Case Law Research

This page contains links to previously researched Iowa Case Law and Federal Case Law dealing with domestic relations cases or cases applicable to family law proceedings. Prior to using this information, please read our legal disclaimer. You may wish to consult with a specialized family law attorney and/or shepardize these cases for current legal precedence.

Attorney Fees

In a Contempt Proceeding:

In re Marriage of Whiteside, 7-716 / 07-0739 (Iowa App 2007) where the Court stated in part, "II. A. The district court exceeded its statutory authority in ordering Harry to pay Amber's trial attorney fees, as Iowa Code section 598.24 (2005) does not authorize taxation of trial attorney fees against a party seeking a contempt finding. B. Iowa Rules of Civil Procedure 1.413 served as no basis for the district court's award of trial fees, as Amber did not invoke, nor did the district court rely on, that rule as a basis for its award of trial attorney fees. III. A. Section 598.24 does not authorize taxation of appellate attorney fees against a party seeking a finding of contempt. B. Iowa Rules of Civil Procedure 1.413 does not provide a basis for an award of appellate attorney fees."

Iowa Code section 598.24 provides the court with the authority to tax reasonable attorney fees, as part of the costs, only against a party found in default or contempt of the decree. In re Marriage of Anderson, 451 N.W.2d 187 (Iowa App. 1989); In re Marriage of Madorin, 705 N.W.2d 107 (Iowa App. 2005).

All other District Court Civil Proceedings:

An award of attorney fees must be fair and reasonable and based on the parties' respective abilities to pay. In re Marriage of Hansen, 514 N.W.2d 109, 112 (Iowa Ct. App. 1994).

On Appeal:

An award of trial attorney fees rests in the trial court's discretion and, therefore, will not be disturbed on appeal in the absence of an abuse of discretion. In re Marriage of Wessels, 542 N.W.2d 486, 491 (Iowa 1995).

The award of attorney fees is discretionary and is not a matter of right. In re Marriage of Sprague, 545 N.W.2d 325, 328 (Iowa Ct. App. 1996).

An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. In re Marriage of Gonzalez, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997).

Communication

The parent having physical care will be the one receiving information on school events, getting conference slips and report cards. These should be shared with the other parent. Except for emergency situations, **the parent then having physical care has a responsibility of communicating to the other parent** the need to make the decision and making the necessary information available. Both parents have an obligation to personally discuss these problems with each other. See In re Marriage of Fortelka, 425 N.W.2d 671, 673 (Iowa Ct. App. 1988); In re Marriage of Nelson, 2003 Iowa App. LEXIS 1502 (Iowa Ct. App., Apr. 30, 2003).

Refusal to communicate and susceptibility for refusing to communicate is considered by the Court as a violation of "best interest of the child" standard. In re Marriage of Hansen, 733 N.W.2d 683, 695 (Iowa 2007).

Contempt Defined

Gimzo v. Iowa District Court, 561 N.W.2d. 833, 835 (Iowa App. 1997) "Willful disobedience requires evidence of conduct that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorization, coupled with an unconcern whether the contemnor had the right or not."

Declaratory Judgment

A judgment entered without jurisdiction is void and a judgment void can be challenged at any time. Rosenberg v. Jackson, 247 N.W.2d 216, 218 (Iowa 1976).

A void judgment is no judgment at all, and no rights are acquired by virtue of its entry of record. Williamson v. Williamson, 179 Iowa 489, 494, 161 N.W. 482, 485 (1917).

A judgment that lacks *in personam* jurisdiction over a necessary party is subject to a declaratory ruling that the judgment is void on collateral attack. Marshfield Homes, Inc. vs. Eichmeier, 176 N.W.2d 850, 851 (Iowa 1970).

Denial of Visitation

Rausch v. Rausch, 314 N.W.2d 172, 174 (Iowa Ct.App.1981) This ruling held the custodial mother in contempt for not honoring visitation rights of father.

In re Marriage of Leyda, 355 N.W.2d 862, 866 (Iowa 1984) The Court changed custody from mother to father based on proof of alienation of child from father.

Wells v. Wells, 168 N.W.2d 54, 64 (Iowa 1969) This ruling upheld a finding of contempt against mother for failing to return her son after a visit.

Andrew Sulma v. Iowa District Court for Washington County, 574 N.W.2d 320, Supreme Court of Iowa, Feb. 18, 1998 (pg. 322). This case dealt with a father's refusal to allow visitation to the mother set forth under the terms of their dissolution decree. The court stated, *"Andrew failed to*

abide by the visitation terms set out in the parties' dissolution decree. He acted with willful disobedience, satisfying the required proof for contempt."

