FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IN RE THE MARRIAGE OF JANIS ROMICK AND BRIAN ROMICK

Upon the Petition of)
JANIS ROMICK,)
Petitioner,)
And Concerning)
BRIAN ROMICK,)
Respondent.)

Filed February 24, 1982

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3-66924

Appeal from Pottawattamie District Court - Keith E. Burgett, Judge.

Petitioner-wife appeals from trial court's modification of the decree dissolving her marriage to respondent-husband. AFFIRMED.

Charles R. Hannan, Council Bluffs, Iowa, for petitioner.

Brian Romick, Omaha, Nebraska, pro se.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Petitioner-wife, Janis Romick, appeals from trial court's modification of the decree dissolving her marriage to respondent-husband, Brian Romick. She asserts that the original dissolution decree established joint custody of the parties' minor children and that trial court erred in interpreting the original decree as an award of sole custody to respondent with visitation to her. She asserts that the court's language in the order from which this appeal is taken amounts to a modification by placing sole custody of the children with respondent and that such a modification is erroneous in light of the court's finding that there has been no change in circumstances since entry of the original decree. Finally, she argues that if the custody provisions of the original decree should be modified, she, rather than respondent, should be awarded sole custody.

The original decree, filed on June 9, 19780, provided:

> The care, custody and control of the [two] minor children of the parties ... shall be awarded to the Respondent [Brian] with the provision, however, that the Petitioner [Janis] shall have their care, custody and control during all school year vacations and holidays; and that the parties hereto shall work out these arrangements for exchange of custody during school vacations and holidays, and if unable to do so, the court shall retain jurisdiction to make such orders as it deems appropriate.

In September 1980, each party filed a separate petition to modify the dissolution decree. Petitioner alleged that the decree established a joint custody arrangement, that difficulties had arisen in the effectuation of this joint custody, and that the parties' respective rights concerning custody and visitation should be further specified. Respondent's petition asked the court to establish permanent care, control and custody of the minor children in him, and to set the exact and precise visitation times for petitioner.

Following a modification hearing, trial court issued an order which stated:

> ... [T]he court ... finds that there has not been a change in circumstances presented to this court to the extent that the custody of the minor children should be

> changed, and therefore, finds that the custody of the minor children should remain with the Respondent.
>
> It is further found that the matter of visitation should be modified to the following extent . . .

The court then proceeded to specify what it characterized as petitioner's visitation rights.

I. Scope of Review. Since this is a case in equity, our review is **de novo.** Iowa R. App. P. 4.

II. Propriety of Trial Court's Order. In this case, the same judge who entered the original decree on June 9, 1980, also heard the parties' applications for modification and entered the order of May 28, 1981, from which this appeal was taken. In this regard, ". . . we recognize the advantage the trial court has in interpreting its own prior decree. We have said a court's construction of its own decree is given great weight in determining what the decree means." In re Marriage of Woodward, 229 N.W.2d 274, 277 (Iowa 1975), quoting Peters v. Peters, 214 N.W.2d 151, 157 (Iowa 1974). The decree will be construed in light of the circumstances under which it was entered, in accordance with the pleadings and other parts of the record, but the court's intention, as gathered from all parts of the judgment, is the determinative factor. Woodward, 229 N.W.2d at 278.

Applying the principles set forth above to this determination, we conclude that trial court properly found its original intention was to award legal custody to respondent with visitation (and physical custody) to petitioner during all school year vacations and holidays. We also agree with trial court's conclusion that the parties' inability to implement the terms of this visitation required some specification. We therefore affirm trial court's order.

AFFIRMED.