

IN THE COURT OF APPEALS OF IOWA

No. 0-254 / 09-1539
Filed May 26, 2010

IN RE THE MARRIAGE OF JAMES T. CRAFT AND JULIE J. CRAFT

Upon the Petition of

JAMES T. CRAFT,
Petitioner-Appellant,

And Concerning

JULIE J. CRAFT, n/k/a
JULIE J. STUEVE,
Respondent-Appellee.

Appeal from the Iowa District Court for Harrison County, James M. Richardson, Judge.

Father appeals order modifying visitation and order dismissing his application for contempt. **AFFIRMED.**

Julie A. Schumacher of Mundt, Franck & Schumacher, Denison, for appellant.

Curtis J. Heithoff, Council Bluffs, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

James Craft appeals the district court's orders dismissing his application to hold Julie Craft now known as Julie Stueve in contempt and modifying his visitation. We affirm.

I. Background Facts and Proceedings.

When James and Julie's marriage was dissolved by stipulated decree in December 2002, Julie was given physical care of their daughters, Kaitlyn, age eight, and Kimberly, age four. Visitation for James was set for every other weekend, a three-hour, mid-week visitation on Wednesday evening, "or a different day as may be agreed between the parties," and three weeks during summer vacation. In November 2003, James's child support and medical support obligations were modified by stipulated modification of the decree. Both James and Julie have remarried.

Kaitlyn had a visit with her father on Father's Day 2008, and then refused further visitations. Kimberly has attended all visitations. In June 2008, Julie sought a modification requesting an elimination of midweek visitation.¹ In turn, James filed an application for a rule to show cause contending Julie had continually denied him contact with Kaitlyn. In January 2009, the court dismissed both actions and ordered counseling with Heartland Family Service for Kaitlyn, the parties, and both new spouses.

On March 5, 2009, James, Julie, and Julie's spouse accompanied Kaitlyn to her first appointment. Heartland's policy required James and Julie to "be seen

¹ Julie also requested an increase in child support and changes to the notice and timing of summer visitations. Julie has not appealed the court's failure to grant these requests.

individually and assessed before any joint or family counseling would occur.” Therefore, at the March 5 meeting, Heartland asked James and Julie to call for a subsequent individual session. Julie was seen individually on March 19. On May 26, 2009, Heartland wrote to the court explaining why it “is not able to continue to provide service to the members of this family.”

[James] was called on 3/24/09 to remind him to make an appointment with our intake department for his evaluation. His wife, Kelly returned the call and left [the agency] a voice message saying he did not know why he needed to make an appointment for an evaluation because the court had ordered therapy to take place between him and his daughter. [The agency] returned the call on 3/31/09 explaining it was our agency’s policy to evaluate individuals first before joint therapy could take place. He has not made that appointment for an evaluation.

On September 11, 2009, the court, at the request of James and Julie, reinstated Julie’s application for modification and James’s application for rule to show cause and the matters were tried. Kaitlyn testified to communication problems and indicated she did not like visitation when she was just spending time with James’s new spouse. Julie detailed communication problems between the parties and stated she encouraged Kaitlyn to attend visitation with James. James claimed Heartland is “not for, I don’t believe for family service . . . it’s a drug and rehab place is what it is.” James stated “as much water that’s gone under the bridge for the last year, [Kaitlyn’s] not going to want to come out there and spend the night,” but he did want “some contact.”

Noting the girls are fifteen and ten respectively, the court found:

Without input by Julie . . . Kaitlyn refused to go to [visitation.] James . . . is not flexible and does not communicate well with Kaitlyn or Julie . . . Minimal communication exists between Kaitlyn and James. . . . James refuses any communication between Julie

and the children during periods of his visitation. The Wednesday visitation period interferes with religious confirmation classes.

The court dismissed James's application to show cause and modified the decree by changing the midweek visitation to Tuesday. The court ordered visitation to end after James "is not personally present in excess of two hours." Additionally, "[c]hildren shall have unlimited access to either parent at all times by cell phone. Kaitlyn's visitation shall be exercised in a public forum, not overnight"

II. Merits.

James argues the court erred in failing to hold Julie in contempt. Contempt proceedings are "primarily punitive in nature" and our standard of review is "somewhat unique." *In re Marriage of Swan*, 526 N.W.2d 320, 326-27 (Iowa 1995). Our contempt statute allows for trial court discretion: "the person *may* be cited and punished by the court for contempt" Iowa Code section 598.23(1) (2009) (emphasis added). Because the statute provides for discretion, "a trial court is not required to hold a party in contempt even though the elements of contempt may exist." *Swan*, 526 N.W.2d at 327. Unless its discretion is "grossly abused," the trial court's decision must stand. *Id.* After reviewing the record, we do not find a gross abuse of discretion. Therefore, we affirm the court's dismissal of James's contempt application.

Second, James contends modification of visitation is not warranted because Julie failed to prove a change of circumstances. We review the trial court's decision de novo. *In re Marriage of McKenzie*, 709 N.W.2d 528, 531 (Iowa 2006). The trial court ruled:

[T]here has been a change in circumstances since the decree, and it's twofold: One, it's the inability of either of you to communicate with each other about what's in the best interests of your children; and two, is that I find that both of you are extremely inflexible.

In our de novo review, we give weight to the court's firsthand opportunity to hear the evidence and view the witnesses. See *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). Accordingly, we agree Julie has established a change in circumstances and conclude the children's best interests are well-served by the trial court's modification of visitation.

III. Attorney Fees.

James and Julie both request appellate attorney fees, which are discretionary. See *In re Marriage of Krone*, 530 N.W.2d 468, 472 (Iowa Ct. App. 1995). We decline to award attorney fees. Court costs are taxed to James.

AFFIRMED.