IN THE COURT OF APPEALS OF IOWA

No. 1-335 / 10-1684
Filed May 25, 2011

IN RE THE MARRIAGE OF ALBENA YORDANOVA AND DANIEL J. NAEGELE

Upon the Petition of

ALBENA YORDANOVA,
Petitioner-Appellant,

And Concerning

DANIEL J. NAEGELE,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

Albena Yordanova appeals from the district court order modifying the visitation schedule in the decree dissolving her marriage to Daniel Naegele. **AFFIRMED.**

John J. Hines of Dutton, Braun, Staack, Hellman, P.L.C., Waterloo, for appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

Albena Yordanova appeals from the district court order modifying the schedule for visitation between her former husband, Daniel Naegele, and their nine-year-old daughter. Albena alleges the schedule is not in the child's best interest because she will spend too much time commuting between the mother's new residence in Brookings, South Dakota, and the father's home in Ames. Albena also contends that the two weeks of summer visitation that she is granted with her daughter does not provide enough time for travel to Bulgaria to see Albena's family. Because we find that the visitation schedule maximizes the child's contact with both parents, which is in her best interest, we affirm.

I. *Background Facts and Proceedings*

Daniel and Albena were married for six years and have one daughter. Albena is a citizen of Bulgaria and the couple's daughter has dual American and Bulgarian citizenship. The child has visited her mother's family in Bulgaria on four separate occasions.

Both parents work in academia. Daniel is a tenure-track architecture professor at Iowa State University, where he earns about $74,383 annually. When the district court entered the dissolution decree in January 2008, Albena held positions as an instructor and full-time doctoral student at the University of Northern Iowa (UNI). State budget cuts forced UNI to eliminate her position in May 2010. In July 2010, she was hired as an assistant professor of engineering technology at South Dakota State University with a yearly salary of $52,000.

In January 2010, Albena filed a petition to modify the decree, alleging a substantial and material change in circumstances based on her reduction in income at UNI. Albena also asked the court to order Daniel to sign an application to renew their daughter's passport—which had expired—so that the child could travel to Bulgaria with Albena, and for a summer visitation schedule that would accommodate the overseas trip.

On July 1, 2010, Daniel filed a counter application to modify the decree, informing the court that Albena was moving from Cedar Falls to Brookings, South Dakota, and alleging that the visitation provisions established in the original decree would no longer be workable given the distance between the two cities. Daniel also asked for his child support obligation to be recalculated based on Albena's new salary figure.

The district court held a hearing on the modification requests on July 7, 2010. That same day, Daniel filed a proposed visitation schedule. The court issued a decree of modification on September 1, 2010, largely following Daniel's proposal for visitation dates. The modification decree allows Daniel to have his daughter for her summer vacation from the last Monday in May until the third Sunday in August, with two uninterrupted weeks of summer visitation for Albena. During the school year, Daniel is slated to have three three-day weekends with Albena, preferably set in the months of October, February, and March. The modified decree also awarded Daniel visitation every Memorial Day, Labor Day and Thanksgiving weekend. The parties were to equally divide Christmas vacation and Daniel was awarded visitation with his daughter every spring break.

The modified decree also recalculated the amount of child support that Daniel was required to pay. Finally, the court ordered Daniel to sign a passport renewal application for their daughter, and set certain limitations on the child's international travel. Albena appeals only from the visitation aspects of the modification decree.

II. *Scope of Review*

A proceeding to modify a dissolution decree is triable in equity and reviewed de novo on appeal. *In re Marriage of Pals,* 714 N.W.2d 644, 646 (Iowa 2006). In establishing visitation rights, our governing consideration is the best interests of the child. *In re Marriage of Stepp,* 485 N.W.2d 846, 849 (Iowa Ct. App. 1992).

III. *Discussion*

A. Visitation schedule

Iowa courts are required to order liberal visitation, "which will assure the child the opportunity for maximum continuing physical and emotional contact with both parents," where appropriate and in the child's best interests. Iowa Code § 598.41(1)(a) (2009); *In re Marriage of Thielges*, 623 N.W.2d 232, 238 (Iowa Ct. App. 2000) (noting that such contact can be assured by means other than a traditional, alternating-weekends visitation schedule). To modify visitation, the parent seeking modification must establish that there has been a material change in circumstances since the decree and that the requested change in visitation is in the best interests of the children. *In re Marriage of Brown*, 778 N.W.2d 47, 51-52 (Iowa Ct. App. 2009).

When a parent moves with a child to a location that is more than one-hundred and fifty miles away, a court may consider the relocation a substantial change in circumstances. Iowa Code § 598.21D.

> If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child.

Id.

Albena agrees with the district court's finding of a substantial change in circumstances, acknowledging that her move to a city three-hundred and fifty miles away from Daniel's home in Ames mandated revisions to the visitation schedule. Her position on appeal is that the schedule adopted by the district court "will result in the child spending far too many hours commuting long distances in a car often during adverse weather conditions and for relatively short periods of visitation." She also contends "the summer visitation is crafted in such a way that Albena will be effectively precluded from taking [the child] to Bulgaria as was the past practice of the family." Citing these alleged hardships on their daughter, Albena asserts that the visitation schedule is not in the child's best interests.

We disagree with Albena's contentions. While long car treks between Brookings and Ames may not be great fun for a nine-year-old girl, it was Albena's move that created the extended commute. We do not fault the mother for accepting an attractive and well-paid position in her field. *See In re Marriage of*

Frederici, 338 N.W.2d 156, 160 (Iowa 1983) (finding "no hint" in the record that mother's seven-hundred-mile move away from Iowa was "motivated by a desire to defeat [father's] visitation rights or undermine his relationship with the children" and noting mother had a "unique and promising career opportunity of the kind that typically motivates people in this highly mobile society to relocate"). But it remains in the child's best interest to spend as much time as possible with her father. *See In re Marriage of Hopkins*, 453 N.W.2d 232, 235 (Iowa Ct. App. 1990) (affirming that "[c]hildren of dissolution have a need to maintain meaningful relationships with both parents"). Even the visitation schedule adopted by the district court reduces Daniel's time with his daughter by approximately forty days from the original decree.

On the issue of the summer visitation for Albena, we do not find support in the record for her assertion that "it will be virtually impossible" for her daughter to enjoy a trip to Bulgaria without having a minimum of three weeks. The uninterrupted two-week visitation awarded Albena in the modified decree was a reasonable length of time to carve out of Daniel's time with his daughter.

Finally, given the complexities of the revised visitation schedule, including the long-distance commutes during the school year and the prospect of international travel in the summer, we would encourage the parents to be flexible and to accommodate each other's visitation time with their daughter, as permitted by the circumstances. *See In re Marriage of Muell*, 408 N.W.2d 774, 777 (Iowa Ct. App. 1987).

B. Appellate attorney fees

Daniel asks for appellate attorney fees. The prevailing party in an appeal from a dissolution modification does not have an absolute right to recover attorney fees; the matter rests in this court's discretion. *See In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). We look at the following factors: "the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal." *In re Marriage of Geil,* 509 N.W.2d 738, 743 (Iowa 1993). Daniel, who has a better-paying, more established professorship than does Albena, has not established his financial need for the fees or Albena's ability to pay. While we affirm the district court's modification of the visitation provisions, we do not believe that Albena's position on appeal was wholly without merit. Considering these circumstances, we decline to order Albena to pay Daniel's attorney fees for the appeal. Costs are assessed equally to each party.

AFFIRMED.