

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

RODNEY RYAN BECKWITH,

Petitioner,

vs.

AMANDA JO SCHRUNK,

Respondent.

Case No. CI98-6

ORDER MODIFYING DECREE

DATE OF HEARING: July 8, 1999.

DATE OF DECISION: July 12, 1999.

APPEARANCES:

For the petitioner: Forrest F. Peetz with petitioner.

For the respondent: James D. Gotschall with respondent.

SUBJECT OF HEARING: (1) respondent’s petition for modification, and,
(2) petitioner’s cross-application for modification.

DECREE INVOLVED:

Date of original decree: October 22, 1998.

Date last modified: not applicable.

FINDINGS: The court finds:

1. The oral stipulation of the parties in open court is fair and reasonable, and is not unconscionable, and is hereby approved, and compliance therewith ordered. The following findings and orders are pursuant to the stipulation so far as it goes.

2. The parties stipulated that the respondent’s petition for modification should be resolved by modification of the decree to mandate specific visitation in accordance with Appendix “C,” except that (1) the extended summer visitation should commence in the summer of 2000, rather than in 1999, and, (2) the issue of transportation, which would otherwise be controlled by paragraph E3 of Appendix “C,” was reserved for decision by the court upon the evidence and arguments of the parties. The only issue remaining for decision is the issue of allocation of the burden of child transportation for visitations, which is the subject of the petitioner’s cross-application.

3. The right of child visitation is subject to continuous review by the court entering the dissolution decree, and a party to a dissolution action may file a motion to modify a visitation order on the grounds that there has been a material change in circumstances. *Smith-Helstrom v. Yonker*, 253 Neb. 189, 569 N.W.2d 243 (1997). The party seeking to modify visitation has the burden to show a material change in circumstances affecting the best interests of the child. The phrase “change in circumstances” should not be mechanically construed. *Ahrens v. Conley*, 5 Neb. App. 689, 563 N.W.2d 370 (1997). There has been a material change of circumstances since the decree was entered or last modified. The stipulation for implementation of specific visitation itself constitutes a material change in circumstances, or at least constitutes a stipulation by the parties that there has otherwise been a material change in circumstances. The court will not further address the material change requirement.

4. The fact that this action was originally for determination of paternity is of no consequence. Issues surrounding children in filiation proceedings are treated, to the extent possible, like those of children born in wedlock. *Ahrens v. Conley, supra*.

5. Familiar principles guide the court’s analysis:

a. The primary consideration in all visitation disputes is the best interests of the child, and the child’s best interests surpass considerations of strictly legal rights of the parents. *Davis v. Davis*, 7 Neb. App. 78, 578 N.W.2d 907 (1998).

b. In determining a child’s best interests in custody and visitation matters, NEB. REV. STAT. § 42-364(2) (Reissue 1998), provides that the factors to be considered shall include, but not be limited to, the following: (a) the relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing; (b) the desires and wishes of the minor child if of an age of comprehension regardless of chronological age, when such desires and wishes are based on sound reasoning; (c) the general health, welfare, and social behavior of the minor child; and, (d) credible evidence of abuse inflicted on any family or household member. *Hassenstab v. Hassenstab*, 6 Neb. App. 13, 570 N.W.2d 368 (1997).

c. Visitation is a key ingredient in raising a child after divorce, and it is in the child’s best interests to be with his or her respective parents to the utmost. *Ahrens v. Conley, supra*.

d. In a question about visitation, as in the case of child custody, a parent's rights are not absolute, but must yield to the best interests of the child. *In re Interest of Daniel W.*, 3 Neb. App. 630, 529 N.W.2d 548 (1995).

e. The increased age of a child plus other relevant evidence can support modification of a decree. *Ahrens v. Conley, supra*.

f. A hearing defining specific rights of visitation requires the presentation of evidence concerning the visitation schedule and evidence which explains how and why the visitation schedule would be in the best interests of the children. *Norris v. Norris*, 2 Neb. App. 570, 512 N.W.2d 407 (1994).

6. The provisions of Appendix "C" are "standard" visitation conditions. A court of equity fails to discharge its duty by mechanically applying the standard provisions in all circumstances regardless of the particular parties' situations.

7. Previously, both parties lived in the Holt County area. When both parties reside in the same general area, the standard transportation provision places a relatively small burden on a noncustodial parent. The petitioner moved to Lincoln, Nebraska. This distance imposes a three to four hour transportation requirement at the beginning and end of each visitation. The evidence clearly shows, and the respondent does not really contest, that the petitioner moved for valid educational and employment-related reasons. The respondent essentially contends that because the petitioner moved away, he automatically should be required to bear the additional burden of that change. While the petitioner's choice to move is a factor to be considered, it is not controlling.

