IN THE COURT OF APPEALS OF IOWA

No. 0-519 / 00-173
Filed August 30, 2000

FILED
AUG 30 2000
CLERK SUPREME COURT

Upon the Petition of
CHRISTOPHER M. MOZENA,
Petitioner-Appellee,

And Concerning
SARAH FRANK, a/k/a SARAH ALLEN,
Respondent-Appellant.

Appeal from the Iowa District Court for Boone County, Allan L. Goode, Judge.

Respondent appeals from the district court order granting her primary physical care and the petitioner visitation of the parties' minor child. **AFFIRMED.**

Elizabeth Kruidenier of Parrish, Kruidenier, Moss, Dunn & Montgomery, L.L.P., Des Moines, for appellant.

John D. Jordan of Payer, Jordan, Mahoney, Jordan, Hunziker & Rhodes, L.L.P., Boone, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

Sara Allen claims the district court should have allowed Christopher Mozena to have only supervised visitation with their son. Because we find liberal, unsupervised visitation is in the child's best interests and will not expose him to physical or emotional harm, we affirm the district court.

I. Background Facts and Proceedings.

Mozena and Allen are the unwed, biological parents of Casey Mozena, born September 1995. Allen has always had custody of Casey, and—until December 1998—has allowed Mozena visitation with their son. Most of this visitation occurred while Mozena was living in his parents' home.

Allen denied Mozena visitation with Casey after Mozena made derogatory racial remarks about her husband and their unborn child. Mozena filed a petition for joint legal custody and visitation of Casey. The district court entered a temporary order granting Mozena visitation, subject to the condition "all visitations shall be under the supervision of his mother." Its final order granted Mozena liberal, unsupervised visitation.

Allen appeals, asserting Mozena's unsupervised visitation with Casey should be disallowed or reduced because Mozena is "unfit" and did not comply with the temporary order. Allen also asserts someone other than Mozena's mother should supervise the visitation.

II. Standard of Review.

We review equity cases de novo. Iowa R. App. P. 4. While we are not bound by the district court's findings of fact, we do give them deference because the court had the opportunity to view, firsthand, the demeanor of the witnesses

when testifying. Iowa R. App. P. 14(f)(7); *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

III. The Merits.

The governing consideration in establishing a noncustodial parent's visitation rights is the best interests of his or her child. *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa App. 1992). The child's best interests are generally met through liberal visitation that assures the child the opportunity for maximum continuing physical and emotional contact with both parents. *In re Marriage of Riddle*, 500 N.W.2d 718, 720 (Iowa App. 1993); *see also* Iowa Code § 598.41(1) (1999). At times, however, the child's best interests call for a court to place conditions on a parent's visitation rights lest the visitation result in direct physical harm or significant emotional harm to the child. *In re Marriage of Rykhoek*, 525 N.W.2d 1, 5 (Iowa App. 1994).

The record does not show Casey is likely to suffer physical or emotional harm if his father is allowed to have unsupervised visitation with him. Allen asserts Mozena's irresponsible behavior—including his drug use and the possession of a gun—makes him unfit for unsupervised visitation with Casey. Although Mozena admits he smoked marijuana as recently as two months prior to trial, he maintains his drug use is infrequent and not in Casey's presence. Many of Allen's other allegations are based either on statements young Casey purportedly made or events that occurred a year or more before trial. There is no credible evidence showing Casey will be exposed to physical or emotional harm if Mozena has unsupervised visitation with him.

Allen has also raised concerns regarding Mozena's planned move from his parents' home. According to Allen, Mozena has not demonstrated an ability to care for Casey without his mother's assistance. While the record suggests Mozena may have made some poor life choices, it does not show he is unable to care for his nearly five-year-old son by himself. Neither this court nor Allen should use visitation to punish Mozena for his past transgressions. *See Anthony v. Anthony*, 204 N.W.2d 829, 833 (Iowa 1973) (quoting *Fitch v. Fitch*, 207 Iowa 1193, 1197, 224 N.W. 503, 504 (1929)).

Because we find Mozena's liberal, unsupervised visitation with Casey is in the child's best interests, we do not address whether Mozena's mother is an appropriate supervisor for the visitation. We affirm the district court.

AFFIRMED.