Ervin, 495 N.W.2d at 745. Dissatisfaction with the stipulation does not excuse compliance.

In re Marriage of Grabill,414 N.W.2d 852, Iowa App.,1987, Aug 26, 1987. (pg. 853) as this ruling addresses denial of visitation and states: "We therefore can find no justification for Christine's actions in making it difficult for Dennis to exercise his visitation rights with the children. There is further evidence that Christine denied visitation to Dennis so that her boyfriend or her baby-sitter would be able to see the children instead."

Langner v. Mull, 453 N.W.2d 644, 649 (Iowa App.1990) The Court ruled that refusal to cooperate in ensuring visitation rights and criminal behavior and violence of husband of custodial parent provided grounds for change of custody.

In re Marriage of Kirk, 508 N.W.2d 105, Iowa App.,1993., (pg. 108) The ruling addresses the transfer of placement from the mother to the father after the mother was found guilty of denial of visitation. This case shows action taken previously by the court regarding denial of visitation. *"The power of the court to impose sanctions for failure to abide by its orders is essential to the efficient discharge of judicial functions."*

In Re Marriage of Quirk-Edwards 509 N.W. 2d. 476, Iowa, 1993. (pg. 480) *"If visitation rights of the non custodial parent are jeopardized by the conduct of the custodial parent, such acts could provide an adequate ground for a change of custody."*

In re Marriage of Wedemeyer, 475 N.W.2d 657, 659 (Iowa App.1991) The Court ruled the campaign of vindictiveness against father to alienate children justified change of custody.

In re Marriage of Ahrenholz, 695 N.W.2d 504; 2005 Iowa App. LEXIS 1039; Appellant Kevin D. Ahrenholz appeals from the district court's refusal to find the his former wife Beth A. Ahrenholz, n/k/a Beth A. Harris in contempt for violating certain of the custodial provisions of their dissolution decree. REVERSED AND REMANDED.

Estoppel by acquiescence

"Estoppel by acquiescence occurs when a person knows . . . of an entitlement to enforce a right and neglects to do so for such time as would imply an intention to waive or abandon the right." Markey v. Carney, 705 N.W.2d 13, 21 (Iowa 2005).

Equal Protection (tests to gauge)

Varnum v. Brien, 763 N.W.2d 862, (Iowa 2009). The foundational principle of equal protection is expressed in Article I, section 6 of the Iowa Constitution, which provides: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." See also Iowa Const. art. I, § 1 ("All men and women are, by nature, free and equal . . . ."); id. Art. I, § 2 (recognizing "[a]ll political power is inherent in the people" and "[g]overnment is instituted for the protection, security, and benefit of the people"). Like the Federal Equal Protection Clause found in the Fourteenth Amendment to the United States Constitution, Iowa's constitutional promise of equal protection " 'is essentially a direction that all persons similarly situated should be treated alike.' "6 Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 7 (Iowa 2004) (quoting City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313, 320 (1985)).

The constitutional guarantee of equal protection, however, demands certain types of statutory classifications must be subjected to closer scrutiny by courts. See, e.g., Plyler v. Doe, 457 U.S. 202, 216, 102 S. Ct. 2382, 2394, 72 L. Ed. 2d 786, 799 (1982) ("[W]e would not be faithful to our obligations under the Fourteenth Amendment if we applied so deferential a standard to every classification."). Thus, courts apply a heightened level of scrutiny under equal protection analysis when reasons exist to suspect "prejudice against discrete and insular minorities . . . which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities." United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4, 58 S. Ct. 778, 783 n.4, 82 L. Ed. 1234, 1242 n.4 (1938). Under this approach, classifications based on race, alienage, or national origin and those affecting fundamental rights are evaluated according to a standard known as "strict scrutiny." Sherman v. Pella Corp., 576 N.W.2d 312, 317 (Iowa 1998). Classifications subject to strict scrutiny are presumptively invalid and must be narrowly tailored to serve a compelling governmental interest. In Re S.A.J.B., 679 N.W.2d 645, 649 (Iowa 2004).

Strict scrutiny is applied to regulations that affect groups that fall under a "suspect classification." To be considered a suspect classification in the United States, the statute at issue must target: 1) a "discrete" or "insular" minority who, 2) possess an immutable trait, 3) share a history of discrimination, and 4) are powerless to protect themselves via the political process.

Any statutory scheme which commands dissimilar treatment for people who are similarly situated involves the very kind of arbitrary legislative choice forbidden by the Constitution. See Frontiero v. Richardson, 93 S.Ct. 1746; 411 U.S. 677 (1973).

