IN THE COURT OF APPEALS OF IOWA

No. 0-138 / 09-1502
Filed April 21, 2010

IN RE THE MARRIAGE OF AMBER RAE MOORE AND BRYAN SCOTT MOORE

Upon the Petition of
AMBER RAE MOORE k/n/a,
AMBER RAE PARGMANN,
Petitioner-Appellant,

And Concerning
BRYAN SCOTT MOORE,
Respondent-Appellee.

Appeal from the Iowa District Court for Wapello County, Annette J. Scieszinski, Judge.

Amber Pargmann appeals from the provisions in the dissolution decree that granted the parties joint physical care of their child. **AFFIRMED.**

Steven Gardner of Kiple, Denefe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellant.

Heather M. Simplot of Harrison, Moreland & Webber, P.C., Ottumwa, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

Amber Pargmann, f/k/a Amber Moore, appeals from the provisions of the dissolution decree that granted the parties joint physical care of their son. She contends she should have been awarded physical care. Upon our review, we affirm the decision of the district court.

I. Background Facts and Proceedings.

Amber and Bryan ("Scott") were married in 2004. Amber filed for divorce in July 2008. During a brief period in which they attempted reconciliation, Amber became pregnant. Their son was born in April 2009.

Trial in this matter was originally scheduled for May, but was continued until August. Following the continuance, Scott filed an application for temporary custody, visitation, and child support, asking that the court award joint legal and physical custody. An order on temporary matters, dated June 10, 2009, placed the child in the parties' joint physical care. Under the terms of the temporary order, the parties cared for their son on alternating weeks. At the August 4, 2009 trial, Amber asked that the court grant her physical care, while Scott asked the court to grant joint physical care.

Amber was thirty-two years old at the time of trial. She is employed by John Deere in Ottumwa as a supervisor in the product engineering department. She earns about $86,700 per year. She is in good health. She resides in the marital home outside of Ottumwa on two acres of property.

Scott was thirty-four years old at the time of the dissolution hearing. He, too, is employed at John Deere in Ottumwa. He is a supervisor on the factory floor. His base pay is $65,160 per year; however, with overtime and bonuses he,

too, earned $86,700 in 2008. Scott resides about twenty miles from Ottumwa, in Bloomfield, but commutes to work in Ottumwa. He shares a residence with Brandi Madden and her two daughters from a prior marriage, ages twelve and seven; Scott and Brandi were expecting a child in September 2009.

The parties' son is healthy and happy. He attends daycare Monday through Friday, the parent then having custody dropping him off. Each parent has the child for one week, with a mid-week three-hour visit by the non-custodial parent. The temporary arrangement, though in effect for only a couple of months prior to trial, appeared to be working well.

On August 20, 2009, the district court filed a dissolution decree for the parties. The court determined Amber and Scott should have joint legal custody of their son, and joint physical care (alternating weeks and mid-week visitation). Amber purchases healthcare coverage for the child. Scott was ordered to pay monthly child support to Amber of $115.

Amber appeals the physical care provision of the dissolution decree.

II. Scope and Standard of Review.

Because this is a dissolution case, the scope of review is de novo. Iowa R. App. P. 6.907. We give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(*g*). "In child custody cases, the first and governing consideration of the courts is the best interests of the child." Iowa R. App. P. 6.904(3)(*o*).

III. Discussion.

When physical care of a minor child is an issue in dissolution proceedings, the district court may grant the parents joint physical care, or choose one parent to be the caretaker of the children. *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). The court's objective is to place a child in the environment most likely to bring the child to healthy physical, mental, and social maturity. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). Joint physical care is a viable option when it is in the child's best interests. *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). If the request is made for joint physical care, then a denial of the request by the court must include specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interests of the children. Iowa Code § 598.41(5)(a) (2009).

The court considers the following factors in determining whether to grant joint physical care: (1) the historical care giving arrangement for the child between the parents, (2) the ability of the spouses to communicate and show mutual respect, (3) the degree of conflict between the spouses, and (4) the degree to which the parents are in general agreement about their approach to parenting. *In re Marriage of Hansen*, 733 N.W.2d 683, 697–99 (Iowa 2007); *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007).

With regard to the first factor, because their son was born while awaiting divorce, there is no real "historical care giving arrangement." As a breast-feeding newborn infant, the child was with Amber. The parties then had joint physical care pursuant to a temporary ruling. Our review of the evidence shows us that

both parents have been concerned about their child's well-being since his birth and both have actively participated in his care.

The second factor looks to communication between the parents and whether they show mutual respect for each other. "A lack of trust poses a significant impediment to effective co-parenting." *Hansen*, 733 N.W.2d at 698. Other than issues unrelated to their child, there was no evidence in the record showing significant problems with communication. Amber testified:

> Q. And so both of you can communicate about Colton? A. Yes. Where Colton's concerned, I have no problems with that.

Similarly, Scott testified: "I know that there's certain issues that we probably struggle on communicating about, but I think anything related to Colton I feel that we do a good job communicating."

The next factor is the degree of conflict between the parties. *Id.* There is obvious conflict between the parties with respect to Scott's relationship with Brandi, which began while he was still married to Amber. However, with respect to their son and parenting, the record reflects an ability to co-parent without undue conflict. Amber and Scott agree their son needs the involvement of both parents and that they should not place their son in the middle of their disputes.

The final factor set forth in *Hansen* is the degree to which the parents are in general agreement about their approach to parenting. *Id.* at 699. "The greater the amount of agreement between the parents on child rearing issues, the lower the likelihood that ongoing bitterness will create a situation in which children are at risk of becoming pawns in continued post-dissolution marital strife." *Id.* Both parents agree that education is important. Both wish that the child have

involvement with the other. Both support the child's interaction with extended family.

After considering all of the factors discussed in *Hansen*, 733 N.W.2d at 697–99, we believe the district court's conclusion that joint physical care is appropriate is a reasonable conclusion in this case. We agree with the district court's description:

> Colton, just four months old at the time of trial, is a fortunate baby. He has two parents who are devoted to him, and who seek to promote his best interests. Both parents are mature, highly educated, and well employed. Both are good communicators. And, both place personal priority on child rearing.

Overall, the joint physical care arrangement has worked well since it was implemented. The parties have been able to put their differences aside and cooperate as parents, recognizing this is in the best interests of the child. Amber and Scott do not live so far apart from one another that a shared arrangement is unworkable; Scott travels to Ottumwa to work and delivers his son to the same daycare as does Amber. We believe that a joint physical care arrangement will effectively promote the child's best interests.

Accordingly, we affirm the district court's decision placing the child in the parties' joint physical care. In reaching this conclusion, we recognize that the district court had the opportunity to hear the evidence and view the witnesses firsthand. This provides the court with a distinct advantage over an appellate court, which necessarily must rely on a cold transcript. *In re Marriage of Udelhofen*, 444 N.W.2d 473, 474 (Iowa 1989).

IV. Appellate Attorney Fees.

Scott seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 767 (Iowa 1997). We determine each party should pay his or her own attorney fees for this appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Amber.

AFFIRMED.