FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF BEVERLY J. DALLY AND FRANKLIN HARRY DALLY

Upon the Petition of)
BEVERLY J. DALLY,)
Petitioner-Appellee/)
Cross-Appellant,)
And Concerning)
FRANKLIN HARRY DALLY,)
Respondent-Appellant/)
Cross-Appellee.)

Filed December 18, 1985

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5-531
85-102

Appeal from the Iowa District Court for Boone County - Louis F. Beisser, Judge

Respondent appeals the trial court's denial of his application for additional and different visitation. **AFFIRMED AS *MODIFIED*.**

Harvey L. Harrison, Des Moines, Iowa, for respondent-appellant/cross-appellee.

Michael F. Mahoney of Mahoney & Mahoney, Boone, Iowa, and Jim P. Robbins of Donelson & Robbins, Boone, Iowa, for petitioner-appellee/cross-appellant.

Considered by Oxberger, C.J., Snell, and Schlegel, JJ.

SCHLEGEL, J.

Respondent, Frank Dally, appeals the trial court's denial of his application for additional and different visitation. Petitioner, Beverly Dally, raises on appeal several issues concerning the effective date of the award of increased child support, medical and hospital responsibilities imposed upon respondent, and attorney fees. We affirm as modified.

Frank and Beverly Dally dissolved their eleven-year-old marriage in August, 1982. They are the parents of two children, ages 9 and 5 at the time of the dissolution decree. They agreed to joint custody of the children with primary physical care given to Beverly. During their marriage Frank had been fired from his job at the Chicago & Northwestern Railroad, and the parties did not expect him to be rehired. At the time of the decree Frank was working part-time and in June, 1983, found work as a substitute preschool teacher. He worked Monday, Wednesday, Thursday, and Friday from 8:30 a.m. to 4:30 p.m. while enrolled full time at Des Moines Area Community College. He received his Associate of Science Degree in child development in December, 1983.

Under these circumstances, the original decree set visitation rights for Frank at every other weekend from 5:30 p.m. on Fridays to 8:00 p.m. on Sundays; every Tuesday and the first Thursday following weekend visitations. Holiday visitation and birthday visitation rights were also set, along with summertime visits set at every two weeks for each parent, unless they agreed otherwise.

Conditions changed, however, for Frank when he was unexpectedly rehired by the railroad. Due to this unforeseen change in income for Frank, Beverly filed for modification of the dissolution decree requesting that the child support amount be increased and that Frank be ordered to assume medical and hospital coverage for the children. In response, Frank cross-petitioned, asking that he be named primary physical custodian and that visitation be changed accord-

ingly; or, in the alternative, that the visitation schedule be altered to allow him to spend more time with the children. He also asked to have the summertime visitation schedule modified.

The trial court refused to grant physical custody of the children to Frank and also refused to modify any visitations schedules. The court increased the amount of child support to $200 per month per child and ordered Frank to provide doctor and hospital insurance for the children and medical expenses not covered by insurance.

On appeal, we are asked to decide several issues raised by both parties. The issues are whether the trial court erred, (1) in failing to alter the visitation schedule; (2) in setting the amount of child support and in not making the increase retroactive to the date of filing the petition to modify; (3) in failing to fully delineate respondent's medical coverage responsibilities; and (4) in setting the amount of attorney fees awarded to petitioner.

The standard of review to be applied in this appeal is de novo. In re Marriage of Hubbard, 315 N.W.2d 75, 80 (Iowa 1982). Although the findings and conclusions of the trial court are given weight, the appellate court is not bound by them. The facts must be examined anew. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983); Iowa R. App. P. 14(f)(15).

I. Visitation Schedule. The original decree set the visitation schedule according to Frank's work schedule at that time, which amounted to several days a week at a day care center and an occasional weekend. But his new work schedule for the railroad requires Frank to be on a train from Friday evening until late Saturday night and Sunday evening until late Monday night. Thus, he was able to see the children a few hours on Friday evening, not at all on Saturday, and most of Sunday. Therefore, on the weekly schedule whereby he was granted visitation on Tuesday and the weekend, his time allowed with

his children would be reduced from three nights and two days, to basically one night (Tuesday), one day (Sunday), and two short evenings (Friday and Sunday). In reality, there is not much a parent can do between the school hours on Friday and six o'clock, when Frank is scheduled to be at work. This is especially true when the children are residing in another town. In addition, if the children must be back with their mother by 8:00 p.m. on Sunday, the time spent returning them will usually take up the evening time he's allowed with his children. Therefore, Frank's new work schedule has, in effect, reduced his visitation time, during the week with just a Tuesday visitation, to one night (Tuesday) and one day (Sunday).

