

**IN THE COURT OF APPEALS OF IOWA**

No. 9-600 / 09-0042  
Filed August 19, 2009

**IN RE THE MARRIAGE OF JANET LEE CARLON  
AND DAVID CHARLES CARLON**

**Upon the Petition of  
JANET LEE CARLON,**  
Petitioner-Appellee,

**And Concerning  
DAVID CHARLES CARLON,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Webster County, Gary L. McMinimee, Judge.

David Carlon appeals from the court's order of supervised visitation in this dissolution action. **AFFIRMED.**

Dani L. Eisentrager, Eagle Grove, for appellant.

Kathy Mace Skinner, Nevada, for appellee.

Considered by Vogel, P.J., Potterfield, J., and Beeghly, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**POTTERFIELD, J.**

David Carlon appeals from the visitation provisions of the parties' dissolution decree. The district court ordered supervised visitation and David contends this was unnecessary. We affirm.

**I. Background Facts and Proceedings.**

David and Janet Carlon were married for twenty-one years and had three daughters. Janet filed a petition for dissolution of marriage. The parents agreed on temporary orders that limited David's time with the children, but did not require supervision. Prior to trial, David and Janet reached agreement as to property distribution and child custody. Thus, the only issue before the district court was what visitation was appropriate between David and the parties' two minor daughters.

At trial, Janet testified that David had a history of mental health issues and that he had been hospitalized for severe depression in 2006 and undergone electroshock therapy. She testified he was on medications after the hospitalization and the depression had improved, but his inability to control his anger had not. She was fearful for the girls if visits were unsupervised. She testified that David inappropriately relied upon their youngest daughter for emotional support and often placed her in the middle of inappropriate situations.

The eldest of the couple's daughters is in college and not subject to any visitation. She testified at the trial, however, that she was fearful of David and was worried for her siblings. She testified David gets angry quickly and that she was afraid of him because he yells and swears at her and her sisters. She

testified he had lunged at her and grabbed her. She thought he was mentally unhealthy and at times “simply not rational.”

The next oldest daughter, age fifteen, also testified she did not wish to have any visits with her father because of his inability to control his anger. She testified that if visits were to be required, she preferred that they be “supervised and the absolute minimal amount.” She testified his anger is irrational and that she was worried for her younger sibling “once she gets to her later teenage years . . . she’ll start to have ideas that differ from daddy’s and he will get upset . . . and I’m afraid of what will happen.”

David and Janet’s pastor also testified at trial that he was concerned about David’s anger and the emotional content of interactions between David and his children.

David testified and acknowledged he had a problem controlling his anger. He acknowledged he had been physical with the girls, but denied that those instances were abusive. He testified he had “tapped” the youngest on the head when he was having an argument with his other daughter. With respect to one incident with his oldest daughter he testified:

I grabbed her by the arm one time and there’s been other times where we’ve you know, she’s come up to me like this and we more or less like she says a standoff, which you don’t think it’s something that a girl should be doing with her father, she should be saying, okay, dad, I’ll do what you want me to do or whatever, but she has never been that way with me.

However, he tended to blame Janet’s controlling nature for the situation, testifying that since his hospitalization Janet had not allowed him to discipline the girls.

After hearing the testimony, the district court filed an order on December 22, 2008. The court wrote:

David has mental health issues that have manifested themselves in the form of depression, anger and no self control. In August 2006, he was hospitalized as suicidal. He continues to be seen by a psychiatrist and takes medications. His depression is under control. Notwithstanding David's belief that he is making strides with respect to managing his anger and behaviors, Janet and the two older daughters disagree and this Court finds their testimony more accurately reflects the current situation. David flip flops between flying off the handle and being apologetic and remorseful, but the out of control behaviors always continue. The issues between David and his children are not due to the children not following his rules and Janet never supporting his discipline . . . . David is physically and verbally abusive to the children. He yells, bullies, and calls them names . . . . He is a physically imposing man. He typically lunges and grabs a child so that they are chest to chest and yells at them, often unintentionally spitting on them. The children indicate that his conduct scares them.

The court noted it was "always reluctant to limit visitation and even more hesitant to impose supervision" but concluded that in this case it "sees little alternative."<sup>1</sup>

The court thereafter set visitation for the two minor children for two hours per week in a public place, with supervision to be provided by Children and Families of Iowa.

David appeals.

## **II. Scope and Standard of Review.**

Our review of this equity proceeding is de novo. Iowa R. App. P. 6.4. Because the trial court had the opportunity to observe the demeanor of the witnesses, we give weight to its findings, particularly with respect to credibility,

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<sup>1</sup> The court initially asked the parties to provide additional information on proposed supervisors. The parties later entered a protective order by consent agreement in favor of Janet. After receiving the additional information, the court entered an order setting the specific time and place for the supervised visits and assessing the costs of supervision equally between the parents.

but we are not bound by them. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999).

### **III. Merits.**

Iowa Code section 598.41(1)(a) (2009) provides:

The court may provide for joint custody of the child by the parties. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, *including liberal visitation rights where appropriate*, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child *unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent*.

(Emphasis added.)

Here, the district court concluded limited, supervised visitation was appropriate because of the risk of harm to the minor children. Upon our de novo review, we agree. We affirm the visitation ordered by the district court.

Both David and Janet seek attorney fees for this appeal. 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 Rykhoek*, 525 N.W.2d 1, 5 (Iowa Ct. App. 1994). We determine each party should pay his or her own attorney fees for this appeal. Costs of this appeal are assessed to David.

**AFFIRMED.**