

NOV 24 1981

IN RE THE MARRIAGE OF FLOYD ALAN ADAMS AND SHIRLEY JEAN ADAMS

Upon the Petition of	)	
FLOYD ALAN ADAMS,	)	
Petitioner-Appellant,	)	Filed November 24, 1981
And Concerning	)	
SHIRLEY JEAN ADAMS,	)	
Respondent-Appellee.	)	<u>1-306</u> 2-66021

Appeal from Mahaska District Court - James D. Jenkins, Judge.

Petitioner-husband appeals from trial court's order modifying the visitation provision set forth in the original decree dissolving his marriage to respondent-wife, alleging 1) that trial court erred in modifying the original decree because there was no present change in circumstances outside trial court's contemplation when issuing the original decree and 2) that the decree as modified is unduly restrictive. VACATED AND MODIFIED.

John N. Moreland, Ottumwa, Iowa, for petitioner-appellant.

Garold F. Heslinga of Heslinga & Heslinga, Oskaloosa, Iowa, for respondent-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-husband, Floyd Allen Adams, appeals from trial court's order modifying the visitation provision set forth in the original decree dissolving his marriage to respondent-wife, Shirley Jean Adams. Petitioner alleges 1) that trial court erred in modifying the original decree because there has been no change in circumstances outside trial court's contemplation when issuing the original decree and 2) that the decree as modified is unduly restrictive. We vacate trial court's order and modify the visitation provisions set forth in the original decree.

The parties' marriage was dissolved by decree of dissolution on October 8, 1979. The decree awarded the primary care, custody, and control of the parties' only minor child Austin Floyd, now age two and one-half years, to the respondent subject to certain specified visitation rights in the petitioner as follows:

- A. Each week from noon Sunday until 6 p.m. the following Monday;
- B. Two weeks each summer at times as agreed by the parties;
- C. Alternate Thanksgivings commencing on Thanksgiving in 1980;
- D. Each Christmas Eve with the child to be returned to the respondent's home by midnight so that the child is in his home on Christmas Day.

The parties at the hearing agreed that all of the custodial and visitation arrangements were satisfactory except item A, the weekly visitation.

At the time of the parties' dissolution, respondent lived in Oskaloosa and was unemployed. Subsequent to the decree of dissolution, she found employment. In order to obtain better employment, she then moved to Iowa City, which is located an hour and one-half distance from Oskaloosa by car. She presently is employed by the Iowa City Chamber of Commerce, working from 8 to 5, Monday through Friday. She has Saturday and Sunday off.

Petitioner was, at the time of the decree, a professional photographer and is still so engaged. He lived and still lives in Oskaloosa. Petitioner finds it necessary, because of his employment, to work frequently on Fridays and Saturdays photographing weddings and other activities. It was because of this employment pattern that visitation originally was established from noon Sunday until 6 p.m. the following Monday.

Alleging that the old visitation schedule had become unduly restrictive since her move and new job, respondent applied to the trial court for modification of the original dissolution decree. Trial court modified the original visitation provision to award petitioner visitation once a month from 9 a.m. on the last Sunday of the month until 6 p.m. the following Monday, until Austin reaches the age of five. Once Austin reaches the age of five, the visitation period is extended to include the second Sunday-Monday

combination in each calendar month. Such arrangement continues until Austin actually begins school, at which time visitation changes to 9 a.m. Saturday until 6 p.m. Sunday on the second and fourth Saturday-Sunday combination of each calendar month. Petitioner appeals from this modification.

I. Scope of Review. Our review of this matter is *de novo*. Iowa R. App. P. 4.

II. Modification Generally. Petitioner argues that trial court erred in entertaining respondent's application for modification of the visitation provision because there existed insufficient change in circumstances, outside the contemplation of the court when issuing the original decree, to justify modification. We disagree.

The rules governing trial court's authority in this regard are well settled.

To justify a change of visitation rights the [respondent] must show that there has been a change of circumstances since the divorce decree. However, as to modification of visitation rights as compared to child custody changes the general rule is that a much less extensive change of circumstances need be shown in visitation right cases. [citation]

Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). See also In re Marriage of Lower, 269 N.W.2d 822, 827 (Iowa 1978). Although it is reasonable to assume that trial court contemplated petitioner's entry into the job market, it is unlikely that that court contemplated, in fixing weekly visitation, the disruption that extensive travel causes a young child. See In re Marriage of Guyer, 238 N.W.2d 794, 797 (Iowa 1976). However, in light of petitioner's move, we believe such a visitation schedule was unduly disruptive and modification was warranted.

III. Visitation. It is axiomatic that the first and governing consideration when determining issues of child custody is the best interests of the child. Iowa R. App. P. 15. The best interests of the child require a continuing association with the noncustodial parent unless the contrary is shown. Donovan, 212 N.W.2d at 453.

Although we are mindful of the disruption extensive travel and weekly visitation causes, see Guyer, 238 N.W.2d at 797, we believe trial court's modified decree is unduly restrictive. See In re Marriage of McBee, 244 N.W.2d 327 at 329 (Iowa 1976). We now make the following provisions for visitation: Visitation shall include the first and third Sunday-Monday combination in each calendar month and shall include the hours between 9 a.m. Sunday to 6 p.m. on Monday. This schedule shall continue until Austin actually begins school. During the period of time that Austin is actually attending school, the time periods shall change to 7 p.m. on Friday until 6 p.m. on Sunday on the first and third Saturday-Sunday combinations of each calendar month. During the summer

months or during school vacation periods, visitation shall revert to the Sunday-Monday combination. Visitation during Christmas, Thanksgiving, and two weeks visitation during the summer, shall remain as trial court provided in the original decree. We thus vacate trial court's order modifying the original decree and modify the original decree as provided in this opinion.

VACATED AND MODIFIED.

Oxberger, C.J.: I would affirm the trial court.

Carter, J., joins in this dissent.