

**IN THE COURT OF APPEALS OF IOWA**

No. 6-788 / 06-0348  
Filed December 28, 2006

**IN RE THE MARRIAGE OF ANJANA KUMAR  
AND MANISH KUMAR**

**Upon the Petition of  
ANJANA KUMAR,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning  
MANISH KUMAR,**  
Respondent-Appellant/Cross-Appellee.

---

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,  
Judge.

Manish Kumar appeals the district court's ruling in his dissolution  
proceeding. Anjana Kumar cross-appeals. **AFFIRMED ON BOTH APPEALS.**

Murray Bell, Davenport, for appellant.

Dennis Jasper, Bettendorf, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

**MAHAN, P.J.**

Manish Kumar appeals the district court's ruling in his dissolution proceeding. He argues the district court erred in awarding physical care of the parties' child to Anjana and in dividing the parties' assets. Anjana Kumar cross-appeals. She argues the district court erred in (1) dividing the parties' assets; (2) failing to find a history of domestic abuse; (3) failing to issue a permanent protective order against Manish; (4) scheduling visitation; and (5) finding Anjana in contempt. We affirm on both appeals.

**I. Background Facts and Proceedings**

Manish and Anjana were married in May 2001. They have one child, a son born February 22, 2003. Anjana filed a petition for dissolution on December 17, 2004. The court filed an injunction on December 27, 2004, ordering both parties to refrain from spending, liquidating, disposing, lending, alienating, or changing any money or assets. Anjana was also granted a protective order against Manish on March 9, 2005. Trial took place on November 2 and 3, 2005. Custody and the division of assets were the primary issues contested.

Manish was thirty-four years old at the time of trial. When he and Anjana married, he was an established dermatologist in Indiana. He moved his practice to Bettendorf in June 2004. The court determined his income to be \$200,000 per year. He is in good health.

Anjana was thirty-three years old at the time of trial. She is an Indian citizen and in the process of obtaining permanent legal residency in the United States. At the time of the parties' marriage, she was enrolled in a

gastroenterology fellowship program at the University of Iowa. Through the early part of the marriage, she lived and worked in Iowa City. After giving birth to the couple's child, she took a leave of absence from her fellowship and lived with Manish in Indiana for six weeks. She then returned to her fellowship. Six weeks later, she took the couple's child to Iowa City to live with her. The district court determined the couple made trips between Indiana and Iowa City, with Manish making more trips than Anjana. Upon finishing her fellowship, Anjana moved to Bettendorf to live with Manish in September 2004. She took a position with Gastroenterology Associates. The court determined her income to be \$200,000 per year.

Both Anjana and Manish claim the other was physically, verbally, and sexually abusive throughout the marriage. The district court refused to issue a permanent protective order, determining that both parties had "embellished" their accounts of abuse. It also determined that the parties' filings did not establish a history of abuse for the purposes of awarding custody. Instead, the court ordered joint legal custody, with Anjana receiving physical care. Manish was awarded visitation every Thursday from 7:30 a.m. to 4:30 p.m. and every other weekend from Friday at 5:00 p.m. until Sunday at 5:00 p.m. He also received six weeks of summer visitation, including four uninterrupted weeks if he chooses. While Manish has summer visitation, Anjana is to be afforded the same visitation schedule he has with the child while the child is in her care. Further, Anjana receives four uninterrupted weeks of summer visitation. Holidays are also shared. In odd-numbered years, Anjana has the child for President's Day weekend, Memorial Day weekend, Labor Day weekend, Christmas Eve, and

New Year's Eve. Manish receives visitation on Easter weekend, July 4th holiday, Thanksgiving Day, Christmas Day, and New Year's Eve. The holiday schedule is reversed in even-numbered years.

The court also divided the parties' assets. The facts of the distribution are addressed as needed below. Both parties appeal.

## **II. Standard of Review**

We review dissolution decrees de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. *Id.* We review the contempt ruling for errors at law. *In re Marriage of Spears*, 529 N.W.2d 299, 304 (Iowa Ct. App. 1994). Contempt for violating a court order requires proof beyond a reasonable doubt that there was a willful violation of an order. *Id.*

## **III. Merits**

### **A. Physical Care and Custody**

Manish argues the district court erred in awarding Anjana physical care of their son. Anjana claims the district court erred when it failed to find a history of domestic abuse and refused to grant her sole legal custody.

