

IN THE COURT OF APPEALS OF IOWA

No. 8-449 / 07-1464

Filed July 16, 2008

IN RE THE MARRIAGE OF MICHAEL SPEER AND BRENDA JO SPEER

**Upon the Petition of
MICHAEL MATTHEW SPEER,**
Petitioner-Appellee,

**And Concerning
BRENDA JO SPEER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister,
Judge.

Appeal from the visitation provisions of the parties' decree of dissolution of
marriage. **AFFIRMED.**

Vivian Meyer Betts of Iowa Legal Aid, Waterloo, for appellant.

Michael Speer, Waterloo, appellee pro se.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

The only issue in this appeal from the decree dissolving the marriage of Michael and Brenda Speer is Michael's visitation with the parties' only child, a daughter born in June of 2001. At trial Brenda contended that Michael's only visitation should be supervised. The district court denied her request and gave Michael specific, reasonable unsupervised visitation. Brenda renews her contention on appeal, contending that any visitation Michael has should be supervised. We affirm.

SCOPE OF REVIEW. We review de novo. Iowa R. App. P. 6.4; *In re Marriage of Riggert*, 537 N.W.2d 789, 791 (Iowa Ct. App. 1995); *In re Marriage of Harris*, 499 N.W.2d 329, 330 (Iowa Ct. App. 1993).

BACKGROUND. The parties were married in August of 1992. When their daughter was born 2001 they both were working outside the home. They both participated in her care. Trouble in the marriage appeared to surface after the family experienced financial difficulties, the mortgage on their home was foreclosed, and Michael began to use marijuana. Brenda was to testify to a time Michael pushed her and spanked their daughter hard enough to leave a hand print on her behind. Michael admitted that he had given his daughter swats on her behind but denied hitting her hard enough to leave a mark. He also denied hurting Brenda. Apparently, some time after these alleged events Brenda sought a protective order in Bremer County, and one was entered by consent on November 28, 2005. The order gave Brenda temporary custody of their child.¹

¹ This order is not part of the record.

The matter came on for hearing on Michael's² request in January of 2006 to change the custody. The issue was whether Michael's visits should be supervised, and if supervised, how the visits should be conducted. There apparently was evidence at that hearing as there was at the dissolution hearing that the child had problems controlling her bowels and urine and frequently wet and defecated on her clothing. The court noted that the child had been counseling with Kathryn Hedican at the Cedar Valley Mental Health Center in Waverly since December 27, 2005. It went on to find "in Ms. Hedican's opinion [the child] has symptoms of Post Traumatic Stress Disorder, which are consistent with Brenda's claims." The court concluded it would not be in the child's interest to grant Michael unsupervised visitation at that time and noted during the hearing Michael was quick to anger and failed to conduct himself in a civil manner.

The dissolution petition in the action before us was not filed in Blackhawk County until September 7, 2006. Michael, who filed the petition, was at that time represented by counsel.³ Michael sought, among other things, temporary custody and sought a hearing on the same. Brenda resisted Michael's request. Michael's request for temporary custody came on for hearing in December of 2006, the Bremer County order was essentially affirmed, and the parties were encouraged by the court to engage in counseling. Michael had only limited supervised visits with his daughter from late 2005 until the dissolution case came on for hearing on July 26, 2007.

² Michael appeared pro se

³ Michael was represented by counsel throughout the trial but his attorney withdrew afterwards and no appellee's brief has been filed.

On July 27, 2007, the district court filed its order, judgment, and decree in the dissolution. The district court carefully crafted a schedule for Michael to have unsupervised visits beginning with two hours every other Saturday for six weeks then extending the hours of the visits every six weeks over the next eighteen weeks. The court then ordered daily visits on every other Saturday and Sunday for six weeks before extending the visits to every other weekend from 10:00 a.m. Saturday until 6:00 p.m. on Sunday.

The court found Michael did not appear quick to anger or short-tempered or uncontrolled or uncivil at the dissolution trial. It noted Michael had completed a number of parenting classes, exercised supervised visits with good results on most occasions, and appreciated a need to reestablish a normal relationship with his daughter. The court also noted Michael is regularly employed, drug free, paying child support, and has a stable residence. The court commented that Hedican, who testified the child suffered post-traumatic stress disorder, apparently made the diagnosis, "if that is what it was," based on one instance where Michael spanked his daughter hard enough to leave a handprint on her buttocks.⁴ The court reasoned while the diagnosis may be accurate, there was no second opinion, and while the child suffers from post-traumatic stress disorder, it could have been caused by an undisclosed event not related to either party.

REQUEST FOR SUPERVISED VISITATION. Liberal visitation rights are generally in the best interest of the child. *See In re Marriage of Kerber*, 433

⁴ Hedican did not witness the injury. Her only knowledge of it was through Brenda's report.

N.W.2d 53, 54 (Iowa Ct. App. 1988), *In re Marriage of Muell*, 408 N.W.2d 774, 777 (Iowa Ct. App. 1987). The court shall order liberal visitation rights, where appropriate, that will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents. Iowa Code § 598.41(1) (Supp. 2005). Supervised visitation does not provide the opportunity for maximum physical and emotional contact of the child with Michael. The presence of a third party can hinder conversation and create an uncomfortable climate for both parent and child. In this situation, because of the limited financial resources of the parents, the cost of a supervisor may limit the number of visits Michael can exercise. While supervised visits may be necessary in the dissolution context to protect a child, they should be used sparingly.

They are no founded reports of child abuse against Michael. Apparently, at the time of the parties' separation Michael was using marijuana. By the time of trial he has been in a job for over a year that required that he pass periodic random drug tests to keep his job. While Michael's direct visits with his daughter have been limited during the over twelve-month period between the Bremer County order and the dissolution hearing, a part of his inability to exercise all visits has been financial. The visitation supervision charged Michael forty dollars an hour or eighty dollars to supervise a two-hour visit with his daughter. Michael has taken classes to improve his parenting skills. He has maintained telephone contact with his daughter, talking to her frequently for as long as she wants to visit. Michael recognized the need to reestablish a relationship with his daughter gradually, and the district court's order begins with two hours of visits every other week and no overnight visitation until Michael has had daily visits for a thirty-six

week period, at which time his daughter will be about seven and a half years old.

Given the required deference to the district court we affirm.

AFFIRMED.