While a state has broad power when it comes to making classifications, it may not draw a line which constitutes an invidious discrimination against a particular class. See Levy v. Louisiana , 88 S.Ct. 1509, 391 U.S. 68 (1968).

Joint Physical Care Case Law

In Re Marriage of Hoffman,705 N.W.2d. 105 (IA 2005); The court reversed a district court ruling and awarded physical care to the father because the mother obstructed joint physical care. Decision without published opinion. Affirmed as Modified and Remanded.

IN RE THE MARRIAGE OF KUETER, 705 N.W.2d. 107 (IA 2005); In this ruling, the Court of Appeals grants Joint Physical Care. Decision without published opinion. Affirmed as Modified and Remanded.

IN RE THE MARRIAGE OF MUNGER, 705 N.W.2d. 340 (IA 2005); In this ruling, the Court of Appeals grants Joint Physical Care. Decision without published opinion. Affirmed at Modifiied and Remanded.

IN RE THE MARRIAGE OF ELLIS, 705 N.W.2d. 96 (IA 2005); In this ruling, the Court of Appeals modified to award joint physical care and remanded for further proceedings.

Rush vs. Wilmington, 715 N.W.2d 769; 2006 Iowa App. LEXIS 861; In this ruling, the Court of Appeals affirmed Joint Physical Care.

In re Marriage of Stevens, 725 N.W.2d 658; 2006 Iowa App. LEXIS 1959; In this ruling, the Court of Appeals AFFIRMED AS MODIFIED; REMANDED WITH DIRECTIONS, to award joint physical care despite poor communication. In this ruling, the Court of Appeals also states, "We believe the court's statement of reasons rejecting joint physical care appears to reflect a generalized disfavor of the very nature of such arrangements."

IN RE THE MARRIAGE OF HANSEN, 733 N.W.2d. 683 (Iowa 2007; The ruling establishes a "check list" or criteria for attorneys and parents regarding joint physical care. Currently, this is the most referenced case in child custody proceedings.

In re Marriage of Berning, 743 N.W.2d 872; 2007 Iowa App. LEXIS 2053; In this ruling, the Court of Appeals AFFIRMED and awarding of Joint Physical Care for the final decree despite Shari having primary physical placement during the temporary order.

In re Marriage of Hite, 2007 Iowa App. LEXIS 1228; In this ruling, the Court of Appeals AFFIRMED AS MODIFIED AND REMANDED, to award Joint Physical Care stating, "the record reveals two loving and capable parents who placed the children's needs first and successfully implemented a joint physical care arrangement for several months prior to trial. We conclude joint physical care was in the children's best interests. We modify the decree to provide that the parents shall exercise joint physical care of the children."

Steven A. Buschbom v. Merry G. French, 752 N.W.2d 33; 2008 Iowa App. LEXIS 958; In this ruling, the Court of Appeals AFFIRMED an awarding of Joint Physical Care post Hansen stating, "While no longer disfavored, there is no presumption favoring joint physical care. Hansen, 733 N.W.2d at 692. Any consideration of physical care must "be based on Iowa's traditional and statutorily required child custody standard—the best interest of the child." Id. at 695. The advantage of the best interests standard is that it provides flexibility to consider the unique custody issues of each case. Id. at 696...we must remember that our overriding goal is to

look to the best interests of the child. Custody and physical care are neither a reward nor a punishment for the parents. By all accounts, the son is doing well under the current arrangement. We will not disturb the court's decision to continue the joint physical care arrangement."

Dietz v. McDonald, 760 N.W.2d 210; 2008 Iowa App. LEXIS 1706; The Iowa Court of Appeals Affirmed a District Court Order with graduated visitation that ultimately results in joint physical care between unwed couples. The Court stated, "Accordingly, we conclude the district court did not err in ordering graduated visitation that will culminate in the parties' joint physical care of Maverick."

Child Support Modification

The party seeking modification bears the burden of proof by a preponderance of the evidence. In re Marriage of Lee, 486 N.W.2d 302, 304 (Iowa 1992).

In some cases, the only equitable way to determine income for child support purposes is to average income over time. In re Marriage of Cossel, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992).

In determining child support, the court must first look to the child support guidelines." In re Marriage of Hilmo, 623 N.W.2d 809, 811 (Iowa 2001).

When parents voluntarily reduce their income or decide not to work, courts may consider earning capacity rather than actual earnings in applying the child support guidelines. In re Marriage of Nelson, 570 N.W.2d 103, 106 (Iowa 1997).

