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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BARBARA SAUTER AND JOHN SAUTER

Upon the Petition of)
BARBARA SAUTER,) Filed June 24, 1980
Petitioner-Appellant,)
and Concerning)
JOHN SAUTER,) 0-160
Respondent-Appellee.) 2-63736

Appeal from Mahaska District Court - Richard J. Vogel, Judge.

Petitioner-wife appeals judgment modifying visitation provisions of dissolution decree. - AFFIRMED.

Garold F. Heslinga, of Heslinga & Heslinga, Oskaloosa, for petitioner-appellant.

Patrick J. Life, of Life Law Office, Oskaloosa, and George L. Lind, Oskaloosa, for respondent-appellee.

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

PER CURIAM

Petitioner-wife, Barbara Rogers, formerly Barbara Sauter, appeals from a judgment modifying the visitation provisions of the parties' dissolution decree. Barbara asserts there has been no material and substantial change of circumstances justifying a modification of respondent-husband, John Sauter's, visitation rights so that John may exercise his summer visitation outside the State of Iowa. We affirm.

Barbara and John were married on October 26, 1968. The only child of the marriage, Laura, was born on May 20, 1969. The marriage was dissolved on December 27, 1976. Barbara was granted custody of Laura, and John was granted reasonable visitation rights including two weeks during the summer in Iowa. On June 7, 1978, John filed a motion to expand and an application to modify the dissolution decree with respect to his visitation rights. The parties reached an agreement regarding all visitation except for the two-week period in the summer. A hearing was held on that issue, and on June 25, 1979, the trial court entered an order incorporating the parties' agreement and modifying the decree with respect to John's summer visitation allowing him to remove Laura from Iowa during his two-week summer visitation.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially regarding credibility, but we are not bound by them. Iowa R. App. P. 14(f)(7). Visitation rights may be modified only on a showing of a change of circumstances. Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). However, the general rule is that in considering a modification of visitation rights, the change of circumstances required to be shown is much less extensive than in issues of child custody. Id.

At the time of the dissolution decree, John was living in New York with a woman named Belinda Burgess. Since that time, John and Belinda have moved to Columbus, Ohio. They were engaged to be married at the time of the hearing on modification. Barbara testified at the modification hearing that at the time of the dissolution she did not want John to be able to remove Laura from Iowa for visitation for fear that there would be difficulty in compelling John to return Laura to Iowa once the visitation period had expired. Barbara also expressed concern about exposing Laura to the environment of John's living arrangement with Belinda.

Barbara contends John has not established that a sufficient change of circumstances has occurred to justify modifying his visitation rights. John asserts that his remarriage, the adoption of the Uniform Child Custody Act in Iowa and Ohio, Laura's age, and difficulties created by Barbara concerning John's exercise of visitation constituted changed circumstances to justify the trial court's modification. We agree with John.

Barbara's fear of exposing Laura to John's living arrangement with Belinda will be alleviated by their pending marriage. That notwithstanding, restricting John's visitation to Iowa was obviously no solution to that concern since Laura was exposed to John and Belinda's living arrangement when they came to Iowa for the purpose of visitation. With regard to John's claim of a change of circumstances arising out of the adoption of the Uniform Child Custody Act in Iowa and Ohio, John asks us to take judicial notice of the adoption of that act in Ohio. John did not specifically plead or prove the pertinent Ohio law. We may not take judicial notice of foreign law if it was not pleaded or proven. Fetters v. Degnan, 250 N.W.2d 25, 27 (Iowa 1977) (quoting Zeman v. Canton State Bank, 211 N.W.2d 346, 349 (Iowa 1973)). However, in the absence of any such pleading or proof, we presume the foreign law to be the same as ours. Id. at 27-28. In light of the change in the law facilitating the return to the custodial parent of a child visiting the non-custodial parent in another state, see §§ 598A.13, .15, The Code 1979, we think the circumstances regarding Barbara's concern over the return of Laura from visitation out of Iowa have sufficiently changed to justify the trial court's modification. We affirm the trial court's modification of John's visitation rights. Costs are taxed to Barbara.

AFFIRMED.