IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF CATHERINE AND MICHAEL VANDE VOORT

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Upon the Petition of	)	
CATHERINE VANDE VOORT,	)	Filed March 20, 1984
Petitioner-Appellee	)	
and Concerning	)	4-76 83-1075
MICHAEL VANDE VOORT,	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Mahaska County - Richard J. Vogel, Judge.

The husband appeals from the trial court's denial of his requested modification of visitation privileges. REVERSED AND MODIFIED.

Garold F. Heslinga, Heslinga & Heslinga, Oskaloosa, Iowa, for petitioner-appellee.

James K. Marvel, Marvel and Doster, Pella, Iowa, for respondent-appellant.

Considered by Oxberger, C.J., Hayden and Sackett, JJ.

Respondent, Michael Vande Voort, appeals from the trial court's refusal to modify the parties' dissolution decree to expand visitation to include a minimum of two weeks summer visitation.

Michael and Catherine's marriage was dissolved in July of 1981. At the time of the dissolution, both parties sought custody of their two daughters, who were born in 1978 and 1979. Catherine was granted custody subject to reasonable visitation by Michael. The trial court provided in the dissolution decree: "If the parties are unable to agree on visitation either party may apply to the court for the time, place and amount of visitation to be set out."

The parties agreed at that point that Michael would have the children every other weekend, every other holiday, and for some period during winter and summer vacations. The agreement worked for a while until Catherine attempted to limit the visitation and on one occasion was not available when Michael attempted to pick up the children.

Michael became frustrated and in October of 1982 filed an application for an order regarding visitation. In the application he alleged that he had attempted to exercise his visitation every other weekend from Friday p.m. to Sunday p.m. and on alternating holidays. He further alleged that Catherine was attempting to limit and circumvent the right of reasonable visitation granted to him. A hearing was set on the order. The application was not resisted and the trial court, in January of 1983, granted visitation as follows:

> 1. Every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m.
> 2. Alternating holidays from 6:00 p.m. on the evening before until 9:00 p.m. on the evening of each holiday.

At that time Michael neither requested nor was granted summer visitation. He was to testify at the modification hearing that he understood that the parties still had an understanding with reference to summer visitation.

Catherine refused extended visitation in the summer of 1983. Michael then filed an application to modify the decree, and asked the court to order a minimum of two weeks summer visitation.

The cause came on for hearing. The trial court found that Michael had failed to show any change of circumstances of any substantial or material nature not contemplated by the court or parties when the decree was entered, and therefore denied the application for modification.

Michael appeals, contending: (1) that the decree contemplated more than one application for visitation; (2) that there was a sufficient change of circumstances to modify the decree; and (3) that it is not in the best interest of the minor children to deny such visitation.

We find on our de novo review that there was a sufficient change in circumstances to justify a visitation modification. To justify a modification of visitation rights, there must be demonstrated a change of circumstances since the dissolution decree, but such change may be much less extensive than would be necessary to obtain custody. In re Marriage of Glass, 213 N.W. 2d 668, 670 (Iowa 1973); Donovan v. Donovan, 212 N.W. 2d 451, 453 (Iowa 1973). The rationale of the above rule is that the best interest of a child ordinarily requires continuing association with his noncustodial parent unless the contrary is clearly shown. Donovan v. Donovan, 212 N.W.2d at 453.

Michael contends that he needs an extended period of time to foster his relationship with his children. He also feels that it is important for him as a father to maintain a good relationship with his daughters. The issue of the relationship of children with parents following a divorce or dissolution has drawn much attention in recent years. Two recent studies on this subject were discussed at length in Child Protective Divorce Laws: A Response to the Effects of Parental Separation on Children, Robert F. Cochran, Jr. and Paul C. Vitz, FAMILY LAW QUARTERLY, Volume XVII, Number 3, Fall 1983. The article concluded in part:

> On the basis of the findings of the Wallerstein and Kelly study[1] and the Jacobson[2] study, we believe the law should seek to protect the child's interest in maintaining a close relationship with both parents. The law should do this by (1) awarding joint custody where the parents request it, (2) ordering substantial amounts of visitation in contested cases. . . .[emphasis supplied]

The Iowa legislature has affirmed its position on the importance of fostering a continuing relationship between parents and children in dissolution proceedings by its strong legislative position on liberal visitation. Iowa Code section 598.41 (1983) provides in pertinent part:

> 1. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure a minor child frequent and continuing contact with both parents. . . [emphasis added]

The Iowa courts have been clear in their belief that a continued close relationship with the noncustodial parent is beneficial to a child. In re Marriage of McBee, 244 N.W. 2d 327, 329 (Iowa 1976).

