IN THE COURT OF APPEALS OF IOWA

No. 6-545 / 95-2226

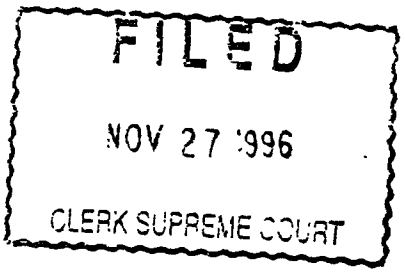
IN RE THE MARRIAGE OF BEVERLY ROBIN ROSENFELD AND MARTIN SANFORD ROSENFELD

Upon the Petition of
BEVERLY ROBIN ROSENFELD,

Appellee,

And Concerning
MARTIN SANFORD ROSENFELD,

Appellant.



Appeal from the Iowa District Court for Polk County, Jerrold W. Jordan, Judge.

Martin Rosenfeld appeals the order of the district court ordering him to pay a portion of his ex-wife's attorney fees and denying his motion to recuse in a modification hearing. **AFFIRMED.**

David S. Wiggins of Wiggins, Anderson & Conger, P.C., West Des Moines, for appellee.

Jill Southworth Rolek of Jill Southworth Rolek, P.C., West Des Moines, for appellee.

Decided en banc. Streit and Vogel, JJ., take no part.

PER CURIAM

This is an appeal by a husband claiming the district court should have granted his motion to recuse and should not have ordered him to pay a portion of his wife's attorney fees for a modification hearing. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Martin and Beverly Rosenfeld were divorced in December 1990. They have been before this court numerous times. *See In re Marriage of Rosenfeld,* No. 95-262 (Iowa App. Nov. 27, 1996); *In re Marriage of Rosenfeld,* No. 93-0108 (Iowa App. Aug. 4, 1994); *In re Marriage of Rosenfeld,* No. 92-0304 (Iowa App. Aug. 4, 1994); *In re Marriage of Rosenfeld,* 524 N.W.2d 212 (Iowa App. 1994); *In re Marriage of Rosenfeld,* No. 91-0014 (Iowa App. Oct. 29, 1991).

The present case arose from a limited remand by the supreme court to allow the district court to address the issue of visitation. Beverly planned to move to North Carolina and she filed a petition to modify Martin's visitation due to the impending move. Prior to the hearing on the matter, Martin filed an oral motion requesting the district court judge to recuse himself. The court denied the request and entered an order on September 1, 1995, modifying the parties' visitation schedule. In a separate order, on November 29, 1995, the court ordered Martin to pay Beverly $7604, which was ninety percent of Beverly's attorney fees for the visitation modification. Martin now appeals.

I. Martin contends the district court judge should have recused himself from the case. He believes the judge had a predisposition in deciding the case. He also states the judge's son had a business relationship with Martin's accountant, who testified in a previous hearing. Additionally, the judge received a telephone call from the family's court-appointed therapist. Martin claims that due to all of these factors the court could no longer be impartial.

We review a judge's decision not to recuse himself for an abuse of discretion. *In re Estate of Olson*, 479 N.W.2d 610, 613 (Iowa 1991). Actual prejudice must be shown before a recusal is necessary. *McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 827 (Iowa 1996). The appearance of impropriety is not sufficient to merit recusal. *In re C.W.*, 522 N.W.2d 113, 117 (Iowa App. 1994). The test is whether a reasonable person would question the judge's impartiality. *McKinley*, 542 N.W.2d at 827.

We find a reasonable person would not question the judge's impartiality. We have separately found the judge's impartiality was not called into question by his connection to Martin's accountant. *In re Marriage of Rosenfeld*, No. 95-262 (Iowa App. Nov. 27, 1996). Also, the matters discussed with the family's therapist were also covered in a letter she sent to the judge and the attorneys in the case. These matters were not relevant to the modification of visitation, and we determine there was no improper ex parte communication concerning issues before the court. We find no abuse of discretion in the judge's decision not to recuse himself.

II. Martin claims the court awarded excessive attorney fees to Beverly. He alleges Beverly has sufficient assets to pay her own attorney fees. In the alternative, he asks to have the amount of the attorney fees reduced.

Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). Martin's income is considerably greater than that of Beverly. We find no abuse of discretion in the court's decision ordering Martin to pay ninety percent of Beverly's attorney fees for this modification action.

III. Beverly seeks attorney fees for this appeal. We order Martin to pay $1000 for Beverly's appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Martin.

AFFIRMED.