

**IN THE COURT OF APPEALS OF IOWA**

No. 3-951 / 13-0844  
Filed October 23, 2013

**KRISTY R. ANDERSON,**  
Plaintiff-Appellant,

**vs.**

**TAYTE W. TRAMPE,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Boone County, Steven J. Oeth,  
Judge.

A mother appeals from the denial of her petition to modify the visitation provisions of the parties' stipulated decree. **AFFIRMED.**

Daniel J. Tungesvik of Kruse & Dakin, L.L.P., Boone, for appellant.

Ben T. Doran of Doran Law Firm, Boone, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**POTTERFIELD, P.J.**

A mother appeals from the denial of her application to modify the visitation provisions of the parties' stipulated decree. She argues the district court erred in finding no material change in circumstances has occurred to merit modification of the decree. We affirm.

**I. Facts and Proceedings.**

Kristy Anderson and Tayte Trampe have one child; they entered into a stipulated agreement regarding visitation in 2003. Kristy filed an application to modify this decree in July 2011 to structure visitation around the child's extracurricular activities. Tayte resisted the application to modify. The court found the child's extracurricular activities had made exercising the original visitation agreement more difficult, particularly since the parents live in different towns some distance apart. The court found that Tayte had accommodated the child's schedule by shortening his parenting time on the weekends, but that summer visitation was especially difficult because of the scheduled activity. Acknowledging the less-extensive change in circumstances required for a modification of visitation, the court concluded Kristy had failed to meet her burden of proof, stating:

The court does not find a child's participation in an activity, even one in which the child has some talent, to be a circumstance not contemplated by a judge in signing a stipulated dissolution decree. This is particularly true when the requested modification is going to alter a father's opportunity for maximum continuing physical and emotional contact with his child.

The court encouraged the parties to work together to make sure the child could still participate in the activity, and applauded Tayte for his reasonable accommodations of the child's schedule. Kristy appeals.

## **II. Analysis.**

Our review in this equity action is de novo; we give deference to the trial court's fact findings, especially those involving the credibility of the witnesses, but we are not bound by those findings. *Nicolou v. Clements*, 516 N.W.2d 905, 906 (Iowa Ct. App. 1994). This standard for modification of visitation is much lower than that to modify custody. *Id.* "The appellate courts of this state have consistently held that to justify a modification of visitation rights, the plaintiff must show there has been a change of circumstances since the filing of the decree." *Id.* Our focus is always on the best interests of the child. *Id.* "Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us." *In re Holub*, 584 N.W.2d 731, 732 (Iowa Ct. App. 1998). "[W]e recognize the reasonable discretion of the trial court to modify visitation rights and will not disturb its decision unless the record fairly shows it has failed to do equity." *In re Marriage of Salmon*, 519 N.W.2d 94, 95 (Iowa Ct. App. 1994)

We agree with the district court that the child's extracurricular activities do not constitute a change in circumstances justifying modification of visitation. We give deference to the trial court's opportunity to view the witnesses and determine the facts. *Clements*, 516 N.W.2d at 906. As children grow older, they become involved in various extracurricular activities. While at times this may make visitation challenging, Tayte and Kristy have worked together to help their

child participate in her chosen activity. Looking to the circumstances as a whole, we cannot find a change justifying modification of visitation.

Kristy requests appellate attorney fees. Such an award rests in our discretion; it is based on the merits of the appeal, Kristy's needs, and Tayte's ability to pay. See *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). We decline to award attorney fees.

**AFFIRMED.**