State ex rel. Miles v. Minar, 540 N.W.2d 462, 464 (Iowa Ct. App. 1995) The Court ruled allowing deviation from the amount calculated under the guidelines if necessary to provide for the children's needs or to effectuate justice between the parties under the special circumstances of the case. Note: See Iowa Court Rule 9.11.

There is a general principle that a person should not have to work overtime to pay child support. In re Marriage of Geil, 509 N.W.2d 738, 742 (Iowa 1993).

In re Marriage of Close, 478 N.W.2d 852, 854 (Iowa Ct. App. 1991) The Court ruled that a parent's child support obligation should not be so burdensome that a parent is required to work overtime to satisfy it.

Modification of Physical Placement

The parent seeking modification of physical care must show an ability to administer more effectively to the children's needs. In re Marriage of Grantham, 698 N.W.2d 140, 146 (Iowa 2005).

In choosing which parent should be awarded physical care of children, the factors of continuity, stability, and approximation are entitled to considerable weight. See In re Marriage of Hansen, 733 N.W.2d 583 (Iowa 2007).

Under the dissolution decree, when both parents have been found suitable to render primary care, the question becomes which parent can render better care. See Melchiori v. Kooi, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002).

In re Marriage of Kirk, 508 N.W.2d 105, Iowa App.,1993., (pg. 108) The ruling addresses the transfer of placement from the mother to the father after the mother was found guilty of denial of visitation. This case shows action taken previously by the court regarding denial of visitation. *"The power of the court to impose sanctions for failure to abide by its orders is essential to the efficient discharge of judicial functions."*

In Re Marriage of Quirk-Edwards 509 N.W. 2d. 476, Iowa, 1993. (pg. 480) *"If visitation rights of the non custodial parent are jeopardized by the conduct of the custodial parent, such acts could provide an adequate ground for a change of custody."*

In re Marriage of Udelhofen, 444 N.W.2d 473, 474-75 (Iowa 1989) The Court changed custody to the father based on outrageous conduct by mother disparaging father to his child.

In re Marriage of Leyda, 355 N.W.2d 862, 866 (Iowa 1984) The Court changed custody from mother to father based on proof of alienation of child from father.

Unreasonableness to communicate can result in a loss of physical care. In re Marriage of McKeon, No. 2-736 / 02-0185 (Iowa Ct. App. 2002). In re Marriage of Kunkel, 555 N.W.2d 250, 253 (Iowa App. 1996).

A custodial parent who is not willing to be cooperative with a non-custodial parent in arranging visitation generally has a lack of cooperation held against him or her in a custody dispute. In re Marriage of Walton, 577 N.W. 2d 869, 870 (Iowa Ct. App. 1998); In re Petition of Holub, 584 N.W. 2d. 731, 733 (Iowa Ct. App. 1998).

Modification of Visitation

"Generally, the degree of change required to modify the visitation provisions of a dissolution decree is less extensive than what is required to modify the custodial provisions. To modify visitation privileges, the party seeking modification must only show there has been a change of circumstances, not a substantial change of circumstances, since the entry of the initial dissolution decree". See Donovan v. Donovan, 212 N.W. 2d. 451, 453 (Iowa 1973); Lou v. Clements, 516 N.W. 2d. 905, 906 (Iowa Ct. App. 1994); In re Marriage of Wersinger, 577 N.W. 2d. 866, 868 (Iowa Ct. App. 1998); In re Marriage of Thielges, 623 N.W. 2d. 232, 235 (Iowa Ct. App. 2000).

Transportation

The court held that the relocating parent is responsible for all transportation costs, required transport from Atlanta to Des Moines on direct flights. See In re Marriage of Worzala, 2010 Iowa App. LEXIS 751 (Iowa Ct. App. July 14, 2010).

Due Process

Due Process - restricts the ways in which government can limit individual freedom (Nowak & Rotunda, 2007).

Substantive Due Process – protects certain fundamental rights or void arbitrary limitations of individual freedom of action. The 14th Amendment is the incorporation of many of the guarantees in the Bill of Rights, thus legislation cannot be passed that denies such protected freedoms (Nowak & Rotunda, 2007).

Procedural Due Process – guarantees that each person shall be accorded a certain "process" if the government deprives them of life, liberty, or property. If the government deprives a person physical liberty for a substantial period of time and penalizes him or her, due process guarantees that person a trial (Nowak & Rotunda, 2007).

In Matthews v. Eldridge, 424 U.S. 319 (1976) - the U.S. Supreme Court stated that it will consider three factors as a due process balancing test.

