

**IN THE COURT OF APPEALS OF IOWA**

No. 2-107 / 11-1418  
Filed March 14, 2012

**Upon the Petition of**

**LINDA REBECCA JENSEN,**  
Petitioner-Appellant,

**And Concerning**

**MAURICE VINCENT WHITE, JR.,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

A mother appeals a district court's order granting joint legal custody and visitation. **AFFIRMED AS MODIFIED.**

Ryan R. Gravett of Oliver Law Firm, P.C., Windsor Heights, for appellant.

Maurice Vincent White, Jr., Des Moines, appellee pro se.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

**VOGEL, P.J.**

Linda Jensen and Maurice White, who have never been married, have one daughter, M.W., born in 2009. The couple separated when M.W. was four months old and Linda has been M.W.'s primary caregiver since that time. On January 26, 2011, Linda filed a Petition for Custody, Support, and Visitation. On March 3, Linda and Maurice entered a mediation agreement, which provided the parties were to have joint legal custody of M.W. and Maurice was to have supervised visits with M.W. in his mother's home on Mondays and Wednesdays from 5:15 p.m. to 6:30 p.m. and on Saturdays from 1:00 p.m. to 4:00 p.m. The mediation agreement also provided Maurice was to obtain a urinalysis test by the end of the business day on March 3, and was to pay \$400 per month as temporary child support. On April 11, the district court issued a temporary order, incorporating the terms of the March 3 mediation agreement and granting Linda temporary physical care of M.W.

On July 11, 2011, Linda filed a motion to compel Maurice to respond to discovery requests sent on May 27, 2011. The district court sustained her motion and ordered Maurice to comply with outstanding discovery requests by August 8. Maurice did not comply and Linda sought sanctions. On July 14, 2011, Maurice's attorney filed an application to withdraw, asserting primarily that Maurice had failed to maintain contact with her. The court granted this application. Linda's petition to establish paternity, custody, support, and visitation came on for trial on August 11, 2011. Linda testified but Maurice failed to appear. A written order followed on August 23, 2011, which among other

things granted joint legal custody and awarded “liberal and minimal” visitation to Maurice. Linda appeals.<sup>1</sup>

Our review of child custody and support orders is de novo. Iowa R. App. P. 6.907; *McKee v. Dicus*, 785 N.W.2d 733, 736 (Iowa Ct. App. 2010). “In child custody cases, the first and governing consideration of the court is the best interests of the child.” Iowa R. App. P. 6.904(o). The legal analysis we employ in resolving child custody decisions is the same regardless of whether the parties are dissolving their marriage or unwed. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988).

Linda first asserts the district court erred in awarding the parties joint legal custody, as it is contrary to M.W.’s best interests. Iowa Code section 598.41(1)(a) (2011) states:

The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.

Under this presumption, courts will grant joint legal custody unless there is a finding of a history of abuse. Iowa Code § 598.41(1)(a); see also Iowa Code § 600B.40 (directing that section 598.41(3) be utilized for determining custody and visitation for children born out of wedlock); Iowa Code § 598.41(3) (providing factors to consider when crafting a custody arrangement). In cases where the district court does not grant joint custody, the court is required to find “by clear

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<sup>1</sup> Maurice did not file an appellate brief.

and convincing evidence that joint custody is not reasonable and not in the best interest of the child to the extent the legal custodial relationship between the child and a parent should be severed.” *In re Marriage of Holcomb*, 471 N.W.2d 76, 79–80 (Iowa Ct. App. 1991). While the district court recognized Maurice’s shortcomings as a father, it ultimately found “there has been insufficient proof presented showing that it is in the minor child’s best interests for Linda to have sole legal custody.” We agree with the district court that there is not “clear and convincing evidence” to support a finding that joint legal custody is not reasonable, nor in M.W.’s best interests. We therefore affirm the district court as to this issue.

Linda next contends the district court erred in awarding Maurice visitation, as it is contrary to M.W.’s best interests. The district court set forth the following visitation schedule:

- a) Every Wednesday from 4 p.m. until 7 p.m.;
- c) [sic] Every other weekend beginning on Saturday at 9:00 a.m. until Sunday at 7:00 p.m.;
- d) Two (2) one-week periods during the summer to be exercised in nonconsecutive weeks. Maurice shall provide Linda with written notice by April 30th of each year as to what weeks he intends to exercise his one-week summer visitations;
- e) Linda shall also be entitled to two (2) one-week periods during the summer to be exercised in nonconsecutive weeks. Linda shall provide Maurice with written notice by May 15th of each year as to what weeks she intends to exercise her one-week summer visitations;
- f) Spring break shall begin on Friday after school or 3:30 p.m. on the last day of school before spring break (as determined by the child’s school) and last until 7:00 p.m. the Sunday before school is to resume;
- g) Easter shall begin on the Saturday before Easter Sunday at 9:00 a.m. and end on Sunday at 7:00 p.m.;
- h) Memorial Day shall begin on the Saturday before Memorial Day at 9:00 a.m. and end on Memorial Day at 7:00 p.m.;

