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IN THE COURT OF APPEALS OF IOWA SUPREME COURT

IN RE THE MARRIAGE OF STEPHANIE IRELAND AND BARRY A. IRELAND

Upon the Petition of	)	
STEPHANIE IRELAND, now	)	
STEPHANIE IRELAND BERNHAGEN,	)	Filed September 23, 1980
	)	
Petitioner-Appellant,	)	
	)	
And Concerning	)	
	)	
BARRY A. IRELAND,	)	<u>0-266</u>
	)	<u>64234</u>
Respondent-Appellee.	)	

Appeal from Clay District Court - Murray S. Underwood, Judge.

Petitioner appeals from trial court's sustaining of special appearance by respondent in an action to modify Idaho divorce decree pursuant to chapter 598A, The Code 1979. **AFFIRMED.**

Rosemary Sackett of Sackett, Sackett, Hemphill & Howe, Spencer, for petitioner-appellant.

David A. Scott of Cornwall & Avery, Spencer, for respondent-appellee.

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

Petitioner, Stephanie Ireland Bernhagen, appeals from trial court's sustaining of a special appearance by respondent Barry A. Ireland in an action to modify an Idaho divorce decree pursuant to chapter 598A, The Code 1979. Specifically, petitioner challenges the trial court's conclusion that Iowa is an inconvenient forum for an action to modify respondent's visitation rights and the court's subsequent refusal to exercise jurisdiction. We affirm the judgment of the trial court.

I.

Petitioner and respondent were divorced in Idaho in November, 1978. Petitioner was granted custody of the couple's two minor children and a specific schedule was set up allowing respondent certain visitation privileges. In particular, respondent was to have the children on Christmas in 1978 and during eight continuous weeks in the summertime.

Petitioner remarried and moved to Iowa with her new husband and the two children on December 24, 1978. The following June, respondent went to petitioner's home in Iowa to exercise his eight-week visitation privilege. Although there is some discrepancy as to whether respondent was denied contact with the children by petitioner's new husband or whether respondent was merely unable to see the children because they were out with their mother at the time, the fact is that respondent returned to Idaho without seeing the children and, on July 23, 1979, initiated contempt proceedings against his wife in an Idaho court. Notice was served on the Idaho attorney who had represented petitioner in the divorce proceedings, but petitioner twice failed to appear and was finally adjudicated in contempt of the Idaho court. Prior to the adjudication of contempt but subsequent to initiation of Idaho proceedings against her, petitioner filed an application in Iowa to modify the visitation provisions of the Idaho divorce decree. Respondent filed a special appearance to challenge the jurisdiction of the Iowa court to hear the modification action. The trial court sustained respondent's special appearance and declined to exercise jurisdiction on the ground that Iowa is an inconvenient forum for the action in light of factors set forth in § 598A.7, The Code 1979.

II.

On appeal, petitioner correctly contends that § 598A.3(1)(b), The Code 1979, confers jurisdiction on the Iowa court to hear her modification action. However,

petitioner maintains that the inconvenient forum doctrine set forth in § 598A.7 is inapplicable here as a basis for the trial court's refusal to exercise jurisdiction. We disagree.

One of the general purposes of the Uniform Child-Custody Jurisdiction Act, chapter 598A, The Code 1979, is to avoid jurisdictional competition and conflict between courts of different states in child custody cases. Pierce v. Pierce, 287 N.W.2d 879, 884 (Iowa 1980). See also In re Marriage of Mintle, 294 N.W.2d 564, 566 (Iowa 1980). To this end, an Iowa court cannot modify the custody decree of another state unless it determines that Iowa has sufficient contact with the case to satisfy the jurisdictional requirements of § 598A.3. Pierce, 287 N.W.2d at 883.

Section 598A.3(1)(b) grants jurisdiction to an Iowa court to modify a foreign custody decree where the child and at least one parent have a significant connection with this state. Thus, because petitioner and her children have made their home in Iowa since December, 1978, the trial court had jurisdiction in the action to modify the Idaho decree. However, even though an Iowa court may have jurisdiction to modify another state's decree, it may decline to exercise that jurisdiction on the grounds of inconvenient forum if the court determines that assumption of jurisdiction by the other state would be in the child's best interest. § 598A.7, The Code 1979. The trial court correctly invoked § 598A.7 in this instance. It noted that a normal relationship with their natural father is in the best interest of the Ireland children and that substantial evidence concerning that relationship is more readily available in Idaho. The court further observed that Idaho was until recently the home state of the children and both parties and that Idaho, being the state of respondent's residence, has a closer connection with the circumstances relevant to the relationship between respondent and his children. The court therefore properly concluded that Idaho was the appropriate forum for petitioner's action to modify respondent's visitation rights.

III.

Respondent argues that petitioner should be required to pay respondent's reasonable attorney fees on this appeal because petitioner's Iowa action to modify the Idaho divorce decree was instituted to prevent the Idaho court from enforcing its decree in the contempt proceedings.

Regardless of whether an action is at law or in equity, it is well settled that a court lacks the inherent power to assess attorney fees against the losing party. See

Harris v. Short, 253 Iowa 1206, 1210, 115 N.W.2d 865, 867 (1962). Normally, attorney fees can be recovered only if authorized by statute or by agreement. Virginia Manor, Inc. v. City of Sioux City, 261 N.W.2d 510, 512 (Iowa 1973); Frost v. Cedar County Board of Supervisors, 163 N.W.2d 432, 434 (Iowa 1968); Thorn v. Kelley, 257 Iowa 719, 726, 134 N.W.2d 545, 548 (1965); Addy v. Addy, 240 Iowa 255, 266, 36 N.W.2d 352, 359 (1949). When \$ 598.7 serves as the basis for refusal to exercise jurisdiction, \$ 598A.7(7) authorizes reimbursement of attorney fees where it appears to the court that the forum is clearly an inappropriate one. Mintle, 294 N.W.2d at 567. While we agree that Iowa is an inconvenient forum for this action, we do not agree that it is clearly an inappropriate one, since petitioner and her children have lived in Iowa since December, 1978. Accordingly, respondent's request for attorney fees on this appeal is denied.

We affirm the trial court's finding that Iowa is an inconvenient forum for petitioner's modification action and the court's subsequent sustaining of respondent's special appearance.

AFFIRMED.