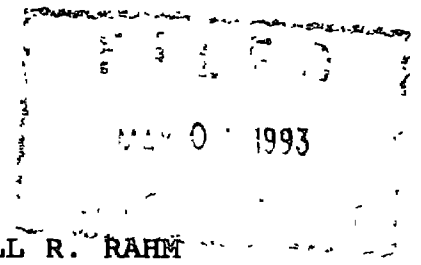


IN THE COURT OF APPEALS OF IOWA

No. 2-630 / 92-751



IN RE THE MARRIAGE OF MARIA D. NELSON AND RANDALL R. RAHM

Upon the Petition of
MARIA D. NELSON,

Appellee,

And Concerning
RANDALL R. RAHM,

Appellant.

Appeal from the Iowa District Court for Lee County,
William L. Dowell, Judge.

The husband appeals the district court's ruling on an application to modify the child custody and visitation provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Timothy W. Greene of Borseth & Greene Law Office,
Pleasant Hill, for appellant.

Maria D. Nelson, West Point, pro se.

Considered by Donielson, P.J., and Schlegel and
Sackett, JJ.

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SCHLEGEL, J.

The husband appeals the district court's ruling on an application to modify the child custody and visitation provisions of the parties' dissolution decree. The husband contends the district court erred in: (1) limiting his summer visitation to a minimum of five weeks; and (2) failing to modify the initial Colorado decree to award him joint legal custody.

Maria D. Nelson and Randall R. Rahm had been stationed at Lowry Air Force Base, Colorado, as active Air Force personnel. The parties have two children, Patrick and Miranda. Patrick was born nearly a year before the parties' marriage. Maria and Randall lived apart during the first year of their marriage. The parties saw each other once when their daughter was conceived. Randall moved to Colorado shortly before Miranda was born.

Their marriage was dissolved by the district court in Colorado on June 28, 1983. At the time of their dissolution, both parties proceeded pro se and entered an agreement as to custody, child support, and visitation. Maria continued to live in Colorado, where she had been stationed as a career military airman. Randall moved back to his home state of California in August of 1983.

Maria has always claimed Iowa to be her state of residence. Since the expiration of her second enlistment in 1984, Maria and the children have resided in Iowa.

On October 21, 1991, Randall filed an application seeking to modify the parties' dissolution decree to provide him a regularly scheduled period of eight weeks during the summer to exercise visitation with his children. At that time, Maria was a graduate student residing in West Point, Iowa. Randall lived in Burbank, California. Randall was self-employed and had a gross annual income of approximately \$7,600. Randall had remarried and his current wife had a gross annual income of approximately \$33,000. In addition, Randall received eighty-five dollars per month as a disability benefit.

On April 14, 1992, the district court ruled that there had been a substantial change in circumstances warranting a modification of the prior decree because each party had moved from Colorado. The court granted visitation to Randall for a minimum of five consecutive weeks during each summer. The court ordered Randall to pay the costs associated with the round-trip air transportation to and from California. Randall appeals, requesting both an extended period of visitation during the summer and joint legal custody.

Modification of a dissolution decree is only permitted where a material and substantial change in circumstances has occurred since the original decree. *Mears v. Mears*, 213 N.W.2d 511, 514-15 (Iowa 1973). "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on

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appeal unless there is a failure to do equity." In re Marriage of Kern, 408 N.W.2d 387, 389 (Iowa App. 1987) (citing In re Marriage of Vetterneck, 334 N.W.2d 761, 762 (Iowa 1983)).

The principles enumerated in Vetterneck and applied in Kern are applicable here as well:

A number of principles emerge from our cases: (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or continuous rather than temporary; (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered.

Vetterneck, 334 N.W.2d at 762. We agree with the district court's holding that each party's move from Colorado since the original dissolution decree was filed constitutes a substantial and material change in circumstances warranting modification of the decree. See In re Marriage of Jerome, 378 N.W.2d 302, 306. Randall has moved to California, and Maria has moved to Iowa.

Having carefully reviewed the record, we conclude the district court's order granting visitation to Randall for a minimum of five consecutive weeks during each summer is in the best interests of the children, and we affirm the court on this issue. Randall shall be responsible for all of the costs and arrangements associated with transporting the children from Iowa to California and back to Iowa.

In addition, the original decree shall be modified to award the parties joint legal custody of the children with Maria continuing to provide primary physical care. Iowa Code section 598.41(2) (1991) states that the court shall consider granting joint legal custody in cases where the parents do not agree to joint custody, such as in the present case.

This subsection instructs that a court should grant joint legal custody unless clear and convincing evidence can be cited supporting the conclusion that joint custody is unreasonable and not in the best interests of the children to the extent that the legal custodial relationship between the children and parent should be severed. We do not find clear and convincing evidence to this effect to exist in the present record. Accordingly, both Randall and Maria shall possess the rights and responsibilities of legal custodians of the children which include, but are not limited to, equal participation in decisions affecting the children's legal status, medical care, education, extracurricular activities, and religious instruction. Iowa Code § 598.41(5) (1991).

As discussed above, the district court's ruling on the application for modification of the parties' original dissolution decree is affirmed as modified.

AFFIRMED AS MODIFIED.