

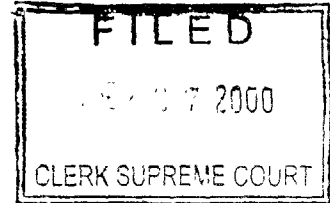
IN THE COURT OF APPEALS OF IOWA

No. 0-332 / 99-1172
Filed September 27, 2000

ANTHONY SNYDER,
Petitioner-Appellee,

vs.

FELICIA PAYTON,
Respondent-Appellant.



Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

The respondent appeals a district court ruling on her application to modify the child support provisions of the parties' paternity decree. Petitioner and respondent request an award of appellate attorney fees. **AFFIRMED AS MODIFIED.**

Patricia M. Hulting of Roehrick, Hulting, Krull & Blumberg, P.C., Des Moines, for appellant.

Anjela A. Shutts of Whitfield & Eddy, P.L.C., Des Moines , for appellee.

Heard by Huitink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

The respondent appeals a district court ruling on her application to modify the child support provisions of the parties' paternity decree. Respondent contends the district court erred in: (1) including in the modified decree a list of responsibilities and obligations that are without statutory basis; (2) setting a complex and disruptive visitation schedule; and (3) requiring her to maintain a \$25,000 life insurance policy naming their minor child as beneficiary. Petitioner and respondent request an award of appellate attorney fees. We affirm as modified.

I. Background Facts and Proceedings. Felicia Payton (Felicia) is twenty-three years old. She has a college degree, and works as a waitress at a West Des Moines restaurant. Anthony Snyder (Anthony) is twenty-three years old. He is a college graduate, and is currently employed by the Des Moines School District as a seventh grade science teacher. The parties' are parents of a minor child, Constance Rose Snyder (Constance), born on January 15, 1996. At the time of Constance's birth, Felicia and Anthony were college students at Clark College in Dubuque and Loyola University in Chicago, Illinois, respectively.

On June 11, 1996, the district court entered a decree granting the parties joint legal custody, with physical care, custody and control awarded to Felicia. The decree ordered Anthony to pay \$100 per month for child support, maintain medical and dental insurance for Constance, and maintain a life insurance policy of \$25,000 with Constance as beneficiary. Anthony has met all his financial obligations to the child. The decree granted Anthony visitation as follows:

[Anthony] shall have visitation on New Year's Day, Memorial Day, Labor Day and Christmas Eve, in odd numbered years, and Easter, Fourth of July, Thanksgiving and Christmas Day in even numbered years. [Felicia] has all other holidays; [Anthony] shall have one weekend per month when [Felicia] is in Dubuque; [Anthony] shall have alternative weekends during the parties' summer vacations.

On September 4, 1998, Felicia filed a petition for modification, seeking an increase in child support. Anthony filed an answer and counterclaim on October 1, 1998, requesting primary physical care of Constance and child support and, in the alternative, modification of the visitation schedule.¹ The parties entered into a consent temporary order in March 1998. The temporary order provided for an increase in child support payments and a temporary change in visitation, defined as follows:

[Anthony] shall have visitation with the minor child as follows: a) Every other weekend from Friday at 4:30 p.m. to Sunday at 6:30 p.m.; b) Every Wednesday evening from 3:30 p.m. to 10:00 p.m.; c) Summer visitation from June 7 to June 13, 1999; d) Father's Day; e) [Anthony's] Birthday; f) All other times that the parties can agree.

In June 1999, following a trial on the petition for modification, the district court filed its findings of fact and conclusions of law and order granting modification of decree. In its modified decree, the district court raised the amount of child support to the amount in the consent temporary order.² The court ordered the parties to use the following guidelines in the performance of their duties and responsibilities as joint legal custodians:

A. Joint custody involves equality in legal rights and responsibilities of the parents toward the child. The responsibilities

¹ Anthony subsequently withdrew his request for physical care of Constance.

² The increase in child support has not been appealed.

include the obligation to allow the child significant contact with the parent not having primary physical care.

B. Both parents shall have legal access to information concerning the child, including but not limited to medical and educational records.

C. Rights and responsibilities of legal custodians of a child include but are not limited to equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instructions.

D. Joint legal custody requires that the party having physical care of the child shall have the responsibility of communicating to the other parent, except in emergency situations, the need to make the decision in regard to the child's activities and welfare and the necessary information available to make the decision.