- i) Fourth of July shall begin on July 4th at 9:00 a.m. and end on July 4th at 8:00 p.m.;
- j) Labor Day shall begin on the Saturday before Labor Day at 9:00 a.m. and end on Labor Day at 7:00 p.m.;
- k) Thanksgiving shall begin on the Wednesday before Thanksgiving after school or 3:30 p.m. and end on the Sunday after Thanksgiving at 7:00 p.m.;
- l) Winter Break Part One shall begin the day school lets out or 3:30 p.m. and end on December 26th at 9:00 a.m.;
- m) Winter Break Part Two shall begin on December 26th at 9:00 a.m. and end on the Sunday before school resumes at 7:00 p.m.;
- n) In even-numbered years, Maurice shall have spring break, Memorial Day, Labor Day, and Winter Break Part One. Linda shall have Easter, Fourth of July, Thanksgiving, and Winter Break Part Two. In odd-numbered years, Maurice shall have Easter, Fourth of July, Thanksgiving, and Winter Break Part Two. Linda shall have spring break, Memorial Day, Labor Day, and Winter Break Part One;
- o) Child's birthday. Linda shall have visitation with the child in odd-numbered years on the child's birthday beginning after school or day care until 7:00 p.m. and Maurice in even numbered years beginning after school or day care until 7:00 p.m.

The parties shall share the responsibility of transporting the minor child for visitation. Unless the parties mutually agree otherwise, Linda shall deliver the minor child at the beginning of visitation and Maurice shall be responsible for dropping off the child at the end of visitation.

**Maurice's visitation shall commence the first full week following the entry of this Order. Maurice's visitation shall also be supervised by a member of his family the first eight (8) months following the entry of this Order.**

Linda's primary concern is that because Maurice only exercised a small portion of the visitation he was granted under the temporary order, this extensive visitation schedule is not in M.W.'s best interests. As Linda states,

This drastic increase does not afford [M.W.] the opportunity to gradually develop a relationship with her father, [and] instead throws her into multiple overnights at unknown locations with nothing supporting such an arrangement from the Trial Court other than a finding that Maurice has not "altogether abandoned his daughter."

At the hearing, Linda testified regarding Maurice's attendance of visitation under the temporary order. She estimated that of the sixty possible visitations since the temporary order has been in place, Maurice has attended less than ten visits and has not stayed for the entire three-hour visit on Saturdays. Linda recalled transporting M.W. many times to Maurice's mother's home, where visitation was to take place, and waiting the entire time the visit was supposed to last, with Maurice never showing up. She further testified that after this occurred for three to four months she began calling Maurice twenty-four to forty-eight hours prior to the actual visit. Linda also testified that during the visits attended by Maurice, he often would fall asleep and his mother would take over caring for M.W. To her credit, and M.W.'s benefit, Linda has maintained a "pretty close" relationship with Maurice's mother. When asked whether she wants M.W. to have a relationship with Maurice, Linda replied, "I think [M.W.] deserves that, and I think she needs someone there." Linda did, however, express concerns about Maurice's current lifestyle, including continued drug use.

Linda also identifies shortcomings in the district court's visitation schedule, including a failure to define where the "supervised visits" will take place, whether the supervised visits will expire at the end of the eight month period, or whether they will transition to wholly unsupervised visits after the eight-month period expires.

We too are concerned that the visitation schedule is not tailored to the best interests of M.W. Given Maurice's lack of interest in his daughter, the schedule is simply unrealistic for Linda to "deliver the minor child at the beginning

of visitation,” when Maurice’s pattern has been to not even show up at his mother’s house to exercise his visitation. This is not only frustrating to Linda but also puts M.W. in a situation where she may not be cared for by a responsible parent. Linda testified that although she wished M.W. to have a relationship with her father, Maurice is simply not “responsible enough to take [M.W.] on his own.” While that day will hopefully come in the near future, for the present time, the visitation schedule imposed by the district court is not in M.W.’s best interests. The leap from barely any visitation exercised to the expansive schedule the district court set forth, immediately subjects M.W. to a parent who has been largely absent from her life. It is a rigid schedule that far exceeds what Maurice has—as demonstrated from his past behavior—been willing to exercise.

Given Maurice’s lack of involvement with his daughter, we modify the district court’s order, striking the visitation schedule, which does not appear to relate specifically to these parents’ situations or to their child’s intermittent connection with Maurice. We, like the district court, have no proposal from either parent for a different visitation schedule. In place of the district court’s schedule, we reinstate the schedule the parties agreed to in the March 3, 2011 Mediation Agreement, as incorporated in the April 8, 2011 Temporary Order, with the addition that Maurice must notify Linda a minimum of forty-eight hours prior to each intended visit. The modified visitation order therefore is as follows:

Maurice is granted supervised visits at the home of his mother, Sherri White. Visits shall occur Monday from 5:15 p.m. to 6:30 p.m., Wednesdays from 5:15 p.m. to 6:30 p.m., and Saturdays from 1:00 p.m. to 4:00 p.m. No visit shall occur unless Maurice provides Linda with a minimum of forty-eight hours notice of his intent to exercise visitation. Linda shall provide all visitation transportation.

The parties shall agree to work with Sherri White and be flexible if needed to accommodate Sherri's schedule. If Sherri is not available, the parties may agree upon another suitable place and person to supervise the visits.

Concluding this modified visitation to be in M.W.'s best interests, protecting her while giving her time to develop a relationship with her father, we affirm the district court's order establishing paternity, custody, and support, and modify as to visitation. Costs on appeal assessed to Maurice.

**AFFIRMED AS MODIFIED.**