8. When one party moves away, the standard provision may or may not be appropriate, depending upon other circumstances. Under the circumstances in this case, some sharing of the transportation burden is appropriate. The principles recited in paragraphs c and d of paragraph 5 above dictate some equitable sharing of the transportation burden. The present gross earnings of the petitioner and respondent are relatively equal. After the deduction for child support is made, the respondent enjoys a significant advantage. However, that advantage is somewhat offset by the extraordinary medical expense obligations being paid by the respondent over time.

9. Evidently because of the young age of the child involved, the parties agreed to defer implementation of the extended summer visitation to the summer of 2000. Because of the respondent's other financial obligations and some of the same considerations relating to deferral of extended summer visitation, the court will defer implementation of the transportation expense allocation.

10. A noncustodial parent bears some burdens by the very nature of not having child custody. One of those burdens is the necessity of some transportation for visitations. A requirement that a custodial parent share the transportation burden for at least one visitation per month provides some equitable sharing of the burden.

11. The order provided below implements the equitable sharing of transportation required under the circumstances of this case.

ORDER: IT IS THEREFORE ORDERED, ADJUDGED, AND
DECREED that:

1. The respondent's petition for modification is granted to the extent of the relief set forth below and is otherwise denied. The petitioner's cross-application for modification is granted to the extent of the relief set forth below and is otherwise denied. The decree previously entered in this case (and as previously modified, if applicable) shall remain in full force and effect except as expressly modified by this order.

2. The custody of the minor child, Allison Jo Beckwith, born January 22, 1998, shall remain with the respondent, subject to specific rights of visitation and correspondence in the petitioner as set forth in Appendix "C" attached hereto and incorporated by reference as expressly modified by the terms of this order. The provisions of Appendix "A" attached hereto are incorporated herein and the parties ordered to comply therewith.

3. The following provisions shall take precedence over and supersede the provisions of Appendix "C" to the extent of any conflict therewith:

a. Extended summer visitation with the child shall not begin until the summer of 2000.

b. Commencing in January of 2000, the transportation for the first visitation of the child with the petitioner in each calendar month, whether constituting regular, summer, or holiday visitation, shall be provided by the parties meeting at St. Paul, Nebraska, (or any

other location mutually agreed upon by the parties being approximately mid way between O'Neill, Nebraska, and Lincoln, Nebraska) at the beginning and end of such visitation. All other transportation for visitation shall be in accordance with the provisions of paragraph E3 of Appendix "C."

4. Each party is reminded of his or her obligation under the original decree that each party shall be required to furnish the clerk of this court, in writing, with such party's address (including specific street address or other physical location, in addition to mailing address), telephone number, and social security number, the name and address of such party's employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information that the Court shall deem relevant until the judgment is paid in full. Each party shall also be required to advise the Clerk of any changes in such information between the time of entry of this order and payment of the judgment in full. Failure to comply with the provisions of this section shall be punishable by contempt.

5. Each party shall be required to pay their own respective costs and attorney fees.

ENTERED: July 12, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19____ by _____.
- 9** Enter judgment on the judgment record.
Done on _____, 19____ by _____.
- : Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 19____ by _____.
- : Note the decision on the trial docket as: 7/12/99 Signed "Order Modifying Decree" entered.
Done on _____, 19____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge

SUPPLEMENTAL ORDER FOR CUSTODY, ETC.

Except as otherwise provided by any approved Parenting Plan, the provisions relating to custody, alimony, support, visitation and conduct of the parties, are subject to the following terms and conditions:

1. **Care and Supervision:** The party who has custody of the children, hereinafter referred to as the Custodian, shall:

- a. provide the children with: (1) regular and nutritious food; (2) clean and appropriate clothing; (3) sanitary and reasonably private living and sleeping quarters; (4) appropriate medical examinations and treatments; and, (5) guidance and counsel in worldly and spiritual matters;
- b. train the children to obey and respect their teachers and the law;
- c. require the children to attend all regular sessions of school until graduation unless excused for medical reasons or by the school or by the Court;
- d. personally supervise and control the conduct and activities of the children except when they are at school, or in known and usual recreational activities, or in the immediate care of another competent person;
- e. not engage in, or permit in the presence of the children, any excessive drinking, immoral conduct, obscenities, violence, or disrespect for law and order;
- f. advise persons entitled to visitation of: (1) all school or police disciplinary contacts; (2) all medical contacts or reports; and, (3) all other important developments in the children's lives and activities;
- g. make emergency decisions affecting the health or safety of the child except during periods of visitation with the other parent, and shall communicate any such decisions to the person entitled to visitation as soon as reasonably practicable under the circumstances.

Each parent shall continue to have full and equal access to the education and medical records of the children unless the court orders to the contrary.

