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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-607 / 89-414

BRUCE ARDEN DAMBERG,

Appellee,

vs.

TERRI JO RUDE,

Appellant.

Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge.

Appellant appeals the district court's modification of the visitation provisions of a paternity decree. **AFFIRMED.**

Bradley Norton of Norton & Norton, P.C., Lowden, for appellant.

J. Drew Chambers of Holleran, Shaw, Murphy & Stoutner, Clinton, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

HABHAB, J. 82

Appellant Terri Jo Rude appeals the district court's modification of the visitation provisions of a paternity decree. Terri asserts there has been no change in circumstances warranting modification. She also argues the district court erred in failing to award her attorney fees. We affirm.

The parties lived together but were never married. The child in dispute was conceived during this relationship. On March 23, 1988, a paternity decree agreed to by the parties was filed establishing Bruce Arden Damberg as the father of Terri's son, Nicholas Damberg. Joint custody was awarded with physical care of Nicholas going to Terri. The decree also awarded Bruce the following visitation rights:

> Upon the child's 2nd birthday and thereafter, the Plaintiff's visitation with the minor child will be every other weekend from Friday at 5:00 P.M. to Sunday at 5:00 P.M.; alternate birthdays and holidays; three weeks in the summertime; and one evening per week for 2 hours, as well as at all other reasonable times mutually agreed by the parties.

Because of her job as a waitress, Terri works two nights during the week. Terri's mother, who lives nearby, generally baby-sits the child during this time.

On December 6, 1988, Bruce filed the present application for modification, seeking additional visitation with his son. Following a hearing, the district court expanded the terms of visitation for Bruce to include two evenings per week while Terri is working. In addition, the

court modified the decree to allow Bruce three consecutive weeks of visitation each year at any time as long as it does not interfere with the child's schooling. Terri's application for attorney fees was denied. Terri filed this appeal.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). In this respect, we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

The burden in a modification of visitation rights differs from the burden in a child custody change in that a much less extensive change of circumstances need be shown in visitation right cases. In re Marriage of Jerome, 318 N.W.2d 302, 305 (Iowa App. 1987); see In re Marriage of Glass, 213 N.W.2d 668, 670 (Iowa 1973); Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). We find Bruce has met this burden here.

The record before us does not indicate whether the court which issued the paternity decree was aware that Terri worked evenings while employed at a tavern. But, since the issuance of the paternity decree, Terri has changed jobs. She now works at a restaurant in Wheatland,

which requires her to work two nights per week. Given the state of the record, we find Terri's employment change to be a material change in circumstances for visitation purposes.

We find no fault with the visitation modification made by the district court. Terri's work schedule opens up the opportunity for Nicholas to be able to spend additional time with his father. As we noted in In re Marriage of Ertmann, 376 N.W.2d 918, 922 (Iowa App. 1985): "Visitation should include not only weekend time, but time during the week when not disruptive to allow the noncustodial parent the chance to become involved in the child's day-to-day activity as well as weekend fun." We affirm the district court's modification of the paternity decree's visitation provisions.

Terri also asserts the district court erred in not awarding her attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa 1982). We find no abuse of discretion on the part of the trial court in declining to award Terri attorney fees.

Terri also seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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 trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). The parties shall pay their own respective attorney fees. Costs of this appeal are assessed to appellant.

AFFIRMED.