



## **[U]08/26/97 MARRIAGE ROSEMARY KUTH v. MATTHEW C.**

1997 | Cited 0 times | Court of Appeals of Minnesota | August 26, 1997

SCHUMACHER, Judge

Appellant Matthew Simonson challenges the district court's suspension of visitation. We affirm, holding that the district court did not abuse its discretion in finding that suspended visitation serves the child's best interest.

### FACTS

Matthew Simonson (father) and respondent Rosemary Simonson-Kuth (mother) were divorced in Dodge County, Minnesota in 1992. They have a child now age seven. The dissolution decree granted mother sole custody of the child and supervised visitation for father. The district court found in its written findings supporting the dissolution decree that father physically and emotionally abused mother, violated restraining orders, and exposed the child to potentially dangerous situations, and visitation would not be modified until he attended the "Men Who Batter" program and completed counseling. Father was prohibited from having contact with the child outside of supervised visits. Father appealed the district court's custody order and this court affirmed. *Simonson v. Simonson*, 1994 Minn. App. LEXIS 514, No. C9-93-997 (Minn. App. June 7, 1994), review denied (Minn. July 27, 1994).

At three subsequent hearings, the district court held father in civil contempt for initiating unauthorized contact with the child and for disregarding court orders pertaining to the dissolution decree unrelated to visitation. At the contempt hearings, the district court ordered father to attend the "Men Who Batter" program and to refrain from unauthorized contact with the child or mother. On May 1, 1996, after finding father failed to purge himself of contempt, the district court suspended father's visitation pending the completion of a psychiatric or psychological evaluation and ordered an evidentiary hearing.

On August 1, 1996, after an evidentiary hearing, the district court suspended father's visitation and ordered that father, mother, and the child participate in an evaluation by court-appointed therapists. On April 15, 1997, after the evaluations were completed and a second evidentiary hearing, the district court suspended father's visitation. The court ordered father to submit an updated psychiatric or psychological evaluation, complete the "Men Who Batter" program, and follow the recommendations of the court-appointed therapists before visitation would be reconsidered. Father appeals.

### DECISION



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1. The district court is afforded broad discretion in visitation matters and will not be overturned on appeal absent an abuse of discretion. *Olson v. Olson* , 534 N.W.2d 547, 550 (Minn. 1995). In visitation disputes, the ultimate question is what is in the child's best interests. Minn. Stat. § 518.175, subd. 5 (1996).

A restriction of visitation requires a finding that the current visitation arrangement physically or emotionally endangers the child or that the noncustodial parent has chronically and unreasonably failed to comply with a court-ordered visitation schedule. *Anderson v. Archer* , 510 N.W.2d 1, 4 (Minn. App. 1993); Minn. Stat. § 518.175, subd. 5. The district court must make particularized findings on the reasons for restricted visitation and must expressly find the child's best interests will be served. *Courey v. Courey* , 524 N.W.2d 469, 472 (Minn. App. 1994).

In its findings of fact supporting suspended visitation, the district court found father repeatedly failed to comply with the court's orders governing visitation. The record offers ample support for this finding. Since 1994, mother has arranged for volunteers to supervise visitations between father and the child and has paid for a facility for visitations. Father's attendance at scheduled visits has been irregular. During 1995, he failed to participate in visits for eight consecutive weeks and his whereabouts were unknown.

The district court also found that continued visitation would harm the child emotionally and, possibly, physically. The record supports this finding. Father made derogatory comments about mother during visits and questioned the child about mother's personal relationships. The child experienced difficulty falling asleep, stating she was afraid as a result of things father told her. See *Kuebelbeck v. Humphrey* , 402 N.W.2d 202, 204-205 (Minn. App. 1987) (district court may severely restrict visitation when noncustodial parent has denounced custodial parent and disturbed child during visits), review denied (Minn. April 29, 1987).

The district court did not abuse its discretion in suspending father's visitation. Because the record is replete with instances of father's inappropriate conduct, we urge the district court to consider carefully father's future requests for visitation.

Affirmed.

