

**IN THE COURT OF APPEALS OF IOWA**

No. 0-854 / 10-0967  
Filed February 9, 2011

**IN RE THE MARRIAGE OF  
RACHEL LYNNE BLUM  
AND KEVIN JAMES BLUM**

**Upon the Petition of  
RACHEL LYNNE BLUM,**  
Petitioner-Appellee / Cross-Appellant,

**And Concerning  
KEVIN JAMES BLUM,**  
Respondent-Appellant / Cross-Appellee.

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Appeal from the Iowa District Court for Shelby County, James S. Heckerman, Judge.

A father appeals from the district court's rulings dissolving his marriage.

**AFFIRMED AS MODIFIED.**

Maura Sailer of Reimer, Lohman & Reitz, Denison, for appellant.

Bryan D. Swain and Joseph C. Lauterbach of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Heard by Vogel, P.J., and Doyle and Tabor, JJ.

**VOGEL, P.J.**

Kevin Blum appeals from the district court's rulings dissolving his marriage to Rachel Blum, which granted the parties joint physical care of their two boys. He argues the court should not have required the children to attend the Harlan schools. Rachel cross-appeals, asserting the court should have awarded her physical care of their children.

We affirm the award of joint physical care, but modify the decision of the district court instructing that the boys attend school in the Harlan school district.

**I. Background Facts and Proceedings**

Kevin and Rachel were married in September 2006. They have two children: Z.B. (born in 2003), and A.B. (born in 2007). The parties separated in September 2009, when Rachel moved to Marne to live with her parents, while Kevin stayed in the family home in Manilla. A temporary order was entered in October 2009, granting Kevin and Rachel joint physical care of the boys, alternating their care on a week-to-week basis with the proviso that the boys remain in their current school and daycare in Irwin, which was in the IKM Manning school district. In January 2010, Rachel secured an apartment in Harlan, as she was employed in Harlan as a certified nursing assistant. Kevin was employed at Farmland Foods in Denison.

After a trial in April 2010, the court granted Kevin and Rachel joint legal custody of the parties' two children, and ordered they "continue to share primary physical care and control of the boys as established by the Court's temporary order." However, the court included in the decree that the older boy "shall attend school in the Harlan Community School District." As to the younger boy, the

court ordered that he be enrolled in daycare “in or near the community where the parent who has him during his or her parenting week resides,” but when he begins pre-school, he too “shall attend school in the Harlan Community School District.” Kevin appeals the portion of the decree mandating the school the children must attend. Rachel cross-appeals, asserting the court should have granted her physical care of the children.

## **II. Standard of Review**

We review custody orders de novo. Iowa R. App. P. 6.907. However, the district court had the advantage of listening to and observing the parties and witnesses. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Our overriding consideration is the best interests of the child. *In re Marriage of Thielges*, 623 N.W.2d 232, 235 (Iowa Ct. App. 2000).

## **III. Joint Physical Care**

We first address Rachel’s contention that she should be awarded physical care of the children. She asserts joint physical care is not in the children’s best interests, as it requires considerable travel for the children each day when they are in her care, time which could be better utilized. She also claims that she and Kevin have too many conflicts in their relationship to make joint physical care an effective arrangement. Kevin responds that the court was correct in awarding joint physical care, and while he and Rachel may have had disagreements during

the dissolution process, they have demonstrated the ability to work together for the sake of the children.

In child custody cases the first and governing consideration is the best interests of the children. Iowa Code § 598.41(3) (2009). Neither party disputes the award of joint legal custody, only physical care. See *In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007) (“Legal custody” carries with it certain rights and responsibilities, including but not limited to “decision-making affecting the child’s legal status, medical care, education, extracurricular activities, and religious instruction.”). “Physical care” involves the right and responsibility to maintain a home for the minor child and provide for routine care of the child. *Id.* If joint physical care is awarded, “both parents have rights to and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, [and] providing routine care for the child. . . .” Iowa Code § 598.1(4). Even though the parties disagree on some matters, these problems should be able to be resolved to the benefit of the children. See *In re Marriage of Gensley*, 777 N.W.2d 705, 716 (Iowa Ct. App. 2009)

The district court awarded Rachel and Kevin joint physical care of the children, alternating their care on a week-to-week basis. The court found that both Kevin and Rachel are suitable custodians and love their boys very much. In making its decision, the court found it “significant” that Kevin works in Denison, and lives in Manilla, a distance of approximately twelve miles, while the older boy attends school in Irwin, eight miles from Manilla. Kevin leaves for work each morning at 5:00 a.m., but his mother comes to his home to assist getting the boys off to school and daycare. The district court noted that Kevin’s parents live

only two miles from his home, and his mother works in Harlan, therefore she could bring the older boy to school in Harlan. The court also found it a “significant hardship” on Rachel that she was forced to drive the boys from Harlan to Manilla and Irwin to school and day care on her parenting week.<sup>1</sup>

The guardian ad litem (GAL) reported to the court, “Recommending that primary physical care be placed with one parent or the other might be easier if it didn’t appear that both parents were essentially equal in their ability to provide for the parenting of the children.” The GAL further wrote that although in the past he has questioned the “appropriateness of shared custody arrangements . . . [in this situation] perhaps the best interests of the children will be served by such a shared physical custody arrangement.”

With two equally qualified parents, we agree with the district court’s workable joint physical care arrangement that provides the children the most time with each parent. With a history of providing shared care for the children in an effective manner, we affirm the district court’s order of joint physical care.

#### **IV. School District**

In Kevin’s appeal, he asserts the district court erred in ordering that the children attend school in the Harlan school district. He argues the children’s best interests are served by continuing in their current school district of IKM Manning, as it is the least disruptive for the children. He faults the district court for focusing on the hardship on Rachel in transporting the children, rather than the stability of

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<sup>1</sup> A review of the record indicates Harlan is approximately twenty-four miles from Irwin; Harlan to Manilla is thirty-two miles. Kevin lives in the IKM Manning School District. The elementary school is located in Irwin, approximately eight miles from Kevin’s home; the middle school is in Manilla, where Kevin resides; the high school is in Manning, approximately nine miles from Kevin’s home.

the children by leaving them in their current environment. He points out that requiring the boys to attend school in the Harlan school district only shifts the drive-time to him during the weeks they are in his physical care. He also notes that Rachel has moved several times, having only lived in Harlan for three months prior to the dissolution trial. She has been employed at seven different jobs in six different communities in the past five years, which casts some doubt that she will be living in the Harlan school district for any length of time. Kevin further points to his stability, as he has worked at the same job for the past seven years, and owned his home in Manilla for ten years.

In determining what is in the best interests of the child we can look to a parent's past performance because it may be indicative of the quality of the future care that parent is capable of providing. *In re Marriage of Winnike*, 497 N.W.2d 170, 174 (Iowa Ct. App. 1992). We conclude Kevin has shown that he has historically been the more stable parent, and that is the best indicator for the children's stability for the future. *See Hansen*, 733 N.W.2d at 696 (stating that stability and continuity of caregiving are important factors that must be considered in custody and care decisions). The children's best interests are therefore best served by attending the school district of Kevin's residence, which is the IKM Manning school district.

#### **V. Appellate Attorney Fees**

An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 99 (Iowa Ct. App. 1997). 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 trial court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Upon our review, we decline to award appellate attorney fees. Costs assessed one-half to each party.

**AFFIRMED AS MODIFIED.**