

**IN THE COURT OF APPEALS OF IOWA**

No. 0-540 / 09-0673  
Filed September 9, 2010

**IN RE THE MARRIAGE OF KARINA MAE RECKER AND MICHAEL  
RAYMOND RECKER**

**Upon the Petition of  
KARINA MAE RECKER,**  
Petitioner-Appellee,

**And Concerning  
MICHAEL RAYMOND RECKER,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Fayette County, Richard D. Stochl,  
Judge.

Michael Recker appeals from the child custody and support provisions of  
the parties' dissolution decree. **AFFIRMED.**

Michael Recker, Arlington, appellant pro se.

Todd Schmidt, Dubuque, for appellee.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.**

Michael Recker appeals from the child custody and support provisions of the parties' dissolution decree. He argues the court erred in placing the children in their mother's physical care and in calculating child support. He also contends that he has been denied due process.

We review this equity proceeding de novo. Iowa R. App. P. 6.907 (2009). We give weight to the trial court's fact findings, particularly with respect to the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(g).

Michael and Karina Recker were married in February 2003. They have two minor children, a seven-year-old daughter and a five-year-old son. Karina has an adult child from a previous relationship. Michael has two children from two previous relationships. Both of these children live with their mothers. Michael exercises regular visitation with one child but has little contact with the other. He pays child support for both children.

Michael operates Recker Salvage and is self-employed buying, selling, scrapping, and refurbishing farm equipment and parts. During the marriage, he worked long hours and child rearing was Karina's responsibility.

The couple separated in 2007. Karina filed a petition for dissolution of marriage and a temporary order placed the children in Karina's physical care. Michael was ordered to pay \$475 per month in temporary child support. Karina sought sole custody of the children with only supervised visitation. Michael requested joint physical care. Prior to trial, Michael was sanctioned for his failure

to comply with discovery: he was prohibited from presenting evidence other than his own testimony as to financial issues at trial.

Trial was held on December 18, 2008, and March 4, 5, and 6, 2009. Michael appeared pro se. On April 8, 2009, the court entered its decree containing extensive findings of fact, including numerous credibility determinations. The trial court found neither party credible, particularly on financial matters. The court also found the children “are bonded to both parents and are doing satisfactorily considering the circumstances.”

The trial court denied Karina’s request for sole legal custody, and awarded the parents joint legal custody. Contrary to Karina’s allegations, the court specifically found there was not a history of domestic violence in this relationship. The record does show that Michael was charged with domestic abuse serious assault against Karina in October 2003 and entered a plea of guilty to the lesser charge of simple assault. However, isolated incidents of violence in a marriage do not automatically establish a history of domestic abuse. *In re Marriage of Forbes*, 570 N.W.2d 757, 760 (Iowa 1997).

With regard to physical care, the court denied Michael’s request for joint care and concluded the least detrimental available alternative was to place the children in Karina’s physical care with visitation awarded to Michael. The court noted that both parties had engaged in activities that undermined the other’s relationship with the children and that neither had demonstrated a superior ability to support the other’s relationship. The trial court also noted its concern for the level of hostility between the parties.

The court's findings of fact and conclusions of law properly supported its determination that joint physical care was not in the best interests of the children. See Iowa Code § 598.41(5)(a) (2007). In fact, when the court asked Michael if he was seeking physical placement of the children with him, Michael stated, "I would love that, Your Honor, until Karina gets better. . . . But I'm willing to accept the children live with their mother and give me weekends and an overnight once during the week."

The trial court calculated Michael's child support on an estimated annual income of \$50,000 and ordered him to pay support in the amount of \$857 per month. For purposes of temporary child support in July 2007, Michael, acting through counsel, had submitted a child support worksheet containing a gross annual income of about \$27,000. He submitted a March 2009 pro se financial affidavit in which he "guesstimated" \$36,000 and explained: "I think that would be net after everything's taken out. It could be plus or minus a couple thousand but I could only create what I could in a short period of time and the records I do have." Michael testified at trial that in 2008 he grossed \$100,000 to \$120,000.