E. The parties shall consult with each other with respect to the education, religious training, medical care, extracurricular activities, and all other matters relating to the child, whose well-being and development shall at all times be of paramount consideration to the parties. If either party has knowledge of any illness, accident, or other matters seriously affecting the well being of the child, that party shall promptly notify the other and, except for emergencies, shall not take any action without consulting the other.

F. Each parent will support the right of the other to love and discipline the child. Disciplinary actions taken by one parent will be supported by the other parent. Disagreements about child-rearing practices will be resolved outside the presence of the child.

G. The "best interests of the child" include but are not limited to the opportunity for maximum, continuous physical and emotional contact with both parents.

H. Both parents should recognize the need for flexibility of visitation scheduling.

I. Both parents should be mature adults who can put aside their differences and operate in their child's best interest.

J. Each parent will, by telephone or in person, promptly inform the other of any illness of the child which requires medical attention. Elective surgery will be performed after consultation between both parents. Emergency surgery necessary for the preservation of life or to prevent further serious injury or condition may be performed

without consultation provided, however, if time permits, the parents shall consult and, in any event, will be informed as soon as possible.

K. Both parents are expected to meet with school and medical personnel jointly if possible in order to focus on the child's problems and to help these personnel arrive at a solution that is in the child's best interest.

- (1) Felicia will take the necessary action with the school authorities of the school in which the child is enrolled to:
 - (a) List Tony as a parent of the child;
 - (b) Authorize the school to release to Tony any and all information concerning the child; and
 - (c) Ensure that Tony receives copies of any notices regarding the child.
- (2) Each parent will promptly transmit to the other any information received concerning parent-teacher meetings, school club meetings, school programs, athletic schedules, and any other school activities in which the child may be engaged or interested.
- (3) After receipt of same, Felicia shall promptly furnish to Tony a photocopy of the child's grade card or report and copies of any other reports concerning the child's status or progress.
- (4) Each parent shall consult with the other and arrange when possible appointments for parent-teacher conferences at a time when both parents can be present.

The court granted Anthony reasonable rights of visitation. The visitation schedule grants Anthony visitation on alternate weekends, and every Wednesday night from 3:30 p.m. to 10:00 p.m., except when the child is in school, in which case visitation shall take place every Wednesday from 3:30 p.m. to Thursday morning. The trial court divided visitation between the parties for various holidays, and granted Anthony an extended summer visitation with the child for two, two-week periods until she reaches age five. At the age of five,

Anthony will receive three, two-week periods of summer visitation. The court provided one of the two-week periods must be uninterrupted. The remainder of the summer visitation, Felicia shall receive one evening per week with the child. Finally, the court ordered Felicia to obtain and maintain a life insurance policy in the amount of \$25,000, naming Constance as the beneficiary. Felicia appeals.

II. Standard of Review. Our review of modification proceedings is de novo. Iowa R. App. P. 4. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Holub*, 584 N.W.2d 731, 732 (Iowa App. 1998). We give weight to the trial court's fact findings, particularly when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Fox*, 559 N.W.2d 26, 28 (Iowa 1997).

III. Joint Custody Responsibilities and Obligations. Felicia asserts the trial court's "guidelines" added to the statutory definitions of legal custody, physical care, and the duty imposed upon the parent awarded physical care. She claims the trial court has created new and burdensome responsibilities that require her to do the "leg work" for Anthony. Under the trial court's list of duties and responsibilities, according to Felicia, she is subject to Anthony's scrutiny and veto power.

Joint custody gives both parents not only rights to the child but at least as important it gives responsibilities. *In re Marriage of Fortelka*, 425 N.W.2d 671, 673 (Iowa App. 1988). The Iowa Code imposes rights and responsibilities on both parties as joint legal custodians. See Iowa Code § 598.1(3) (1999) ("Rights and responsibilities of joint legal custody include, *but are not limited to*, equal

participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.") (emphasis added). The award of physical care to one parent does not affect the other parent's rights and responsibilities as joint legal custodian of the child. Iowa Code § 598.41(5). The parent awarded physical care must support the other parent's relationship with the child. Iowa Code § 598.41(5). The responsibilities of legal custodians also include the obligation to put personal biases aside and to work with the child's other parent to arrive at a schedule that gives due consideration to the educational and social needs of the children. *Fortelka*, 425 N.W.2d at 673. As we explained in *Fortelka*:

The parent having physical care will be the one receiving information on school events, getting conference slips and report cards. These should be shared with the other parent. Except for emergency situations, the parent having physical care has a responsibility of communicating to the other parent the need to make the decision and making the necessary information available. Both parents have an obligation to personally discuss these problems with each other. While no one can expect medical and school personnel to serve as referees, we can and do expect the parents to meet with them jointly and we expect each parent to focus on the children's problem and help the personnel arrive at a solution that is in the children's best interests. Both parents should recognize the need for flexibility of visitation scheduling. Joint custodians should be mature adults who can put aside their differences and operate in their children's best interests.

