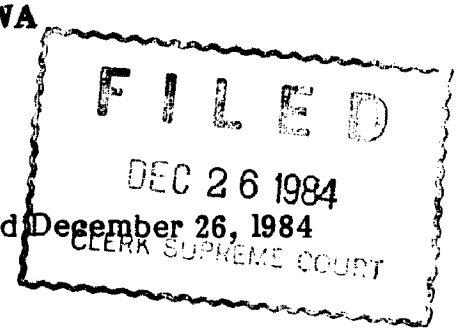
IN THE COURT OF APPEALS OF IOWA



Filed December 26, 1984

JACK O'NEAL,

Plaintiff-Appellant/Cross-Appellee,

vs.

CINDY O'NEAL,

Defendant-Appellee/Cross-Appellant.

475

IN RE THE MARRIAGE OF CINDY LEE O'NEAL AND JACK O'NEAL

Upon the Petition of

CINDY LEE O'NEAL,

Petitioner-Appellee/Cross-Appellant,

And Concerning

JACK O'NEAL,

Respondent-Appellant/Cross-Appellee.

4-407
83-1171

Appeal from the Iowa District Court for Dubuque County - Robert J. Curnan, Judge.

Petitioner appeals her dissolution decree asserting the trial court should have: (1) placed greater restrictions on respondent's visitation rights; (2) ordered respondent to pay more child support; and (3) ordered respondent to pay a portion of petitioner's attorney fees. AFFIRMED AS MODIFIED.

Thomas R. Mayer, Clinton, Iowa, for respondent-appellant/Cross-Appellee.

Francis Lange of Kaufman, Lange, Hodge & Neuhaus, Dubuque, Iowa, for petitioner-appellee/cross-appellant.

Considered by Snell, P.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

Petitioner, Cindy O'Neal, appeals her dissolution decree. She asserts: (1) the trial court should have placed greater restrictions on Jack's visitation rights; (2) the trial court should have ordered Jack to pay more child support; and (3) the trial court should have ordered Jack to pay a portion of Cindy's attorney fees. We affirm the decree as modified.

This case was remanded to the district court after the supreme court decided a jurisdictional dispute under the Uniform Child Custody Jurisdiction Act (U.C.C.J.A.). O'Neal v. O'Neal, 329 N.W.2d 666 (Iowa 1983). On remand the trial court dissolved the parties' marriage, granted custody of their child, Michelle, to Cindy, and ordered Jack to pay $25 dollars a week child support. Our scope of review in this equity case is de novo. Iowa R. App. P. 4.

I. Visitation Provisions. Cindy lives in Dubuque. Jack lives outside the State of Iowa. Although custody of Michelle was awarded to Cindy, the trial court decided it was in the best interests of the child to maintain a relationship with her father, Jack. Accordingly, Jack was awarded "reasonable visitation" rights when he is present where Michelle resides or is domiciled. In addition, he was awarded visitation with Michelle for eight weeks each summer.

Cindy does not appeal the decision that Jack be allowed to visit Michelle. Rather, she argues that in light of past circumstances Jack's visitation privileges should be restricted. We agree.

In modifying the visitation provisions of the dissolution decree, we act for the best interests of the child. See Iowa Code § 598.41(1), 1984 Iowa Legis. Serv. No. 3 at 42 (West). During her life Michelle has lived in more than twenty-five homes. O'Neal, 329 N.W.2d at 667. Her best interests require that she now be placed in a stable, permanent home. Our modification of the visitation provisions of the decree is designed to prevent Jack from destroying the stable home environment the decree tries to establish.

The record shows that Jack has violated at least four court orders pertaining to the custody of Michelle by abducting her and fleeing to different states. A repetition of such conduct would clearly be against the best interests of the child. Although our modifications cannot prevent Jack from again abducting Michelle, they are designed to impress upon him the serious nature of such illegal action. Accordingly, we modify the visitation provisions as follows:

1. Jack shall have no visitation rights until he posts a bond in the amount of $2,000 with the clerk of district court. The bond shall be forfeited to Cindy in the event Jack violates the custody order by abducting Michelle. Posting bond will serve as a deterrent to abduction. In addition, the bond will provide a source of funds which can be used to pay for the cost of locating Michelle after an abduction. If Jack does not violate the custody order, the bond shall be remitted to him upon his petition after Michelle reaches age eighteen.

2. Jack, upon posting the above-mentioned bond, shall continue to have reasonable visitation privileges when he is in the city of Michelle's residence or domicile. When exercising this privilege he shall not take Michelle further than sixty miles from her residence unless Cindy agrees to a longer trip.

3. The summer visitation privilege shall be limited to three weeks for the summers of 1985, 1986, and 1987. The time shall be increased to eight weeks after 1987. Additionally, until Michelle is fifteen years old, the location of the summer visitation shall be limited to the state of Jack's residence, unless Cindy agrees otherwise. By limiting visitation to a period of three weeks in the first three years, we decrease Jack's opportunity to abduct Michelle. The shortened period will also provide for a "hotter trail" for investigation if Jack does abduct Michelle. If he shows by his actions in the first three

years that he has accepted his situation, the visitation period increases automatically.

II. Child Support. The trial court awarded child support of $25 a week. Cindy requests that this be increased to $45 a week and that a trust fund be set up to provide for Michelle's support.

Jack has been trained as an electrician. He has the potential to make a good salary. Although he has had several jobs in the past few years, he has not had trouble finding a new job when finished with a previous one. In addition, he receives a $240 monthly service-connected disability check. Cindy has no job. We modify the amount of Jack's support payments. He shall pay $45 a week, beginning the date the trial court rendered the dissolution decree. One half of these payments shall be put into a trust fund for Michelle's support until the fund reaches a sum of $2,000.

III. Attorney Fees. Cindy asks us to award her attorney fees for the trial of this action and the appeal. She has incurred substantial expense not only in this litigation, but in related litigation in other states because of the abduction of Michelle. She argues that under the circumstances of this case she can be awarded costs and attorney fees pursuant to either Iowa Code section 598A.8(3) or section 598A.15 (1983). We decline to rule on her argument. However, under Iowa Code section 598.11 and case law, we have authority to award attorney fees in dissolution proceedings. See In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981) (citing cases). Applying the factors listed in Castle, we direct Jack to pay Cindy $3,000 for attorney fees for the trial and this appeal.

AFFIRMED AS MODIFIED.