The parent seeking a change in visitation from that established in the original decree must establish a change of circumstances such as was not within the contemplation of the court when the original decree was entered. Hobson v. Hobson, 248 N.W.2d 137, 139 (Iowa 1976). Any changes must be substantial and material, more or less permanent or continuous and must relate to the welfare of the child. In re Marriage of Nesset, 345 N.W.2d 107, 109 (Iowa 1984); Hobson v. Hobson, 248 N.W.2d at 139. Where it is visitation, and not custody, that is the subject of the action, a less extensive change of circumstances is required. Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973).

The basis of all requests for a modification of visitation rights as well as the basis for all review of court decisions must be the best interests of the child or children. See In re Marriage of Leyda, 355 N.W.2d 862, 865 (Iowa 1984); In re Marriage of Hubbard, 315 N.W.2d 75, 82 (Iowa 1982).

Our statutes as well as our case law have promoted the maximum physical and emotional contact between divorced parents and their children. See Iowa Code §§ 598.1(6), .41; see also In re Marriage of Weidner, 338 N.W.2d 351 (Iowa

1983). It is therefore well settled that our society regards the best interests of the child as the maximum contact possible between parent and child.

The trial court in this case refused respondent's request, saying that a change would not be in the best interests of the children, and that the children have "adapted" to the present living conditions and should not be required to make any changes.

We cannot agree with the trial court concerning the weekly visitation rights during the school year. Frank has requested that, instead of the original schedule, he be allowed to visit the children each Wednesday evening and every other Friday until their bedtime; and also every other weekend from Friday after school until Sunday evening. We do not consider these terms to be so different that the children would suffer in "adapting" to this new schedule. This change in Frank's work schedule was unforeseen by both parties and the court. To affirm the trial court on this specific issue would, on the basis of Frank's reinstatement, impose upon him additional responsibilities of being a parent and at the same time eliminate some of the joys of having children. We therefore modify the trial court's order to allow visitation during the school year according to Frank's proposed schedule.

We affirm the trial court's refusal to change the summertime visitation. Frank's reinstatement has not brought about any change in circumstances that would justify a modification of this aspect of the decree.

II. **Amount of Child Support**. When the original decree was entered, Frank was anticipating a gross annual income of $7,000 to $10,000 per year. The record indicates he is presently earning over $30,000 with the railroad. The trial court modified Frank's support obligations from $100 per month to $200 per child per month, or $400. Frank's income has increased threefold due to his reinstatement, and his support payments were increased fourfold. Both

parents are liable for support of their children, not necessarily in equal shares, but proportionately accordingly to their ability to pay. In re Marriage of Novak, 220 N.W.2d 593, 598 (Iowa 1974). The trial court had the opportunity to weigh and consider all of the financial resources of the parties. We affirm the trial court's decision on this issue.

We note, however, that Frank regained his employment with the railroad on January 16, 1984, and the petition to modify was filed a month later. It would be equitable to order Frank to begin his increased payments no sooner, or later, than he is financially able. It is equitable, under the facts of this case, to make the increased support obligation effective from the date of the petition to modify. We therefore modify the trial court's decree to make the increase retroactive to the date of filing the petition to modify. See Willcox v. Bradrick, 319 N.W.2d 216, 219 (Iowa 1982).

III. **Medical and Dental Coverage.** The trial court modified its original decree to require Frank to "... provide for the children's doctor and hospital coverage and pay for such medical bills not covered by insurance ...." The parties originally stipulated that medical costs included dental costs, hospital costs, outpatient costs, diagnostic costs including x-rays and doctor bills. Since the above medical responsibilities were initially assumed by Beverly, she alleges that the modification now transfers such obligations to Frank. We agree. We hold the logical interpretation of the trial court's modification order would include all of the formerly stipulated responsibilities assumed by Beverly.

IV. **Attorney Fees.** Beverly alleges the trial court erred in awarding her insufficient attorney fees. We do not increase that award. We award $500 attorney fees associated with this appeal.

We modify the trial court's order setting visitation rights for the respondent and granting of attorney fees. In all other respects, the trial court's order is affirmed.

AFFIRMED AS MODIFIED