

IN THE COURT OF APPEALS OF IOWA

No. 7-666 / 07-0511
Filed October 24, 2007

**IN RE THE MARRIAGE OF DENNIS DORMAN
AND JAKELINE MEGAN DORMAN**

**Upon the Petition of
DENNIS DORMAN,**
Petitioner-Appellee,

**And Concerning
JAKELINE MEGAN DORMAN,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

A wife appeals the visitation provisions of the parties' dissolution decree.

AFFIRMED AS MODIFIED.

Elizabeth Kellner-Nelson of Pendleton Law Firm, P.C., West Des Moines,
for appellant.

James P. Piazza Sr., Des Moines, and Catherine K. Levine, Des Moines,
for appellee.

Considered by Huitink, P.J., and Baker, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SCHECHTMAN, S.J.**I. Background Facts & Proceedings**

Dennis and Jakeline Dorman, each twenty-three, were married in August, 2004, after living together for over a year. They are the parents of twin daughters, Maria and Christina, born on December 2, 2005. The parties separated on January 11, 2006, after Jakeline obtained a temporary protective order under Iowa Code chapter 236 (2005). A consensual permanent protective order, for one year, was entered two weeks later. Dennis was granted visitation on Wednesday evening from 6:00 p.m. to 8:15 p.m., Friday evening from 5:00 p.m. to 8:00 p.m., and overnight from 5:00 p.m. Saturday to 5:00 p.m. Sunday.¹ Jakeline resided, with the children, in a two bedroom apartment in Clive. Dennis moved to his parents' home in West Des Moines.

Dennis, a college graduate, was employed as a business consultant, with hours from eight a.m. to five p.m., Monday through Friday, except he leaves at noon on Fridays. Jakeline was a few hours short from obtaining an associate degree. She is employed part-time at a fast food concern, but intends to secure full-time work when available. A licensed daycare provider tends the girls while she is working.

Dennis filed a petition for dissolution on January 21, 2006. At Jakeline's request, Dr. Kari Kinnaird, a licensed clinical psychologist, was appointed as a visitation evaluator. Her report concluded, "I believe that the current schedule is a good one and can remain in effect until the children are three years old;" when

¹ This was the visitation schedule beginning in June 2006. Dennis received considerably less visitation under the original order in January.

the children were three, “two consecutive overnights and a longer time between visits are more tolerable for most children.”

A dissolution decree was entered on February 8, 2007. It granted joint legal custody of the children, with Jakeline awarded physical care. The court entered the following visitation schedule for Dennis:

- (a) from Wednesday afternoon at the conclusion of daycare until Thursday morning when daycare resumes;
- (b) beginning with the first weekend following the entry of this decree and every other weekend thereafter, from the conclusion of daycare to 8:00 p.m. on Fridays and from 5:00 p.m. Saturday to 5:00 p.m. Sunday;
- (c) beginning with the second weekend following the entry of this decree and every other weekend thereafter, from the conclusion of daycare on Friday afternoon to the resumption of daycare the following Monday morning.

Dennis was also granted alternating holidays, together with two one-week, non-consecutive weeks during the summer. When enrolled in school, visitation would begin when school recessed, rather than when daycare concluded.

Jakeline filed a motion to reconsider pursuant to Iowa Rule of Civil Procedure 1.904(2), stressing that under the decree, she would be unable to spend a full weekend with the children. The court denied Jakeline’s request, Jakeline appeals.

II. Standard of Review

In this equity action, our review is de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Merits

Jakeline contends she should receive additional time on the weekends to spend with the children because the decree allows her less than twenty-one hours every other weekend, from 8:00 p.m. Friday to 5:00 p.m. Saturday. Her parents live in North Liberty. She would have a difficult time arranging adequate time for the children to visit them. Nor would it allow her sufficient leisure time to enjoy the girls on her own schedule. Further, this would require transferring the children four times on these weekends. Additionally, Jakeline requests that on the alternating weekends, when Dennis has the children for the full weekend, he should return them at 5:00 p.m. on Sunday instead of Monday morning. She concludes it will be too disruptive for the children to spend three consecutive nights away from their home two times per month.

