IN THE COURT OF APPEALS OF IOWA

No. 1-143 / 00-1256
Filed July 18, 2001

FILED
JUL 18 2001
CLERK SUPREME COURT

ELLEN RASMUS,
Petitioner-Appellee,

vs.

DAVID KING,
Respondent-Appellant.

Appeal from the Iowa District Court for Chickasaw County, John Bauercamper, Judge.

David King appeals from the visitation provisions of a custody decree. **AFFIRMED.**

Richard Stochl of Elwood, O'Donohoe, Stochl, Braun & Churbuck, New Hampton, for appellant.

Kevin J. Kennedy of Kennedy and Kennedy, New Hampton, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

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ZIMMER, J.

David King appeals from the visitation provisions of a custody decree. We find the visitation provided for by the trial court's order to be equitable and reasonable. We affirm.

Background Facts. David King and Ellen Rasmus are the unmarried parents of Michelle King, born in September 1994. The parties lived together for approximately nine years before separating in the summer of 1999. During their relationship, Ellen was the primary caretaker of Michelle.

Ellen filed a petition for custody in September 1999. Shortly thereafter, the parties stipulated to the entry of a temporary order providing for joint custody with physical placement with Ellen. The temporary visitation schedule awarded David visitation every other weekend from Friday evening until Monday morning and every Wednesday night from after school until Thursday morning. At the time the temporary visitation schedule was established, Michelle was attending preschool two half days per week.

The parties were unable to agree on a permanent visitation schedule. Following trial in July 2000, the district court entered a decree awarding David visitation rights on alternate weekends from Friday at 5:00 p.m. until Sunday at 7:30 p.m. He also has mid-week visitation during the school year on Wednesday of each week from the time that he gets off work until 7:30 p.m. During the summer, this mid-week visitation is extended until Thursday morning at 8:00 a.m. David also has extended summer visitation and holiday visitation.

David appeals. He contends the district court should have awarded him the visitation he had during the pendency of this action.

Scope of Review. Iowa Code section 598.41(1)(a) addresses the statutory goal of assuring children have the opportunity for the maximum continuing physical and emotional contact with both parents.

> 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 the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child . . . .

Iowa Code § 598.41(1)(a) (1999).

When dealing with visitation issues, prior cases have little precedential value and we must base our decision primarily on the particular circumstances of the parties before us. *In re Petition of Holub,* 584 N.W.2d 731, 732 (Iowa Ct. App. 1998). We review the custody provisions of a dissolution decree de novo. Iowa R. App. P. 4. We give deference to the district court's findings of fact because the trial court had the opportunity to view firsthand the demeanor of the witnesses when they testified. *In re Marriage of Swenka,* 576 N.W.2d 615, 616 (Iowa Ct. App. 1998).

Visitation. David does not object to the amount of summer visitation or holiday visitation that he received. His complaint on appeal concerns the length of mid-week visitation and the length of alternate weekend visitation. David argues the trial court should have ordered that his alternate weekend visitations carry over until the following Monday morning. He also contends the trial court should have ordered mid-week over-night visitation every Wednesday night.

At the time of trial, Michelle was scheduled to begin kindergarten in late August 2000 in the New Hampton Community school district. She was

scheduled to attend all day classes. At trial, Ellen requested that David's temporary visitation schedule be slightly reduced. She thought it would be in her daughter's best interest to have a less disruptive schedule during the week during the school year. Before reaching this conclusion, she consulted with others including teachers and teacher aides.

David asked the district court to make permanent the temporary visitation schedule established in September of 1999. The court slightly reduced David's visitation by ending alternate weekend visitation on Sunday evening rather than on Monday morning. In addition, the court limited mid-week visitation during the school year from the time David gets off work until 7:30 p.m. During the summer, this mid-week visitation is extended until 8:00 a.m. Thursday morning.

We conclude the district court's visitation schedule is reasonable and that it serves the statutory goal of assuring Michelle "the opportunity for maximum continuing physical and emotional contact with both parents." Iowa Code § 598.41(1)(a). Accordingly, we affirm that schedule. In doing so, we note that trial courts must have a certain range of discretion within which to fashion visitation orders. As long as an order provides for visitation that is equitable and reasonable under the particular facts and circumstances of a case, it should be affirmed.

Appellate Attorney Fees. Ellen seeks appellate attorney fees. An attorney fee award is not a matter of right, but rests within the sound discretion of the court. *In re Marriage of Williams,* 589 N.W.2d 759, 762 (Iowa Ct. App. 1998). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend

the district court's action. *Id.* After consideration of the enumerated factors, we award Ellen $300 in appellate attorney fees.

The district court's decree is affirmed.

AFFIRMED.