The record indicates a marked reluctance on the part of Catherine to allow Michael liberal visitation. Michael is a farmer and is a few hours short of being a college graduate. He is articulate, and all evidence in the record indicates that he is genuinely interested in his daughters. He drives 320 miles to pick up and deliver the children each time he exercises his visitation rights. This leaves little time during the visitation period to work on fostering and maintaining a relationship and being able to relax and communicate with his daughters. Extended summer visitation will afford him this opportunity.

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1 J. Wallerstein and J. Kelly, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE (1980). These published results of a study systematically tracked the effects of divorce on the same families for a period as long as five years.

2 Jacobson, The Impact of Marital Separation/Divorce on Children: I. Parent-Child Separation and Child Adjustment, 1 J. DIVORCE 341 (1978).

In discussing modification of visitation rights the Iowa Supreme Court, in Smith v. Smith, 258 Iowa 1315, 1317, 142 N.W. 2d 421, 422 (1966), quoting from Gonyea v. Gonyea, 232 Or. 367, 372, 375 P. 2d 808, 810 (1962), said:

> There is no constant or standard quantity of change which will qualify. The amount of change necessary to justify a modification of a decree varies with the facts of the individual case... We are of the opinion that the mere putting into operation of a decree may in some cases qualify as a change of circumstances.

The Iowa court then went on to quote from the Illinois decision of Blonsley v. Blonsley, 52 Ill. App. 2d 391, 393, 202 N.E. 2d 70, 72 (1964), as follows:

> We do not believe that under the particular facts in the case before us the Order of the Trial Court materially abridged the plaintiff's rights to custody of the children. Certainly the Chancellor should be allowed broad discretion when the question of altering visitation privileges is involved.

Smith v. Smith, 258 Iowa at 1318, 142 N.W. 2d at 422-23.

In Donovan v. Donovan, 212 N.W. 2d 451, 453 (Iowa 1973), the Iowa court said:

> Although the record is scant, we believe the present age of the children, defendant's new home environment and the possibility of establishing a better relationship of the boys with their father justify the visitation modification as ordered by the trial court.

Michael's visitation request is minimal and is in accordance with accepted practices. See In re Marriage of Weidner, 338 N.W. 2d 351, 359 (Iowa 1983)(visitation every other week from Friday afternoon to Sunday evening and four weeks in the summer approved); In re Marriage of Roff, 228 N.W. 2d 98, 100 (Iowa 1975)(visitation of one weekend a month, three specified annual holidays, and two weeks during the summer expanded on appeal to include additional reasonable visitation); Black v. Black, 203 N.W. 2d 121, 125 (Iowa 1972)(visitation of first full weekend of each calendar month from 9 a.m. on Saturday until 8 p.m. on Sunday and first full two weeks of July); and In re Marriage of McBee, 244 N.W. 2d 327, 329 (Iowa 1976)(visitation enlarged to include every other weekend from noon Saturday until 6 p.m. Sunday, and holiday visitation to include alternate holidays and from July 1st to July 31st of each year).

We have considered the present ages of the children, the attitude of Catherine in refusing to agree to extended summer visitation, the fact that visitation had occurred in prior years, and the need for the children to enjoy a period of time with their father that is not interrupted by excessive travel and find that the facts here support a modification of the decree to include summer visitation. We therefore modify the dissolution decree to provide that Michael shall have, in addition to the visitation already specified, visitation with his daughters for a three-week period during the summer.

Because of our disposition of this issue, we need not address the remaining issues raised by Michael on appeal.

REVERSED AND MODIFIED.