

IN THE COURT OF APPEALS OF IOWA

No. 8-372 / 07-2172
Filed May 29, 2008

JOSHUA M. ITES,
Petitioner-Appellee,

vs.

STEPHENIE KORTHALS,
Respondent-Appellant.

Appeal from the Iowa District Court for Osceola County, David A. Lester,
Judge.

Stephenie Korthals appeals from the district court's decree which granted
the child's natural father, Joshua Ites, visitation. **AFFIRMED.**

Timothy Kramer of Waagmeester Law Office, P.L.C., Rock Rapids, for
appellant.

Lynn Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellee.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Stephenie Korthals (formerly Stephenie Hibma) appeals from a portion of the district court's decree in an action brought by Joshua Ites to establish custody and visitation. She contends the district court erred by basing its final visitation order on the parties' temporary visitation order. Further, she contends the visitation schedule ordered by the court is unreasonable given the distance between the parties' homes. We affirm.

Stephenie and Joshua are the parents of Pierce Charles Hibma, born in June 2003. Stephenie and Joshua were never married to each other. Joshua has always acknowledged paternity of Pierce, and his name appears on the child's birth certificate as Pierce's natural father. Since Pierce's birth, Stephenie has been the child's caretaker.

Following his graduation from high school, Joshua enlisted in the Army Reserve. At the time of Pierce's birth, Joshua was stationed at Fort Carson, Colorado, awaiting mobilization to Egypt. He was allowed forty-eight hours' leave to see Pierce at the end of June 2003. Following a nine-month tour of duty in Egypt, Joshua moved to Sheldon, Iowa. At that time, Stephenie and Pierce were residing with Stephenie's parents, who lived in the area. Joshua remained in Sheldon until August 2004, at which time he moved to Wellsburg, Iowa. While living in Sheldon, Joshua would see Pierce approximately three times per week. After he moved, Joshua had limited contact with Pierce and Stephenie.

In April 2005 Joshua filed a petition for custody determination and visitation, and subsequently Stephenie filed an answer and counterclaim to his petition. In October 2005 Joshua was deployed to Iraq for a period of twenty-two

months. During this time, Stephenie married Jesse Korthals, and she and Pierce moved in with Jesse. During his deployment, Joshua had very limited contact with Pierce. He was able to visit with his son while on leave from duty in December 2005 and December 2006.¹ Each of his visits was two days in length. Upon Joshua's return from his deployment in July 2007, he filed a motion requesting the court to grant him temporary visitation rights with Pierce while his petition to establish custody was pending.

At the time of the hearing on Joshua's motion for temporary visitation, the parties reached an agreement concerning Joshua's temporary visitation rights with Pierce. The district court entered an order approving that agreement on August 17, 2007. The agreement, which remained in effect at the time of trial, granted Joshua visitation every other weekend from Friday at 7:00 p.m. until Sunday at 7:00 p.m. Stephenie and Joshua agreed to meet in Sac City, which is approximately half-way between where the two parties currently live, to exchange Pierce. The parties must each drive approximately two hours to meet at this location.

On October 30, 2007, a trial was held on Joshua's petition for custody determination and visitation. At the time of trial, Stephenie was twenty-three years old. She lived in Boyden, Iowa, with her husband of two years, and Pierce. Stephenie has a college degree from Buena Vista University and is employed by an accountant in a town near her residence. Joshua was twenty-five years old at

¹ Prior to both holiday visits, Joshua filed an application seeking temporary holiday visitation, the parties subsequently reached an agreement, and the district court entered an order for the visit.

the time of trial, and he was living in Cedar Falls, Iowa, with his brother. He is a full-time student at the University of Northern Iowa.

On November 30, 2007, the court issued its decree, which granted Stephenie primary physical care and Joshua visitation with Pierce. The visitation schedule established weekend visitation, summer visitation, and holiday visitation with age adjustments. Stephenie appeals from the visitation provision of the court's decree. She requests that the visitation schedule ordered by the court be replaced with a schedule that provides for significantly less weekend visitation for Joshua.

Our review is de novo. Iowa R. App. P. 6.4. Although not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g). In establishing visitation rights, our governing consideration is Pierce's best interests. *In re Petition of Deierling*, 421 N.W.2d 168, 171 (Iowa Ct. App. 1988). Generally, liberal visitation is in a child's best interests because it maximizes physical and emotional contact with both parents. See Iowa Code § 598.41(1)(a) (2005); *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa Ct. App. 1992).

Stephenie contends the district court improperly based its final decree on the terms of the August 17, 2007 temporary visitation schedule agreed to by the parties. She argues that as a consequence, the court improperly held her to a higher burden of proof as though she were seeking a modification of this temporary order. Stephenie also contends the visitation schedule ordered by the court is unreasonable because it fails to realistically address the factors involved

in long distance visitation. Upon our review of the record, we find no merit to either of her claims.

The record reveals the trial court acknowledged that the parties reached an agreement concerning temporary visitation; however, the court also noted in its findings of fact that the parties were not able to reach an agreement concerning the issue of permanent visitation in their pretrial stipulation. At trial, the court heard testimony from the parties regarding Pierce's reaction to the temporary visitation arrangement. The court addressed Stephenie's concerns with the temporary arrangement in its final decree, specifically noting that Pierce was able to handle the travel and suffered no adverse affects from traveling. The court found Stephenie's request for a transition period during which Joshua's weekend visitations would be during the daytime only, and in or near her home, was without merit. The court concluded, "Stephenie was unable to provide the court with any evidence or testimony, however, to support this request." The court further found that Stephenie's concerns over future scheduling conflicts were not unique and did not merit the "significant limitation of Joshua's visitation" being sought.

We find nothing in the record which convinces us that the trial court improperly "based" its decision on the parties' temporary visitation arrangement or placed a higher burden on either party in determining the permanent visitation schedule. The record does reveal, however, that the court properly considered the applicable law, each party's proposed visitation arrangement, and the evidence and testimony presented at trial in establishing a visitation schedule for Joshua and Pierce. We believe the visitation schedule established by the district

court is equitable and reasonable under the facts and circumstances of this case. We also conclude the schedule is consistent with Pierce's best interests and will provide the child with the opportunity for the maximum continuing physical and emotional contact with both his parents as section 598.41 directs. We affirm the court's ruling.

Joshua requests appellate attorney fees. An award of appellate attorney fees rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). Whether attorney fees should be awarded depends on the needs of the party making the request and the respective abilities of the parties to pay. *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994). We also consider whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). We decline to award appellate attorney fees in this case.

AFFIRMED.