2. **Control of Visitation:** Unless otherwise provided, the person entitled to visitation may:

- a. take the children to such reasonable places for such reasonable activities as such person may determine;
- b. correspond with the children and the Custodian shall not censor such correspondence;
- c. telephone each child for not to exceed 15 minutes between 7:00 P.M. and 9:00 P.M. on Wednesdays and Sundays, and at such other times as the parties may agree and the Custodian shall not participate in such calls;
- d. while the child is visiting with such person, make emergency decisions affecting the health or safety of the child, and shall communicate any decisions to the Custodian as soon as reasonably practicable under the circumstances.

In connection with visitation, the Custodian shall:

- e. have the children ready and available promptly for all visits;
- f. if advised in advance, provide the children with such special and additional clothing as may be appropriate for the planned activities;
- g. in the event a child is invited or desires to participate in other activities which may interfere with a visit, not encourage, permit, or consent thereto without previous approval of the person whose visitation will be interfered with, and will not deprecate the denial of such approval;
- h. not reduce or deny visitation for failure of support.

3. **Interference:** Neither parent will intrude upon the privacy of the other; nor falsely make or imply mean or nasty or derogatory or deprecatory statements about the other to anyone; nor prevent or restrict or in any way interfere with the other's rights granted by this Order.

4. **Injunction:** The Petitioner and Respondent and their agents and servants, and each of them, are enjoined and restrained from doing, attempting to do, or threatening to do, any act of injuring, maltreating, vilifying or molesting the adverse party, or any of the children or violating any of the terms of this decree or of Appendix "A."

5. **Contempt:** Willful violation of any of the orders or directives set forth above will be considered contempt of court. Punishment for contempt of court may be from one dollar to five hundred dollars or from one hour to six months in jail.

STANDARD VISITATION IN THE EIGHTH JUDICIAL DISTRICT

Except as otherwise provided by any approved Parenting Plan in this case, reasonable visitation rights of the non-custodial parent shall include but not be limited to the following:

A. **WEEKEND VISITATION:** Weekend visitation shall be every other weekend from Friday to Sunday, beginning on the second Friday following the date of this order, or if a schedule has been established, on the next date that would be provided by that schedule.

B. **HOLIDAY VISITATION:** In even numbered years, the non-custodial parent shall have the children on the following holidays that are numbered with an even number, and visitation shall be reversed for odd numbered years:

1. Easter: From the day school is dismissed for Easter vacation to the day before school resumes after that holiday.
2. Memorial Day: From the Friday before the nationally-recognized Memorial Day to Memorial Day.
3. Fourth of July: The day before the Fourth of July and the Fourth of July, but if the day falls on Friday through Monday, then it shall include the weekend and the day that the offices of the State of Nebraska are closed in honor of that day.
4. Labor Day: From the Friday before Labor Day through Labor Day.
5. Thanksgiving: From the day school is dismissed before Thanksgiving to the day before school resumes.
6. Christmas: From the day school is dismissed before Christmas to December 27.
7. New Year's: From December 27 to the day before school resumes after New Year's Day.

C. **SUMMER VISITATION:** The non-custodial parent shall have extended summer visitation consisting of a six-week continuous period that begins on the seventh Friday next preceding the date school is to commence, and ends on Friday six weeks later. During this period, the other parent shall have visitation every other weekend, commencing two weeks after the summer vacation begins.

D. **MOTHER'S AND FATHER'S DAY:** If the celebrating parent desires, the children shall spend Mother's Day with their mother, and Father's Day with their father. This visit shall start at 8 a.m. of the day and end at 8 p.m. of that day.

E. **GENERAL PROVISIONS:** Unless otherwise provided or agreed:

1. Time: All visitation shall begin and end at _____ p.m. (6:00 p.m. if left blank) on the day this order states as the start or end of a visitation period, as the case may be.
2. School's Commencement and End: School shall be deemed to start and end on the day the school attended by the children starts and ends; but if children do not attend school, the start and end of the public grade school in the community where the children live shall control.
3. Transportation: Except for weekend visitations during the extended summer visitation, the non-custodial parent shall be responsible for providing transportation for the children at the commencement and at the end of any visitation period. Driving may be done by any responsible adult who is related to the parties by blood or marriage.
4. Waiver: A parent entitled to visitation may waive the same by giving the other party three day's notice by telephone, or by agreement. Failure to exercise visitation without giving notice of waiver shall constitute a violation of this order.
5. Modification: As long as the parties agree, and continue to agree, they may modify this visitation schedule as they desire.

F. **APPEARANCE AND DAY-TO-DAY RULES:** The rules laid down by the custodial parent on matters concerning personal appearance (hair styles, etc.), and day-to-day rules, such as curfew and bedtime, shall also be enforced by the non-custodial parent as nearly as possible. The custodial parent shall supply clothing, including diapers, sufficient for each visitation.