IN THE COURT OF APPEALS OF IOWA

No. 0-071 / 09-1191
Filed July 14, 2010

IN RE THE MARRIAGE OF ANDREW J. WORZALA AND MARY T. WORZALA

Upon the Petition of
ANDREW J. WORZALA,
Petitioner-Appellant,

And Concerning
MARY T. WORZALA n/k/a MARY T. SLOAN,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

A father appeals certain visitation provisions of a modification decree. **AFFIRMED.**

Elizabeth Kellner Nelson of Pendleton Law Firm, P.C., West Des Moines, for appellant.

Michael B. Oliver of Oliver Law Firm, P.C., Windsor Heights, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

A father appeals certain visitation provisions of a modification decree.

I. Background Facts and Prior Proceedings

Andrew Worzala and Mary Sloan (f/k/a Mary Worzala) are the parents of a child, born in 2001. The parents divorced in 2005. Under the dissolution decree, Andrew received physical care of the child, subject to visitation with Mary.

In 2008, Andrew took a job transfer to Georgia. As a result, Mary petitioned to modify the dissolution decree to grant her physical care of the child. Andrew answered and counterclaimed for a modification of the visitation portions of the decree.

Following trial, the district court denied Mary's request for physical care and modified the visitation schedule. The court held Andrew responsible for all transportation costs, required transport from Atlanta to Des Moines on direct flights if the child was unaccompanied, and adopted a visitation schedule proposed by Andrew. Following a ruling on post-decree motions, Andrew appealed.

II. Analysis

Andrew contends the district court acted inequitably in (A) failing to hold Mary responsible for a portion of the transportation expenses, (B) requiring direct flights when the child was traveling alone, and (C) adopting his proposed visitation schedule without modifying the times to account for the direct flight schedules. "The trial court has reasonable discretion in determining whether modification is warranted and that discretion will not be disturbed on appeal

unless there is a failure to do equity." *In re Marriage of Bonnette*, 492 N.W.2d 717, 722 (Iowa Ct. App. 1992).

A. Allocation of Costs

If a parent who is awarded physical care of a child relocates 150 miles or more from where the child lived at the time of a decree, the court may consider the move a substantial change in circumstances. Iowa Code § 598.21D (2009). "The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents." *Id.*

As noted, the district court held Andrew entirely responsible for the transportation costs. The court reasoned that Andrew chose to transfer to Georgia. We agree with the court's decision.

Andrew elected to move for his personal benefit. *See In re Marriage of Beecher*, 582 N.W.2d 510, 514 (Iowa 1998) (concluding that a downward departure from the child support guidelines was not justified even though father was bearing eighty percent of transportation costs for the children, noting that a move to California was for his personal benefit). There is no evidence that the company he worked for insisted on or even encouraged the move as a condition of continued employment. Rather, Andrew made a lateral transfer to Georgia hoping the new position would eventually reap monetary benefits.

At the time of trial, Andrew had not realized his hopes for an improved financial position in Georgia as he had only seen a $400 annual increase in wages and his monthly expenses far outstripped his income. Andrew asserts his marginal financial situation is precisely the reason he needs transportation

assistance from Mary. However, Mary's financial position was even more precarious, as she was unemployed and had a child support obligation. Additionally, Andrew had the option to avoid the transportation expenses by transferring back to Iowa, an option he refused to pursue.[1]

Andrew also maintains that if Mary is not held responsible for some of the transportation expenses, she will have no incentive to cooperate on the dates and times of the visits. The district court found that both parents used visitation to place the child in the middle of their differences. The record supports this finding. Therefore, we decline to reallocate the transportation costs on this basis.

B. **Direct Flight Provision**

Andrew takes issue with the requirement that he place his child on a direct flight to Des Moines if the child is unaccompanied. In imposing this requirement, the district court pointed out that the child was only seven years old and

> has been required to travel from Augusta to Atlanta, go through security in Atlanta, wait in the Atlanta airport, fly to Moline or to Kansas City unaccompanied by an adult, where the child is to be picked up by a relative and driven from either Moline or Kansas City, with Moline being two hours and Kansas City being three hours from Des Moines, to Des Moines for visitation.

The court noted that the parents had "allowed this transportation to occur without thinking about the impact of all of this on the child."

"[T]he trial court is in the best position to determine when, and the conditions under which, visitation should be permitted." *Lamansky v. Lamansky*, 207 N.W.2d 768, 772 (Iowa 1973). Although there is no question that the direct

[1] Andrew testified that he could apply for a position in Iowa and could transfer back if a position became available but his moving expenses would not be covered. The record suggests that he stood to spend far more than the cost of a move back to Iowa for airline tickets.

flight requirement would impose an even greater financial burden on Andrew, that requirement served the best interests of this young child. *See In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa Ct. App. 1994) ("The best interest of the child dominates our consideration in child custody cases.").

C. Visitation Times

In the alternative, Andrew argues that the visitation times should be modified to accommodate the direct flight schedules. He asserts:

> [A]ccording to the visitation schedule, nearly all the visits end at 4:00 p.m. If the trial court's "direct flight" requirement is upheld, this exchange time is not practical because the only available flight will be the Delta Connection 4:30 p.m. flight from Des Moines to Atlanta. If the flight is booked or for some reason not available that day there would be no available flight. Even if the flight is available, it would result in [the child] arriving in Atlanta, Georgia around 7:40 p.m. and still having a 2-hour drive to Augusta. If Mary insists that Andrew adhere to the 4:00 p.m. exchange time, it will likely result in [the child] missing at least one day of school after every visit. Andrew respectfully requests that Mary's visits with [the child] conclude at 12:00 p.m.

The district court advised the parents this was something they should work out. We discern no abuse of discretion in this piece of advice. As joint custodians, the parents are obligated to communicate and cooperate on matters affecting the child. *See In re Marriage of Ruden*, 509 N.W.2d 494, 496 (Iowa Ct. App. 1993) ("Both parents are charged with maintaining the best interests of the children, and thus with cooperating in visitation."). We are convinced that the accommodation of pick-up and drop-off times for flights that have yet to be booked is a matter that the parents can and should work out on their own.

III. Appellate Attorney Fees

Mary seeks to an order requiring Andrew to pay her appellate attorney fees. An award rests in our discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Given the significant financial burden Andrew is carrying, we decline Mary's request.

We affirm the district court's modification decree.

AFFIRMED.