IN THE COURT OF APPEALS OF IOWA

No. 0-142 / 09-1781
Filed April 21, 2010

IN RE THE MARRIAGE OF MELISSA A. SISSON AND ADAM C. SISSON

Upon the Petition of
MELISSA A. SISSON,
Petitioner-Appellant,

And Concerning
ADAM C. SISSON,
Respondent-Appellee.

Appeal from the Iowa District Court for Hardin County, Timothy J. Finn, Judge.

Melissa Sisson appeals from a district court's decree dissolving her marriage to Adam Sisson. **AFFIRMED.**

Lynn Wiese, Iowa Falls, for appellant.

Melissa Nine and Barry Kaplan of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellee.

Heard by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VOGEL, P.J.

Melissa Sisson appeals from the district court's decree dissolving her marriage to Adam Sisson. She contends that the district court erred in granting the parties joint physical care of their two children. We affirm.

Adam and Melissa Sisson were married in 2001 and two children were born of the marriage, Isabelle in 2001, and Allison in 2004. The parties initially separated in November 2006 for a period of approximately eight months. Adam moved out of the marital home, and the girls remained with Melissa, with Adam having visitation every other weekend. After an attempted reconciliation in July 2007, the parties separated again in February 2008. Adam moved into a home owned by the parties, located several blocks from the marital home, where Melissa remained. The girls lived with Melissa, and spent every other weekend and every Thursday overnight with Adam.

Melissa filed a petition for dissolution in March 2008, and began looking for jobs in Illinois, in order to be closer to her family. A dissolution hearing was held in August 2009, where Melissa requested physical care, while Adam requested either joint physical or primary care of the children. Subsequently, the district court granted Adam and Melissa joint legal custody and joint physical care. Melissa appeals.

We review custody orders de novo. *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa Ct. App. 1998). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

Our overriding consideration is the best interests of the children. *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007).

Melissa maintains the court erred in awarding joint physical care, granting physical care to each party on alternating weeks. At the time of trial, both Adam and Melissa worked outside the home, each with 8:00 a.m. to 4:30 p.m., Monday through Friday schedules. Because Melissa stayed home with the children until 2006, and they continued to live primarily with her thereafter, the record does support that she spent more time with them. Because of this, she asserts she could provide more stability and continuity for the girls through an award of physical care of the children. Adam responds that he was also at home a "good portion of this time," and participated equally in the caretaking duties and household chores, so joint physical care was appropriately granted. The record also supports Adam's assertion that he spent a good deal of time with the girls when they all lived under one roof.

Joint physical care anticipates that parents will have equal, or roughly equal, residential time with the children. *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). Under joint physical care, the parties are equally responsible for routine, daily decisions to be made regarding the children regardless of residential arrangements at the time. *In re Petition of Seay*, 746 N.W.2d 833, 835 (Iowa 2008). The four factors to be considered when determining whether a joint physical care arrangement is in the best interests of the children are: (1) "approximation"—what has been the historical care giving arrangement for the children between the two parties; (2) the ability of the spouses to communicate and show mutual respect; (3) the degree of conflict

between the parents; and (4) "the degree to which the parents are in general agreement about their approach to daily matters." *Hansen*, 733 N.W.2d at 697–99.

Evidence introduced at trial demonstrated that both Adam and Melissa have been parents actively involved in the lives of their children. Although the girls have primarily lived with Melissa, Adam has remained very close to the girls. Upon separation, he exercised weekend visitation, mid-week visitation, and often requested additional visits. He was involved in the girls' activities, from coaching their sporting activities to helping them with homework, taking them to church, and teaching them to garden. He has voluntarily paid child support and carried health insurance for the girls. Because of the close proximity of Adam and Melissa's homes, the separation did not interfere with the girls attending the same school or participating in the same activities.

Significant to the success of a joint physical care arrangement is that both Adam and Melissa generally agree on their approach to day-to-day parenting and have historically been able to cooperate and work together in raising the children. Each testified that they have similar values, lifestyles, educational beliefs, and styles of discipline. Adam and Melissa both agree the other is a good parent who loves their children. While Melissa argues she and Adam do not communicate well, she testified that they speak at least once a week, and are able to effectively communicate about the children, their schedules, and the various activities in which they are involved. The district court found that "the parties have, despite their other conflicts, demonstrated an ability to communicate concerning the best interests of the children."

When the circumstances are such that the district court refuses to award joint physical care, it must "make specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child." Iowa Code § 598.41(5)(a) (2009). In this case, the court stated that it "[could not] make such a determination here." It found that

> the parents have to varying degrees shared virtually all of the parental responsibilities, where either party could care for the children on their own, where they live in the same community only a few blocks away from each other and near the schools, and where they have demonstrated a reasonable degree of ability to communicate concerning the children, that the children should be placed in the joint shared physical custody of their parents.

After considering the four *Hansen* factors, as did the district court, we agree that joint physical care was properly awarded. *See In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986) (stating that the district court had the advantage of listening to and observing the parties and witnesses).

Melissa also requests appellate attorney fees. An award of attorney fees is not a matter of right but rests within the court's discretion and the parties' financial positions. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). After considering the appropriate factors, we decline to award appellate attorney fees. Costs on appeal assessed to Melissa.

AFFIRMED.