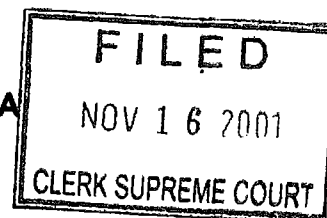


IN THE COURT OF APPEALS OF IOWA

No. 1-535 / 00-1414
Filed November 16, 2001



IN RE THE MARRIAGE OF TRACY LYNN BOURASSA and DAVID JOSEPH BOURASSA

Upon the Petition of
TRACY LYNN BOURASSA,
Appellant,

And Concerning
DAVID JOSEPH BOURASSA,
Appellee.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul,
Judge.

The petitioner appeals the physical care, support, and medical expense provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED, REMANDED WITH DIRECTIONS.**

Michael J. Frey of Hellige, Lundberg, Meis, Erickson & Frey, Sioux City,
for appellant.

Teresa A. O'Brien of Forker & Kanter, Sioux City, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Tracy Bourassa appeals provisions of the decree dissolving her marriage to David Bourassa. Tracy contends she should have been awarded physical care of the parties' children or, in the alternative, granted more liberal visitation. She also alleges the district court miscalculated her child support obligation, and failed to make a provision for uncovered medical expenses. While we decline to disturb the district court's decision to place the children in David's physical care, we find Tracy is entitled to more visitation than is currently provided for under the decree. We therefore modify the visitation provision and remand the support issues for recalculation in light of Tracy's extraordinary visitation.

Background Fact and Proceedings. Tracy and David were married in 1988, and had three children: Timber, born in 1991, Tyson, born in 1994, and Tasha, born in 1997. In September 1999 Tracy asked David to move out of the marital home, but David refused to leave until early December 1999. During this three-month period both parties absented themselves from the home. Beginning in October Tracy often went out in the evenings, but the parties offered conflicting testimony as to how much time Tracy spent away from the home. David also spent some nights at the home of his elderly mother, describing his presence in the family residence during that period as "on and off, about half the time." When David did move out in December, just a few days prior to Tracy's filing a petition to dissolve the parties' marriage, he moved into his mother's house. David's mother was also the children's primary babysitter.

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Tracy and David initially agreed to a physical care schedule that gave Tracy care of the children an average of five out of seven days per week and typically provided David with one weekday and one weekend overnight. In March 2000 David requested an equal shared-care arrangement. Tracy claims, and David denies, that this request was an attempt by David to avoid paying child support. By the time of trial the parties had undertaken a roughly equal split of physical care, with David having the children every Monday, Tuesday and Wednesday evening, every Friday, and every other Saturday. Although each party contributed to the financial support of the children between filing and resolution, neither had paid child support to the other.

Tracy is employed as a elementary teacher at the same school attended by the children and, factoring in the summer break, works nine to ten months out of the year. David is a skilled concrete finisher and is unemployed for an average of three months each winter. Given the nature of his profession, David does not work a typical full-time schedule during the remaining nine months. During the marriage he spent part of his free time making improvements to the family home and performing odd jobs for cash payment. David admitted that, if he took on more jobs from various employers, he had the potential to work ten months a year. David was unemployed for the five months preceding trial, as his employer was delayed in beginning a new project. It appears that, during this span of time, David made no effort to seek alternate employment. He contends this is due to a recent slow down in the need for cement finishers.

The testimony on primary care-giving tasks was conflicting, Tracy claiming ninety percent of the children's hands-on care, and David assessing the split at fifty-fifty. David did care for the children when he was laid off from work, but would take them to his mother's house when undertaking certain home improvements. In contrast, when Tracy was off work during the summer, the children remained at home in her care.

After final hearing on August 3, 2000, the court awarded joint legal custody but placed physical care of the children with David, finding that "[David] has been more dependable in regard to spending time with the children, [Tracy] frequently absenting herself from the family home and the children living there while both parties lived in the home." Tracy was allowed visitation as agreed upon by the parties or, alternatively, visitation every other weekend from 4:00 p.m. Friday to 7:00 p.m. Sunday, and every Wednesday from 4:00 p.m. to 4:00 p.m. the next day. The court ordered Tracy to pay child support, finding her income at the school to be \$1,666.66 gross and \$1,394.37 net per month, and finding David capable of earning a \$1,864.15 net monthly income. The decree did not allocate payment of uncovered medical expenses.

Scope of Review. Marital dissolutions are proceedings in equity. *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50-51 (Iowa 1999). Accordingly, our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, particularly on issues of credibility, but are not bound by those findings. Iowa R. App. P. 14(f)(7).

Physical Care. The only evidence before the court on the issue of physical care was the testimony offered by each party and some photographs offered by David. Viewing the record as a whole, it appears Tracy spent slightly more time providing the children with immediate hands-on care. However, the evidence indicates David is an active and involved father and an appropriate caregiver. We find no reason to alter the district court decision, particularly in light of the court's implicit credibility findings. However, we cannot agree the visitation award was appropriate. As Tracy's job leaves her summer months free, and as David historically enjoys his busiest work season during that time, the children should spend the majority of the summer with their mother.

We therefore find the current visitation schedule should be expanded to grant Tracy eight (8) weeks of visitation during the summer months. During this time, David shall have reasonable access to the children as his work schedule allows. Such modification places Tracy's yearly visitation over the 128 days necessary to receive an extraordinary visitation credit under Iowa's child support guidelines. See Child Support Guidelines, Iowa Code foll. § 598.21 (2000) (mandating that, for any case pending as of August 1, 2000, a non-custodial parent receiving more than 127 days of visitation per year is entitled to a credit of between 25% and 35% to his or her monthly support obligation).

We also agree holiday and birthday visitation should be addressed. Accordingly, Tracy shall have the children every year on her birthday and on Mother's Day, and David shall have the children every year on his birthday and on Father's Day. We further determine that the parties shall engage in an

alternating holiday visitation schedule, including but not limited to New Year's Day, spring break, Easter, Memorial Day weekend, July 4th, Labor Day weekend, Thanksgiving (Thursday through Sunday), a shared Christmas break and the children's birthdays. The specific details of this alternating visitation shall be worked out by the parties, according to their work schedules and the needs of the children. If the parties cannot agree to the details of this schedule, they shall each submit a proposal to the trial court for resolution of the issue.

Child Support. Tracy challenges the district court's computation of child support, specifically contending the court miscalculated each party's income and/or earning capacity. Because of the increase in Tracy's visitation, support needs to be recalculated, taking due notice of the extraordinary visitation credit found in the Child Support Guidelines. Accordingly, we find the issue of child support should be remanded to the district court for recalculation in accordance with the guidelines.

Medical Expenses. The parties agree the decree should accurately reflect Iowa law on the issue of uncovered medical expenses. Therefore, upon remand, the district court shall amend the dissolution decree in accord with the guidelines, providing that David, as the custodial parent, pay the first \$250 per year per child of uncovered medical expenses up to a maximum of \$500 per year for all children, and that uncovered medical expenses in excess of the yearly maximums be paid by David and Tracy in proportion to their respective net incomes.

AFFIRMED AS MODIFIED, REMANDED WITH DIRECTIONS.