

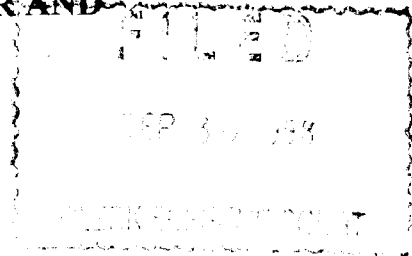
IN THE COURT OF APPEALS OF IOWA

No. 8-107 / 97-1184
Filed September 30, 1998

IN RE THE MARRIAGE OF VIRGINIA VANVACTER AND
JERRY VANVACTER

Upon the Petition of
VIRGINIA VANVACTER n/k/a VIRGINIA HACKER,
Appellee,

And Concerning
JERRY VANVACTER,
Appellant.



Appeal from the Iowa District Court for Webster County, Joel E. Swanson,
Judge.

Jerry VanVacter appeals from the district court's modification of the parties'
dissolution decree. **AFFIRMED AS MODIFIED.**

James W. McCarthy, Fort Dodge, for appellant.

Brian R. Johnsen of Baker, Johnsen and Sandblom, Humboldt, for appellee.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Jerry and Virginia were divorced in August 1992. Virginia was awarded physical care of their children subject to Jerry's liberal, but unspecified, visitation rights. In 1992, the parties agreed to a modified visitation schedule. Jerry's modified visitation included two weekends per month, summer visits beginning on the first Monday after school is dismissed until July 31, mid-week visits from 4:00 p.m. until 7:30 p.m., holidays and special day visits.

Jerry initiated these proceedings to change the allocation of income tax exemptions for the children. Virginia's response sought modification of Jerry's child support and visitation schedule. Virginia alleged she "did not intend or understand the children would be with respondent (Jerry) during all but three weeks of the summer." She also alleged mid-week visits were no longer practical because Jerry could not return the children on time. Virginia additionally claimed Jerry interfered with her summer weekend visits while the children were with him and demeaned her in the children's presence.

All disputed issues were tried on a joint affidavit submitted to the court. After considering this affidavit, the court found:

. . . The original decree did not specifically address visitation. Subsequent attempts only created future difficulties. A period of ten weeks summer visitation was granted to the respondent (Jerry) which resulted in a totally unworkable situation with young children. Additional visitation was attempted because the parties lived in the Fort Dodge area . . . Difficulty has arisen when court-ordered special day

visitation falls on a weekend when respondent (Jerry) would normally have visitation or when special days have fallen during summer visitation

The court also found Virginia's earning capacity was \$10,088 per year or \$770 net monthly income. The court found Jerry's net monthly income was \$3416.

In the modification decree, Jerry's child support obligation was increased from \$1000 to \$1230 per month. The court also imposed a more structured visitation schedule which substantially reduced Jerry's summer visitation. Jerry was ordered to pay \$2000 of Virginia's attorney fees.

II. Standard of Review.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We give weight to the trial court's factual findings but we are not bound by them. Iowa R. App. P. 14(f)(7).

III. Visitation.

Modification of a dissolution decree is only allowed when there has been a material and substantial change in circumstances since the entry of the decree or as its latest modification of the provisions involved. *In re Marriage of Bergfield*, 465 N.W.2d 865, 870 (Iowa 1981). Generally, a much less extensive change in circumstances need be shown in visitation rights cases. *In re Marriage of Rykhoek*, 525 N.W.2d 1, 3 (Iowa App. 1994). The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be

disturbed on appeal unless there is a failure to do equity. *In re Marriage of Kern*, 408 N.W.2d 387, 389 (Iowa App. 1987).

Our de novo review confirms the previously quoted findings of the district court and we adopt them as our own. The record reveals a discouraging and seemingly endless imbroglio on this issue. The resulting tension and disruption of the children's domestic routine is not in their best interests. The parties inability to devise or manage a constructive visitation schedule since the decree was entered provides more than adequate grounds for modification of its visitation provisions. Although Jerry's summer visitation has been substantially reduced, the modified schedule imposed preserves substantial summer visitation with minimal risk of the disruption or opportunity for dispute that has tainted the parties' prior visitation experiences. The district court's modification decree is equitable and falls well within its reasonable discretion. We affirm on this issue.

IV. Child Support.

As noted earlier, Jerry claims his modified child support obligation is excessive because the district court overstated his income. We are unable to find direct evidence supporting the district court's finding that Jerry's net monthly income is \$3410. Although the decree recites this amount is based on Jerry's financial affidavit, marital status, and exemptions, there are no calculations which show us how this amount was determined. In the absence of any record contrary to Jerry's child

support worksheet, we find Jerry's net monthly income is \$3210.58, and reduce his modified child support obligation to \$1120.49.

V. Trial Attorney Fees.

Jerry contends the trial court erred in awarding Virginia \$2000 in attorney fees.

Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award, the complaining party must show that the trial court abused its discretion. *Id.* Awards of attorney fees must be for fair and reasonable amounts, *In re Marriage of Willcoxson*, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. *In re Marriage of Lattig*, 318 N.W.2d 811, 817 (Iowa App. 1982).

Because we find no evidence the trial court abused its discretion in awarding attorney fees, we affirm the award of \$2000 to Virginia.

VI. Appellate Attorney Fees.

An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Eastman*, 538 N.W.2d 874, 877 (Iowa App. 1995). We consider the needs of the requesting party, the ability of the other party to pay, and whether the requesting party was obligated to defend the district court's decision on appeal. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996). We decline to make an award in this case. Each party shall pay his or her own attorney fees.

AFFIRMED AS MODIFIED.