1. The private interest that will be affected by the official action.

2. The risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any of additional or substitute procedural safeguards.

3. The governments interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requisites would entail.

Due process requires a neutral decision-maker, be it a judge, hearing officer, or agency. Decision makers are constitutionally unacceptable where they have a personal monetary interest in the outcome of the adjudication or where they are professional competitors of the individual. Gibson v. Berryhill, 411 US 564 (1973); Ward v. Village of Monroeville, 409 U.S. 57 (1972); Tumey v. Ohio, 273 US 510 (1927).

Due process requires that indigents seeking a divorce be allowed access to the courts and thus an inability to pay filing fees can not preclude them from exercising their constitutional right of freedom of choice. Boddie v. Connecticut, 401 US 371 (1971).

Jurisdiction Case Law

Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action. See Mela v. US, 505 F2d 1026.

There is no discretion to ignore lack of jurisdiction. See Joyce v. United States, 474 F.2d 215 (3d Cir. Pa. 1973).

Parenting as a fundamental right

Meyer v. Nebraska, 262 US 390; 43 S Ct 625 (1923);

Parent's rights have been recognized as being essential to the orderly pursuit of happiness by free man.

Pierce v. Society of Sisters, 268 US 510, 535 (1925);

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Griswold v. Connecticut,381 US 479 (1965);

A man has the right to enjoy the mutual care, company, love and affection of his children, and this cannot be taken away from him without due process of law. There is a family right to privacy which the state cannot invade or it becomes actionable for civil rights damages.

Stanley v. Illinois, 405 US 645, 651 (1972);

The parent-child relationship is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection.

Wisconsin v. Yoder, 406 US 205, 232-233 (1972);

The Court took up a challenge to Wisconsin's compulsory education laws and found that even when claiming a purpose of benefiting the child, the state must demonstrate convincing evidence that its intended policy will actually bring about its professed goal.

Quilloin v. Walcott, 98 S Ct 549; US 246, 255 (1978);

A father who is separated or divorced from a mother and is no longer living with his child could not constitutionally be treated differently from a currently married father living with his child.

Santosky v. Kramer, 102 S Ct 1388; 455 US 745 (1982);

Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced

dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.

[W]hile there is still reason to believe that positive, nurturing parent-child relationships exist, the [state's] parens patriae interest favors preservation, not severance, of natural familial bonds. The State registers no gain towards its declared goals when it separates children from the custody of fit parents (quote at 766,767).

Paternity Case Law

In Rivera v. Minnich, 483 U.S. 574 (1987), the Supreme Court held that a paternity statute that provided proof by a preponderance of evidence did not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. It concluded that the clear and convincing standard of proof for terminating a parent-child relationship established in Santosky v. Kramer, 455 U.S. 745 (1982), was not applicable.

In Little v. Streater, 452 U.S. 1 (1981), the Court held that due process requires that an indigent defendant involved in paternity matters be entitled to blood testing at state expense to establish or disprove paternity.

Strict Scrutiny Case Law

In Trimble v. Gordon, 430 U.S. 762 (1977), the Court held that a classification base on illegitimacy is not suspect so as to require strict scrutiny. However, using a mid-level or mid-tier analysis, the Court held that at a minimum, a statutory classification must bear some rational relationship to a legitimate state purpose. The Court explained, "in this context, the standard just stated is a minimum; the Court sometimes requires more. 'Though the latitude given state economic and social regulation is necessarily broad, when a state statutory classifications approach sensitive and fundamental personal rights, the Court exercises a stricter scrutiny.' " Id. At 767.

When legislation burdens the exercise of a right deemed to be fundamental, the government must show that the intrusion withstands strict scrutiny. Zablocki v Redhail, 434 US 374, 388 (1978).

Under strict scrutiny, the state bears the burden of producing evidence to show that statutes are narrowly tailored to a compelling government interest. Carey v Population Services International, 431 US 678, 686 (1977).

Massachusetts Board of Retirement v Murgia, 427 US 307, 313 (1976)(noting that strict scrutiny may be appropriate where a group has experienced a "'history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities" (quoting San Antonio School District v Rodriguez, 411 US 1, 28 (1973)). See FF 42-43, 46-48, 74-78.

Motion for Summary Judgment

A request made by the defendant in a civil case. Asserts that the plaintiff has raised no genuine issue to be tried and asks the judge to rule in favor of the defense. This motion is done before trial and asks the judge to dismiss the matter because there is no basis for the lawsuit.

- "Each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." Id. In order to defeat a summary judgment motion, the nonmoving party may not simply rely on his pleadings but must present some evidence on every material issue for which he will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

See Iowa Court Rule 1.981.