Karina, who had been responsible for the books for Michael's business, estimated his gross annual income at \$50,000, the figure eventually accepted by the court. Michael had not filed tax returns since 2004 and the district court expressly found that his income was "difficult to calculate based on his evasiveness and failure to cooperate." Michael cannot now complain that the court had no reliable evidence on which to base his income. This record supports a finding that substantial injustice between the parties would result from use of Michael's unsupported claims of actual earnings for purposes of child

support calculations. Michael was also ordered to provide health insurance for the children and ordered to pay sixty-five percent of unreimbursed medical expenses not covered by insurance.

We uphold the trial court's child custody and support awards. Trial in this matter spanned four days. Michael, acting as his own attorney, cross-examined Karina for more than ten hours.<sup>1</sup> The trial court had a substantial amount of time and opportunity to observe the parties. Because of its superior vantage point, we give weight to the findings of the trial court, particularly in matters of credibility. We enumerate some of the findings we find particularly pertinent and supported by the record: Michael is "unwilling[ ] to be forthright about his business affairs" and "his testimony on financial matters is not credible."<sup>2</sup> "Karina's credibility on financial matters is not substantially greater than Michael's."<sup>3</sup> The court also found, "Karina has made visitation difficult" and "has been on a calculated mission to alienate Michael from the children in any way possible." "Michael adheres to a non-traditional view of modern medicine" and, while "his beliefs are

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<sup>1</sup> The trial court at one point stated,

We have been at this cross now for almost eight hours. I have never, in any divorce case I tried as an attorney in 20 years, or anything I have tried as a judge, seen a longer cross than this in a divorce case. Most crosses can be effectively done in three hours, okay? So focus your issues, decide what we haven't covered, and let's move forward.

Cross-examination continued for quite some time thereafter.

<sup>2</sup> Michael's business practices are questionable at best. He does not have an inventory. He testified he does not use receipts. He has not filed a tax return since 2004. Checks used to purchase equipment are drawn from, and checks for items purchased from Michael go through bank accounts in other peoples' names. The couple would often have hundreds, if not thousands, of dollars in cash in the home.

<sup>3</sup> Prior to their separating in 2007, Karina wrote all the checks for Michael's business and had more than one bank account through which business income and expenses were funneled. Karina also testified at trial that, without Michael's knowledge, she directed some \$10,000 to an account in her sister's name in contemplation of an earlier separation. The trial court found, however, "the credible evidence indicates she sent \$20,000.00" and that Karina "has been siphoning cash away from family funds over the years."

out of the norm, the children have never been denied essential medical treatment and appear to be healthy.” “Michael has a history of domestic abuse in prior relationships”; however, “[t]here is not a history of domestic violence in this relationship.”

Upon our de novo review of the record in this matter, we find no reason to disturb any of the trial court’s findings or conclusions as they relate to child custody and support.

We also reject Michael’s claim that he has been denied due process because the district court failed to address motions filed prior to the notice of appeal. On May 4, 2009, Michael filed a motion to stay amend or enlarge findings and conclusions of law. On May 5 he filed a “Nunc Pro Tunc Resistance,” a “Motion for Modification of Custodial Provisions of Judgment and Decree,” and a notice of appeal of the April 8, 2009 decree. Michael’s filing of the notice of appeal conferred jurisdiction on the appellate court and divested the district court of jurisdiction. See *Wolf v. City of Ely*, 493 N.W.2d 846, 848 (Iowa 1992). Moreover, we conclude Michael was afforded a meaningful opportunity to be heard, the lodestar of due process. See *Boddie v. Connecticut*, 401 U.S. 371, 377, 91 S. Ct. 780, 786, 28 L. Ed.2d 113, 118 (1971); *In re Marriage of Seyler*, 559 N.W.2d 7, 9 (Iowa 1997).

We affirm. Costs on appeal are taxed to Michael.

**AFFIRMED.**