It is our onus to seek only that which will be in the best interests of the children. See Iowa Code § 598.41(1). We must do so in light of what is reasonable, “will assure the child[ren] the opportunity for the maximum continuing physical and emotional contact with both parents,” and “will encourage parents to share the rights and responsibilities of raising the child[ren],” and will not cause “physical harm or significant emotional harm to the child[ren] . . . or a parent.” Iowa Code § 598.41(1)(a); see *In re Marriage of Bunch*, 460 N.W.2d 890, 891 (Iowa Ct. App. 1990).

The parent with physical care of the children “is entitled to be more than a servant to the children, entitled to enjoy weekend time with them.” *In re Marriage of Weidner*, 338 N.W.2d 351, 359 (Iowa 1983); see also *In re Marriage of*

Lacaeyse, 461 N.W.2d 475, 477 (Iowa Ct. App. 1990) (“Since [the father] has primary physical custody of the boys, he is entitled to enjoy weekend time with them.”). Both parents should be able to participate in weekend fun with their children. *In re Marriage of Ertmann*, 376 N.W.2d 918, 922 (Iowa Ct. App. 1985).

The case *In re Marriage of Bunch*, 460 N.W.2d at 892, contains the following profound statement:

We cannot say as a matter of law that sections 598.41(1) and 598.1(6)² require the court to apportion at least one-half of available time to the noncustodial parent. The Iowa Code requires us to consider only those factors listed in section 598.41(1), *i.e.*, the best interests of the child; *not* an equitable arrangement among the parents.

The case of *In re Marriage of Guyer*, 238 N.W.2d 794, 796 (Iowa 1976), involved visitation for a four year old. The district court awarded the noncustodial parent visitation from Saturday noon until 6:00 p.m. on Sunday every weekend. *Guyer*, 238 N.W.2d at 796. On appeal, it was reduced to alternating weekends as “weekly visits are unduly disruptive.” *Id.* at 797.

There does appear to be a need to balance the apparent conflict between the goal of maximum parental contact and the avoidance of excessive disruption. The cases *In re Marriage of Miller*, 390 N.W.2d 596, 602 (Iowa 1986); *In re Marriage of Weidner*, 338 N.W.2d 351, 359 (Iowa 1983); and *In re Marriage of Kurth*, 438 N.W.2d 852, 855 (Iowa Ct. App. 1989), each address decretal visitation.

The district court was critical of Jakeline regarding the amount of visitation Dennis had received up to trial, and determined he deserved an increase. Yet,

² Now section 598.1(1) (2005).

Dennis received all the visitation awarded in the chapter 236 action. There was no evidence Jakeline had denied any of the visitation he was entitled to receive. Further, although Dennis did file an application for a hearing on temporary matters with the petition, it was never pursued any farther. The trial court also had some concerns about Jakeline's lack of communication and support of any paternal relationship. It should be noted that a no-contact order was in place most of relevant time which would prevent robust exchanges between the two parents.

The twins are less than two years of age at the present time. They are in dire need of stability. And, Jakeline needs more than the allotted time with them on the weekends, which is in their best interest. Dennis was given a mid-week overnight, as well as some holidays and summer visitation. Adding in two overnights on alternating weekends appears in equitable compliance with the mandate of section 598.41(1).

The girls should be returned home at 5:00 p.m. on Sunday rather than on Monday morning. Like *In re Marriage of Gratias*, 406 N.W.2d 815, 818 (Iowa Ct. App. 1987), "We believe that it is in the children's best interests that they be returned to the custodial parent . . . in order to allow preparation for school and other weekday activities."

Taking all of these factors into consideration, we modify the visitation schedule to provide Dennis visitation with the children as follows:

- (a) every Wednesday from the conclusion of daycare until Thursday morning when daycare resumes;
- (b) on alternating weekends, from Friday at 12:00 noon, or when Dennis gets off work, until Sunday evening at 5:00 p.m.

Once the children begin school, Dennis's Friday visitation shall begin when school gets out. All other provisions of the parties' dissolution decree are affirmed.³

IV. Attorney Fees

Both parties have requested attorney fees for this appeal. An award of appellate attorney fees is not a matter of right, but rests within our discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We determine Dennis should pay \$1000 towards Jakeline's appellate attorney fees.

We affirm the decision of the district court, except for the modification to the parties' visitation schedule, as set forth. Costs of this appeal are assessed to Dennis.

AFFIRMED AS MODIFIED.

³ The court did not reduce the child support by the extraordinary credit, although it fell within that range (170 overnights). Under the reduced amount of visitation (118 overnights), no extraordinary credit is available. No remand is necessary for any recomputation of child support.