

IN THE COURT OF APPEALS OF IOWA

No. 1-610 / 11-0383
Filed August 10, 2011

**IN RE THE MARRIAGE OF CHRIS PONT
AND CLAVIN PONT**

Upon the Petition of

**CHRIS PATRIDGE f/k/a
CHRIS PONT,**

And Concerning

CALVIN PONT,
Respondent-Appellee.

Appeal from the Iowa District Court for Buchanan County, Bradley J. Harris, Judge.

Chris Pont appeals the district court's decision modifying the visitation provisions of the decree dissolving her marriage to Calvin Pont. **AFFIRMED.**

John J. Sullivan of Sullivan Law Office, P.C., Oelwein, for appellant.

Gary F. McClintock of McClintock Law Office, Independence, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

SACKETT, C.J.

Chris Partridge, formally known as Chris Pont, appeals from the district court decision modifying the visitation provisions of the decree dissolving her marriage to Calvin Pont. She contends the trial court erred when it found there was a material change in circumstances to permit modification of a January 2008 decree of dissolution. We affirm.

SCOPE OF REVIEW. In this equity case our review is de novo. Iowa R. App. P. 6.907. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). 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. 6.904(3)(g); *In re Marriage of Anliker*, 694 N.W.2d 535, 539 (Iowa 2005).

BACKGROUND. A decree dissolving the marriage of Chris Pont and Calvin Pont was entered on October 22, 2001. The decree provided the parties should have joint legal custody and shared physical care of their son who was born in February of 1996. In December of 2005, a child in need of assistance action was initiated in juvenile court, and an order was entered by the juvenile court finding the parties' son was a child in need of assistance based upon Calvin's use of methamphetamine. The result of the proceedings was that Chris was granted primary custody of the child, and Calvin's visitation was to be conducted at the discretion of the Iowa Department of Human Services.

In January of 2007, Chris filed a petition to modify the decree. The juvenile court in July of 2007 entered an order granting Chris sole custody of the

child and limiting Calvin's visitation with him to four hours a week. The limitation was a result of the court's concern that Calvin's continued his use of alcohol and drugs, and his refusal to seek treatment, put the child at risk. The matter came before the district court in November 2007, and in January 2008 the district court modified the dissolution decree granting Chris sole custody of the child and limiting Calvin's visitation to four hours a week supervised visitation. The district court noted Calvin's continued use of alcohol, marijuana, and methamphetamine, and his lack of cooperation and effort in addressing his substance abuse issues supported limiting his visitation.

In May of 2010, Calvin filed an application for modification in the district court asking for extended and unsupervised visitation. He alleged he was now alcohol and drug-free, and should be permitted more liberal visitation.

The matter came on for hearing February 4, 2011. The child would be fifteen later that month. Calvin testified he now lives drug-free, he is sober, has no alcohol or drug problem, and has successfully completed treatment. Robin, one of the parties' adult daughters testified. She graduated with a bachelor's degree in nursing in August 2010. She said that she frequently visits her father and at times comes unannounced. She testified that she does not have a good relationship with her mother. She related, except for the past 4th of July when she saw her dad drinking a beer, she has not seen any marijuana in her father's home or seen him to use alcohol or drugs.

Chris testified that since the January 2008 modification the child revealed to her he had seen a marijuana plant in his father's home, as well as a bong.

Calvin and Robin testified that the child had told them his mother interrogates him after he returns from a visit with his father, and sometimes he tells her something just so the interrogation will cease.

Chris testified she was concerned about Calvin having extended and unsupervised visitation because the child was not able to protect himself while in his father's care. She also testified Calvin is not truthful, and reviewed past history.

The district court issued a ruling on February 14, 2011, and found:

[T]he conditions since the modification decree have materially and substantially changed and it is in the child's best interest to modify the visitation provisions of the previous decree. The court is convinced by respondent's appearance and testimony as well as the corroborating testimony of Robin Pont that respondent has made significant improvement regarding his substance abuse issues. The court still holds serious concerns that the respondent has failed to produce evidence of completed substance abuse treatment and has failed to complete the Children in the Middle program as ordered by the court in its decree of January 10, 2008. It is therefore appropriate that any change in visitation be delayed until proof of completion of both programs has been provided.

The court further determines that transitional visitation should be provided due to the limited visitation which has been exercised in the past.

The court further found that:

Respondent shall file with the court proof of completion of the substance abuse program at Pathways. If proof of completion is not available, respondent shall undergo a substance abuse evaluation and successfully complete any recommendations contained therein. Proof of completion of said recommendation shall be filed with the court.

Respondent shall also attend and complete the Children in the Middle program and file proof of completion of said program with the court. The proof of completion of Children in the Middle shall be in addition to the certificate of completion previously filed herein on August 20, 2001.

This order was filed on February 14, 2011. Chris filed a notice of appeal from that order on March 11, 2011.

VISITATION. Chris contends there was not sufficient evidence to support the modification. She contends Calvin provided no evidence that his situation was different on February 4, 2011, then it was when the court modified the dissolution decree on January 9, 2008. She advances that the court here accepted the testimony of Calvin and Robin, and relied upon their word alone that Calvin was no longer using illegal drugs and alcohol, even though they made the same assertions during the previous modification hearing. She argues the court's findings here that Calvin made significant improvements regarding his substance abuse is inconsistent with the record and is an abuse of discretion. She contends this is especially true when considering Calvin's credibility. She contends that juvenile court documents admitted as evidence here illustrate Calvin's lack of credibility, and should have been given greater consideration by the district court. She contends there is no new evidence to show Calvin's attitude, behaviors, or actions have changed significantly, or improved since the January 2008 modification decree.

Chris also contends the increased visitation is not in the best interest of her son. She further alleges her son, who was fifteen years of age at the time, would not be able to protect himself if his father had an episode with alcohol or drugs. She asked that the modification be reversed and Calvin's application be dismissed.

In order to modify the visitation provisions of a dissolution decree, a party must establish by a preponderance of the evidence there has been a material change in circumstances since the decree, and the requested modification is in the best interests of the children. *In re Marriage of Thielges*, 623 N.W.2d 232, 238 (Iowa Ct. App. 2000). The degree of change required to modify the visitation provisions of a dissolution decree is much less extensive than what is required to modify the custodial provisions. *Nicolou v. Clements*, 516 N.W.2d 905, 906 (Iowa Ct. App. 1994). Generally, liberal visitation is in a child's best interests "insofar as is reasonable" because it maximizes physical and emotional contact with both parents. Iowa Code § 598.41(1)(a) (2009). However, "[a]lthough liberal visitation is the benchmark, our governing consideration in defining visitation rights is the best interests of the children, not those of the parent seeking visitation." *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa Ct. App. 1994).

Circumstances have changed since the last modification. The child is now three years older, and is certainly in a position where he could react if his father were to commence drinking or using drugs. Additionally, Calvin's period of sobriety is longer than it was in 2008. While we recognize that Calvin's past behavior has resulted in Chris being very concerned about her child's safety, we believe the child himself can make adequate provision for this. We also recognize that apparently the parties have not communicated with each other about visitation; rather they have used one of Calvin's brothers as a go between. Chris also has not kept Calvin advised as to the child's school activities and

teacher conferences. Robin testified she believes the child needs his father in his life, and the additional visitation provided by the district court will provide this contact. We find no reason to reverse the decision of the district court. It is affirmed.

Costs on appeal are taxed to Chris.

AFFIRMED.