We review numerous factors in determining which parent should have physical care of a child. See Iowa Code § 598.41(3) (2003). Our primary consideration, however, is the best interests of the child. *In re Marriage of Decker*, 666 N.W.2d 175, 177 (Iowa Ct. App. 2003). Specifically, we look to which parent can administer most effectively to the child's long-term interests. *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa Ct. App. 1998). We also

consider the emotional and environmental stability each parent offers. *Id.* at 762. There is no inference favoring one parent over the other. *Decker*, 666 N.W.2d at 177. The critical issue is determining which parent will do a better job raising the children; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain physical care in an original dissolution proceeding. *Id.*

It is clear that both parents love their son and want the best for him. However, both parents have serious credibility issues. Dr. Witherspoon interviewed and evaluated the parents based on the physical care factors set forth in Iowa Code section 598.41(3). He suggested Anjana should have physical care of the parties' son. The district court also heard testimony from Anjana, Manish, and several other witnesses. It determined that Anjana had been the child's primary caretaker and, though both parents demonstrated the ability and desire for physical care, Anjana was better able to function as the child's physical care giver in the long term. Dr. Witherspoon was able to observe the parents and several of the witnesses during his evaluation. In addition, the district court was able to observe all the witnesses and independently determine their credibility. After reviewing the evidence, we agree with the credibility determinations and affirm the district court rulings on both physical care and custody. Further, we agree that neither party proved that a permanent protective order is warranted in this case.

### **B. Visitation**

Anjana argues the district court did not consider the child's needs when granting visitation. We disagree. The district court determined that "both parents

have shown they are capable of acting as the primary caretaker of the child.” The court was aware of the child’s food allergies and other health problems when it awarded physical care and visitation. Anjana’s contention that the child should not have visitation when he is sick is unfounded. Manish is a medical doctor and, as the district court stated, capable of being the primary caretaker of the child. He would thus be able to care for a sick child. Obviously, if the child is severely ill, visitation would not be advisable. Anjana requests reciprocal summer visitation. We note that the district court already provided her four consecutive weeks of visitation in its ruling on the parties’ motions to enlarge. Anjana also requests telephone visitation while the child is in Manish’s care. We note again that the district court provided Anjana with the same visitation Manish receives while the child is in Anjana’s care. The court wrote,

In regard to the four consecutive weeks of vacation accorded to both the Petitioner and the Respondent in this matter, unless the party who has the child on vacation is traveling out of the Quad Cities area, the other parent [Anjana] shall have the same regular weekend visitation rights which have been accorded to [Manish].

We construe the phrase “the same regular weekend visitation rights” to include the same telephone contact Manish enjoys.

Finally, the record makes it obvious the parties have been quite adversarial throughout their case. We reiterate the district court’s advice to the parents:

It is apparent to the court that there is an acrimonious relationship between the parties which manifested itself in all issues presented to the court, including those involving the child. Nonetheless, it is apparent to the court that both parties are intelligent and caring parents who have the capacity to rise above their present conflicts and act as joint legal custodians of the child. The court further believes that upon further reflection and once this case is

concluded, the parties will wish to act in the best interest of their child by modeling at least civil and respectful behavior towards each other when they communicate regarding the child's needs and long-term interests.

The district court's ruling concerning visitation is affirmed.

### **C. Division of Assets**

Both parties argue the district court erred in dividing their personal assets. Anjana also claims the district court erred in dividing their respective business assets. Both parties made accusations concerning depletion of marital assets. Manish claims Anjana absconded with a family-heirloom, a 6.35 carat diamond ring. Again, we reiterate the district court:

[Anjana] and [Manish] have reserved some of their most caustic and vituperative attacks on one another for these economic issues, often to a degree which was inversely proportional to the amounts in issue. Both parties have enjoyed very expensive lifestyles during their marriage and separation. This court is not a forensic accountant, and is not equipped with the expertise or the inclination to isolate and resolve all the myriad of financial improprieties and incidents of taking unfair advantage alleged by each party against the other.

We conclude the district court's valuation of the parties' property is well within the permissible range of the evidence. *See In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993). Further, the district court's distribution is equitable given the parties' premarital assets, financial and other contributions to the marriage, their generosity to their families, and their lifestyle. As for the diamond ring, Manish's family and a friend testified to its existence. Manish, however was unable to provide any independent documentation confirming he owns such a ring. We, then, are left with three possibilities: (1) Anjana took the ring; (2) Manish still has the ring but is accusing Anjana of taking it; or (3) Manish

never owned such a ring. There is no independent evidence to support any of the possibilities. Therefore, we conclude, as did the district court, that any heirloom ring as described by Manish in the evidence presented at trial is awarded to him, at an undetermined value. The district court's ruling concerning the parties' distribution of assets is affirmed.

#### **D. Contempt**

Anjana claims the district court erred in finding her in contempt for violating an order restricting the parties from spending, liquidating, disposing, encumbering, lending, alienating, or changing the form of any money or assets. Anjana, however, violated the order by spending money on her immigration attorney. While we understand it was an expense necessary for her to become a citizen, she should have sought the court's permission before spending that amount of money. The district court's contempt finding is affirmed.

#### **IV. Summary**

We conclude Anjana should have physical care of the parties' child and that the parties should share joint legal custody. We also conclude that the district court's visitation schedule adequately addresses the needs of the child. The district court's valuation of the assets is within the permissible range of the evidence and its distribution is equitable. Finally, the district court properly found Anjana in contempt. The district court's ruling is affirmed. Costs are taxed one-half to each party.

**AFFIRMED ON BOTH APPEALS.**