Fortelka, 425 N.W.2d at 673. See also *In re Marriage of Hoksbergen*, 587 N.W.2d 490, 492-93 (Iowa App. 1998); *In re Marriage of Westcott*, 471 N.W.2d 73, 75 (Iowa App. 1991).

We do not find the court's guidelines too burdensome for Felicia. The court clearly states the list is intended for use as *guidelines* in the performance of the parties' duties and responsibilities as joint legal custodians. The guidelines

set out the general rights and responsibilities of both parties, not just Felicia. The responsibilities directed at Felicia relate to school records. As the parent with physical care, she will be the one receiving information on school events, and getting conference slips and report cards. The court's requirement she share this information with Anthony does not impose upon Felicia any additional burden. See *Fortelka*, 425 N.W.2d at 673. We affirm the district court on this issue.

IV. Visitation Schedule. Felicia argues the district court's visitation schedule amounts to an award of joint physical care, and points to five specific objections to the schedule. We disagree with Felicia's contentions, and affirm the trial court's visitation schedule.

In establishing visitation rights, our governing consideration is the best interest of the child. *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa App. 1992). Generally, liberal visitation rights are in the child's best interests. *Id.* Iowa Code section 598.41(1) provides in pertinent part:

The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents. . . .

Iowa Code § 598.41(1)(a). Unless visitation with the noncustodial parent will in some way injure the child, it is not to be prohibited. *In re Marriage of Toedter*, 473 N.W.2d 233, 234 (Iowa App. 1991).

The record contains no evidence that substantial contact between Anthony and Constance would be detrimental to Constance. Anthony has been involved in Constance's life since her birth. While attending college, Anthony traveled from Chicago to Dubuque at least one weekend per month to see the

child. Since graduating from college and returning to Des Moines, Anthony has maintained regular contact with Constance to the extent possible, given Felicia's occasional lack of cooperation. Anthony works from 7:30 a.m. to 3:15 p.m. during the school year, leaving him free to spend time with Constance in the evenings and on weekends. During the summer, he has a flexible schedule.

Anthony has provided financial support for Constance since her birth. He makes consistent and on-time payments of child support. In addition, he has purchased toys, baby supplies, clothes and food for Constance. Anthony maintains a bedroom for Constance in his two-bedroom house. She has a bed, toys, and clothes available when she visits Anthony.

Nothing in the record indicates it would not be in the best interest of the child to spend substantial time with her father. We conclude the visitation schedule grants substantial time to Anthony with Constance. It does not grant the parties equal amounts of time as Felicia contends. The district court apparently concluded, based on the testimony of witnesses, recent difficulties between the parties required a detailed visitation schedule. Based on the record before us, we agree. We affirm the visitation schedule in its entirety.

A. Turning Birthdays and Holidays into Weekends. Felicia argues the schedule turns holidays and birthdays into weekends and not a single-day event. The court's visitation schedule treats five holidays as weekends: Easter, Memorial Day, Labor Day, Fourth of July and Thanksgiving. Other major holidays, such as Christmas and birthdays, are treated as days. Odd-numbered years, Felicia has Constance for Memorial Day and Labor Day, while Anthony has her for Fourth of July, Easter, and Thanksgiving. The schedule alternates

during even-numbered years. We conclude this schedule treats both parties fairly.

B. Overnight Midweek Visitation. Felicia argues allowing Anthony an overnight midweek visitation with Constance is disruptive and not in Constance's best interests. We disagree.

Visitation should include not only weekend time, but time during the week when not disruptive to allow the noncustodial parent the chance to become involved in the child's day-to-day activity as well as weekend fun. *In re Marriage of Ertmann*, 376 N.W.2d 918, 922 (Iowa App. 1985). This court generally supports midweek overnight visitation with the noncustodial parent. See *Toedter*, 473 N.W.2d at 235 (granting noncustodial parent midweek overnight visitation each week so long as she resides in the same school district as the children); *In re Marriage of Muell*, 408 N.W.2d 774, 777 (Iowa App. 1987) (granting noncustodial parent overnight visitation every Wednesday). But see *In re Marriage of Gulsvig*, 498 N.W.2d 725, 727 (Iowa 1993) (rejecting noncustodial parent's suggestion he should have midweek visitation rights); *In re Marriage of Fish*, 350 N.W.2d 226, 230 (Iowa App. 1984) (denying midweek visitation because it "would involve excessive shifting of the child between parents and could impair the child's sense of stability.").

