IN THE COURT OF APPEALS OF IOWA

No. 1-382 / 00-1657
Filed August 15, 2001

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF MARK ALLEN SEAGO AND HEIDI MARIE SEAGO

Upon the Petition of
MARK ALLEN SEAGO,
Petitioner-Appellant,

And Concerning
HEIDI MARIE SEAGO,
Respondent-Appellee.

Appeal from the Iowa District Court for Tama County, William R. Eads, Judge.

The petitioner appeals the district court's ruling on respondent's application for enforcement of decree granting respondent additional visitation. **REVERSED.**

Boyd J. Milroy and Morris L. Eckhart of Milroy, Eckhart & Thompson, Vinton, for appellant.

Dennis D. Appelgate of Mickelson, Roan, Appelgate & Kenkel, Toledo, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Mark and Heidi Seago were divorced in April 1997. They had only one child, Kylie, born April 11, 1995. By stipulation, the parties were awarded joint custody. Mark was awarded physical care, subject to Heidi's right to liberal visitation. The stipulation set forth the following visitation schedule:

> 5. . . . [Heidi is] to receive reasonable visitation rights, including, but not limited to, the following:
>
> A. Alternative weekends, from 5:00 p.m. Friday to 6:00 p.m. the following Sunday.
>
> B. Wednesday evening of each week from 4:00 p.m. to 8:00 p.m.
>
> C. Mother's Day and [Heidi's] birthday, whether or not they fall on a scheduled visitation day.
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> D. [Heidi's] visitation will not include Father's Day or [Mark's] birthday, whether or not they fall on a scheduled visitation day.
>
> E. Alternate holidays, with the holidays to include: Easter, Kylie's birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
>
> . . .
>
> 7. The parties agree that [Heidi] shall have visitation at such other times and places as can be agreed upon by the parties.

The decree incorporated this stipulation, stating Heidi was entitled to "reasonable visitation rights, including, but not limited to, that which is set out in the stipulation of settlement . . . ."

On January 20, 2000, Heidi filed an "application for enforcement of judgment" alleging Mark denied all requests for visitation beyond that specifically enumerated in the stipulation. Heidi therefore asked the district court to specify additional times for visitation and require that she be given priority for childcare when Mark is unavailable. The district court granted the motion, interpreting the

decree's language that visitation be "not limited to" that set out in the stipulation to authorize additional visitation. The court supplemented Heidi's visitation rights as follows:

> 1. Every Wednesday from 12:00 noon until 8:00 p.m., unless and until the child is in school, at which time the Wednesday visits shall be from the end of the school days until 8:00 p.m.
> 2. Every Saturday that Mark is working from 8:00 a.m. until 8:00 p.m.
> 3. Any other times that Heidi is available for caring for the child in which Mark would otherwise be required to utilize the services of a baby-sitter for which payment must be made.
> 4. Three weeks of summer vacation, not including the first week following the end of a school year nor including the last week prior to the commencement of a new school year. Heidi shall give Mark thirty days notice as to when such periods of visitation shall be exercised.
> 5. Not less than three full days of Christmas vacation visitation during the time that the child is not attending school during a Christmas vacation period.

On appeal Mark argues that the district court erred in modifying the decree without requiring proof of a substantial change in circumstances.

II. Standard of Review.

Our review is de novo. Iowa R. App. P. 4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of White*, 537 N.W.2d 744, 746 (Iowa 1995). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Gaer*, 476 N.W.2d 324, 326 (Iowa 1991).

III. The Merits.

We agree that the district court improperly modified the divorce decree. A stipulation, when incorporated into the dissolution decree, becomes the court's

language and is to be interpreted and enforced as a final judgment of the court. *In re Marriage of Sylvester*, 412 N.W.2d 624, 627-28 (Iowa 1987). A decree is to be construed as other written documents; the determining factor is the intention of the court as gathered from all parts of the judgment. *In re Marriage of Antisdel*, 478 N.W.2d 864, 866 (Iowa Ct. App. 1991).

Where ambiguity exists, the court may construe or clarify the decree, giving effect to that which is clearly implied as well as that which is expressed. *See In re Marriage of Lawson*, 409 N.W.2d 181, 182-83 (Iowa 1987). However, an order is not merely a clarification where it makes substantive changes in the original decree; rather, such an order is an improper modification of a custody order absent proper showing of a substantial change in circumstances. *See* 24 Am. Jur. 2d *Divorce and Separation* § 598 (1998); *see also In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa Ct. App. 1998) (custody may only be modified following showing of substantial change in circumstances since the decree that was not contemplated by the court when decree entered). We find that the district court's order granting substantially more visitation rights constituted a substantive change in the decree and thus, in light of Heidi's admission of no changed circumstances, we must reverse the district court. *See Butler v. Denton*, 150 F.2d 687, 691 (10th Cir. 1945) (purpose of construing doubtful provisions in a judgment is to give effect to that which is already latently in the judgment; court has no warrant to add new provisions, substantive or otherwise, which were omitted or withheld in the first instance).

REVERSED.

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