

IN THE COURT OF APPEALS OF IOWA

FILED OCT 27 1981 547

CLERK SUPREME COURT

IN RE THE MARRIAGE OF ROCHELLE R. VINSON AND ROBERT H. VINSON

Upon the Petition of	)	
ROCHELLE R. VINSON,	)	Filed October 27, 1981
Petitioner-Appellee,	)	
And Concerning	)	1-219
ROBERT H. VINSON,	)	2-65947
Respondent-Appellant.	)	

Appeal from Wapello District Court - James D. Jenkins, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from the decree dissolving the parties' marriage. Respondent alleges 1) that his visitation rights should be expanded, 2) that petitioner should be required to pay transportation expenses incurred by respondent in exercising his visitation rights, and 3) that the child support award is excessive. Petitioner contends 1) that respondent's child support obligations should continue between the ages of 18 and 22 as permitted by section 598.1(2), The Code, 2) that respondent should be required to provide health insurance for the minor children, 3) that she should have been awarded permanent alimony, and 4) that trial court erred in failing to make an award of attorney fees incurred at trial. AFFIRMED WITH MODIFICATION.

Allan C. Orsborn of Barnes & Walter, Ottumwa, Iowa, for respondent-appellant.

J. Terrence Deneffe of Kiple, Kiple & Deneffe, Ottumwa, Iowa, for petitioner-appellee.

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

PER CURIAM

Respondent-husband, Robert H. Vinson, appeals and petitioner-wife, Rochelle R. Vinson, cross-appeals from the decree dissolving the parties' marriage. Respondent alleges 1) that his visitation rights should be expanded, 2) that petitioner should be required to pay transportation expenses incurred by respondent in exercising his visitation rights, and 3) that the child support award was excessive. Petitioner, on cross-appeal, contends 1) that respondent's child support obligations should continue between the ages of 18 and 22 as permitted by section 598.1(2), The Code, 2) that respondent should be required to provide health insurance for the minor children, 3) that she should have been awarded permanent alimony, and 4) that trial court erred in failing to make an award of attorney fees incurred at trial. Petitioner also seeks attorney fees on this appeal. We affirm with modification.

The parties were married on September 22, 1973, and separated in September, 1979. Two children were born of the marriage, Bobby Jo, born January 19, 1974, and Jamie Michael, born September 18, 1976. Petitioner also has another child born prior to the parties' marriage. At the time of trial, petitioner was 28 years old and had a ninth grade education. Throughout the marriage she worked as a factory worker, earning a minimum wage. At the time of hearing, she was employed as a waitress in a cocktail lounge where she received a guarantee of \$80 per week, a percentage of the house gross, and tips. She estimated that her potential earnings would be between \$700-\$800 gross per month.

Respondent, age 25, has a high school education and is a welder by trade. At the time of the parties' separation, he was earning \$12.80 per hour, but lost that employment in February, 1980, due to completion of the work project. At the time of trial, he was receiving unemployment compensation and was seeking regular employment.

Trial court awarded custody of the minor children to petitioner and ordered respondent to pay \$100 per week as child support. Petitioner received virtually all the personal property, valued at \$3,000. Respondent received the Bronco automobile which trial court also valued at \$3,000. Trial court also set respondent's visitation, including summers and holidays, and ordered respondent to bear the costs incurred in exercising visitation. The court awarded no alimony and concluded that each party should pay his or her own attorney fees.

I. Scope of Review. Our review is de novo. Iowa R. App. P. 4. Although we give effect to the findings of the trial court, we are not bound by them and we make our own determination of the facts. In re Marriage Joens, 284 N.W.2d 326, 327 (Iowa 1979).

II. Respondent's Visitation. Respondent alleges that trial court's schedule of visitation is too limited. Under the decree, respondent is entitled to visit his children at reasonable times and in reasonable places, but as a minimum, this is to include one weekend per month from 10:00 a.m. Saturday until 6:00 p.m. Sunday, alternate birthdays and holidays, from 8:00 a.m. to 6:00 p.m., and a two-week period each summer. Trial court also encouraged the parties to agree upon additional visitation but made no further specification. Respondent specifically argues that his visitation should be expanded to allow weekends to include Friday evenings as well as Saturday and Sunday. He further seeks at least one month visitation during the summer. We agree, in part, with respondent's assertions. Taking into consideration the distance respondent must travel to exercise his visitation, the hours provided are unduly restrictive. We therefore modify trial court's decree to provide the following visitation:

Visitation shall be at a minimum of one weekend per month from 5 p.m. on Friday until 6 p.m. on Sunday. Respondent shall also have visitation on alternating birthdays, the holidays of Thanksgiving, Christmas, New Year's Day, Easter, Memorial Day, Fourth of July, and Labor Day. Holiday time periods shall be from noon, or such time that is consistent with the children's schooling, on the day prior to the holiday until 6 p.m. on the day of the holiday. Respondent shall be entitled to four weeks visitation during the summer, to be exercised at his discretion in one four-week period or two two-week periods. Respondent shall give petitioner thirty days notice of his expected summer visitation schedule.

Given the parties' respective financial circumstances, we decline to change trial court's allocation of travel expenses and believe respondent should be responsible even though the distance is substantial due to petitioner's move to the state of Missouri.

III. Child Support Award. Respondent also asserts he is unable to pay the \$100 per week child support obligation that trial court imposed. We disagree. While respondent was unemployed at the time of trial, there is no reason to believe that this is other than temporary. We further agree with trial court's finding that he is capable of earning approximately \$12.80 per hour. Given petitioner's expenses, including the costs of babysitting so she can be gainfully employed, her earning capacity, and respondent's earning capacity, we affirm trial court's award. Petitioner's basic expenses will also continue during respondent's periods of visitation so that requiring him to continue child support payments during the time the children are visiting with him is equitable. See In re Marriage of Glass, 213 N.W.2d 668 (Iowa 1973).

At time of trial, the minor children were six and four years of age respectively. At this time, we conclude it is premature to anticipate their educational and support requirements past age 18. We note, however, that petitioner can still seek support for the children at a later time pursuant to the provisions of section 598.1(2).

Petitioner also argues that respondent should be required to provide health insurance for the minor children. Given the amount of support respondent must pay and petitioner's testimony that such coverage might be available through her own employment, we decline to increase respondent's support obligation.

IV. Alimony. Petitioner contends that she should have been awarded permanent alimony. After applying the criteria set forth in section 598.21, The Code, we do not agree. Although petitioner has only a ninth grade education, she has demonstrated her capacity to be gainfully employed and has not suffered a reduction in this regard as a result of her marriage to respondent.

V. Attorney Fees. Petitioner challenges trial court's finding that each party should pay his or her own attorney fees at trial. Trial court is given considerable discretion in making this determination. In re Marriage of Winagard, 278 N.W.2d 505, 512 (Iowa 1979). Our primary consideration in reviewing trial court's determination is the parties' resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Assessing the parties' resources in this case, we conclude trial court did not abuse its discretion in denying petitioner's request for attorney fees at trial. However, we find that respondent should pay \$500 towards petitioner's attorney fees incurred as a result of this appeal.

In conclusion, we modify trial court's decree by expanding respondent's visitation rights as set forth above. All other provisions of trial court's decree are affirmed. Costs of this appeal are assessed equally against the parties.

AFFIRMED WITH MODIFICATION.

All judges concur except Oxberger, C.J., who dissents.

OXBERGER, C.J., (dissenting).

Husband's duty to pay child support while unemployed should be stayed beyond the amount of \$10 per child pending his finding employment. His loss of employment was not his fault. Plaintiff may seek modification if respondent does not make good faith effort to find employment.