**IN THE COURT OF APPEALS OF IOWA**
No. 7-157 / 06-1638
Filed April 11, 2007

**IN RE THE MARRIAGE OF ANN MUNGER**
**AND KEVIN J. MUNGER**

**Upon the Petition of**
**ANN MUNGER, n/k/a ANN SNOOK,**
Petitioner-Appellant/Cross-Appellee,

**And Concerning**
**KEVIN J. MUNGER,**
Respondent-Appellee/Cross-Appellant.

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Appeal from the Iowa District Court for Lyon County, Patrick J. Carr, Judge.

Ann Munger, n/k/a Ann Snook, appeals the joint physical care plan, choice of school district, and shared special expense fund of the trial court's order and decree following remand. Ann also appeals the trial court's denial of the motion to withdraw and continue trial. Kevin Munger appeals the child support provisions of the court order. **AFFIRMED.**

Missy Clabaugh of Jacobsma, Clabaugh & Freking, P.L.C., Sioux Center, for appellant.

Randy Waagmeester of Waagmeester Law Office, P.L.C., Rock Rapids, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**BAKER, J.**

Ann Munger, n/k/a Ann Snook, appeals the joint physical care, choice of school district, and special fund joint checking account provisions of the trial court's order and decree following remand. Ann also appeals the court's denial of her motion to continue trial and her attorney's motion to withdraw. Kevin Munger appeals the child support provisions of the order.

**I. Background and Facts**

Kevin and Ann were married in 1993 and had two children, Jacob, born in 1994, and Marissa, born in 1996. An August 23, 2004, decree dissolving the marriage placed the children in the joint legal custody of the parties and awarded their primary physical care to Ann. Kevin appealed from the physical care portion of the decree. The Iowa Court of Appeals modified the dissolution decree to provide for joint physical care and remanded for the entry of an order detailing the specifics of the joint physical care arrangements.

Following a series of settlement attempts, a remand hearing was scheduled for June 15, 2006. On June 13, 2006, a telephone hearing was held to hear a motion for continuance of trial and application by Ann's attorney, Francis Honrath, to withdraw from the case. The trial court denied the two requests.

The trial court ordered an alternating week arrangement for joint physical care and that the children attend school in the West Lyon School District. The court ordered the implementation of a shared special expense fund, whereby each parent would equally contribute to a joint checking account to pay for the children's expenses. The trial court also reduced Kevin's child support obligation from $859.96 to $733.40 per month.

Ann filed several post-trial motions, which were overruled and denied by the trial court.

**II**. **Merits**

Our review in equity cases is de novo. Iowa R. App. P. 6.4. We are not bound by the trial court's findings of facts, but we give them deference because the trial court had a firsthand opportunity to view the demeanor of the parties and evaluate them as custodians. *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998); *see also* Iowa R. App. P. 6.14(6)(*g*). "In child custody cases, the first and governing consideration of the courts is the best interest of the child." Iowa R. App. P. 6.14(6)(*o*).

The trial court stated several cogent reasons for preferring a week-to-week rotation of care: It is simple and predictable, it avoids mid-week relocations of the children, and it is consistent with the psychologist's[1] recommendation that the children's schedule be consistent and predictable. We therefore affirm the trial court's order regarding the shared physical care plan.

In determining which school the children should attend, the trial court found the "competence and ability of the schools and their personnel to be about equal." We do not believe it would be in the best interests of the children to disrupt them again by ordering them transferred back to Sioux Falls. We therefore affirm the decision of the trial court that the children attend school in West Lyons.

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[1] Following an April 2006 mediation session, Ann and Kevin agreed to select a clinical psychologist to consult with the children and parties and issue a written report to assist in resolving the issue of which school the children would attend.

Ann asserts that the trial court erred in ordering that she and Kevin maintain a joint checking account for the children's expenses. The record fully supports the trial court's finding that "Ann and Kevin's attitudes and belief system about money and its uses vary widely. It is likely that disputes . . . might arise over economic expense needs of the children . . . ." We agree that the "structure of a shared fund . . . will have the benefit of a clear and unambiguous accounting for the uses of money for expenses for the children." We find no reason to deviate from the trial court's order regarding the account.

Kevin asserts that the trial court erred when it ignored Ann's "intentional and substantial voluntary reduction in income." The child support guidelines are to be strictly followed unless their application would lead to an unjust or inappropriate result. *In re Marriage of Brown,* 487 N.W.2d 331, 333 (Iowa 1992). It is appropriate to consider earning capacity rather than actual earnings in applying the uniform guidelines. *In re Marriage of Salmon*, 519 N.W.2d 94, 97 (Iowa Ct. App. 1994). Before using earning capacity, however, the court must find that the use of actual earnings would result in a substantial injustice. *Id.* Based on our review of the record, there is no reason to deviate from the amount ordered by the trial court.

Ann contends that the trial court's denial of the motion to withdraw and continue trial was erroneous and dramatically prejudiced her rights to be adequately represented at the remand hearing. The standard of review from a denial of a motion to withdraw or a motion to continue is abuse of discretion. *Bell v. Iowa Dist. Court*, 494 N.W.2d 729, 731 (Iowa Ct. App. 1992).

The trial court denied the motions to withdraw and to continue trial because the interests of the children "militate strongly against permitting withdrawal at this very late date." The court noted that a delay "might render it impossible to hear and decide the remand issue before the commencement of the children's school." We agree with the trial court that it was in the best interests of the children that the issues be heard and decided before the school year started. The trial court did not abuse its discretion in denying these motions.

Both parties request an award of their appellate attorney fees. "An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions." *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa Ct. App. 1998) (citing *In re Marriage of Kern,* 408 N.W.2d 387, 390 (Iowa Ct. App. 1987)). Each party shall be responsible for his or her own appellate attorney fees. Costs shall be taxed equally between the parties.

**III Conclusion**

Upon our de novo review of the joint physical care plan, choice of school district, shared special expense checking account, and child support provisions, we agree with the trial court's findings of fact, conclusions of law, application of law to the facts found, and resulting order. We therefore affirm. *See* Iowa Ct. R. 21.29(1). We also agree with the trial court's denial of the motion to withdraw and continue trial. *See id.*

**AFFIRMED.**