Overnight midweek visitation would not involve "excessive shifting of the child between parents" in this case. The parties reside in close proximity, making the logistics of midweek visitation easy. Anthony's home is well-equipped to care for the child, and his schedule affords him ample opportunity to pick up

Constance on Wednesday and return her Thursday morning before school. We conclude overnight midweek visitation would not be disruptive to Constance.

C. Returning the Child Home at 10:00 p.m. Felicia contends allowing Anthony to return Constance at 10:00 p.m. the night before a school day is too late and disruptive of the routine established for Constance. Her contention is without merit. Felicia testified she had no problem with Anthony returning the child at 10:00 p.m. on Wednesday evenings, until Constance starts school. The visitation order allows Anthony visitation on Wednesday evenings until 10:00 p.m., *except* when Constance is in school. Once Constance starts school, the visitation order provides overnight Wednesday visitation.

D. Summer Visitation. Felicia argues the summer vacation visitation is too long and deprives Felicia of any quality vacation time with Constance. We disagree.

The appellate courts have approved extended periods of summer visitation. See, e.g., *Gulsvig*, 498 N.W.2d at 727 (two-week summer visitation with the child at two years of age, and a four-week summer visitation when the child becomes five years of age, subject to the provision the visitation should not exceed a two-week period at any time); *Stepp*, 485 N.W.2d at 850 (June 15 to August 15 each summer); *Toedter*, 473 N.W.2d at 235 (increasing summer visitation from four weeks to six weeks); *In re Deierling*, 421 N.W.2d 168, 171 (Iowa App. 1988) (six weeks of continuous summer visitation). We have refused to order weekend visitation during the noncustodial parent's extended summer visitation with the child. *In re Marriage of Russell*, 473 N.W.2d 244, 247 (Iowa App. 1991) ("We encourage James to allow his daughter to visit her mother

during the [six-week] extended visitation if she so desires, but we decline to order a visitation schedule.”).

Anthony's work schedule allows him to spend a large amount of time with Constance during the summer months. Only one of the two-week periods of summer visitation imposed by the court is uninterrupted, thereby allowing Anthony to take Constance on a vacation or trip. The remainder of the summer visitation, the court's order grants Felicia one evening per week with the child. Nothing in the record indicates this amount of summer visitation would be harmful to Constance. We conclude the summer visitation schedule is in the child's best interest.

E. Make-up Visitation. Felicia argues allowing Anthony to make up missed visitation puts the routine Constance needs when under Felicia's physical care in Anthony's control.

The record demonstrates the parties have had trouble communicating about visitation in the past. Anthony cites to specific instances where Felicia denied him his allotted visitation period. Apparently the trial court, upon hearing the parties' testimony, determined a more rigid visitation schedule was necessary, with a provision for make-up visitation. We will not disturb the make-up visitation provision of the trial court's order, as it had the benefit of hearing and observing the parties first-hand. See *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997).

V. Life Insurance Policy. Felicia contends requiring her to maintain a life insurance policy on her life for the benefit of Constance is unnecessary, unreasonable, and improper, because she is not the parent paying support.

Further, Felicia argues, Anthony did not show a substantial change in circumstances to justify modification of the decree to require her to maintain life insurance.

A parent who pays child support is often required to have a life insurance policy in force to protect the payment of child support. We have upheld such provisions as reasonable and proper. See *In re Marriage of Weidner*, 338 N.W.2d 351, 360 (Iowa 1983); *In re Marriage of Mayfield*, 477 N.W.2d 859, 862-63 (Iowa App. 1991). However, Anthony cannot cite to a case in which the court requires the parent with physical care to obtain a life insurance policy for the benefit of the child. We find the life insurance provision as it relates to Felicia unnecessary and without merit in this case. Therefore, we vacate the requirement Felicia maintain a life insurance policy on her life for the benefit of Constance.

VI. Attorney Fees and Costs. Both parties request attorney fees and costs for the appeal. An award for attorney fees is not a matter of right but rests with the court's discretion and depends on the parties' respective financial circumstances and ability to pay. *Holub*, 584 N.W.2d at 733. After considering these factors, we order each party to pay their own attorney fees and costs.

AFFIRMED AS MODIFIED.