

IN THE COURT OF APPEALS OF IOWA

No. 1-034 / 10-1140
Filed April 27, 2011

**IN RE THE MARRIAGE OF WILLIAM M. CHARLIER
AND ANGELA M. CHARLIER**

Upon the Petition of

WILLIAM M. CHARLIER,
Petitioner-Appellee,

And Concerning

ANGELA M. CHARLIER,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Don Nickerson,
Judge.

Mother appeals dissolution decree seeking physical care of her son.

AFFIRMED.

Kimberly A. Graham of Graham Law Collaborative, Indianola, for
appellant.

Thomas P. Schlapkohl, Urbandale, for appellee.

Heard by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, J.

The June 2010 dissolution decree¹ entered for William (Bill) and Angela Charlier provided they would have joint legal custody of Bryan, their two-year-old son, and placed physical care with Bill. Angela appeals and seeks physical care.

I. BACKGROUND FACTS AND PROCEEDINGS.

Bill and Angela, both in their thirties, dated for two years and married in July 2007. Bryan was born in May 2008. Angela's children from her marriage to William Magneson, April, age seventeen, and William, age fourteen, also lived with the parties. Bill is an experienced mechanic and works at an automobile dealership with a base salary of \$50,000/year. Angela has a four-year college degree and a new job with Wells Fargo earning \$29,000/year.

¹ Angela contends the district court erred by adopting Bill's proposed decree "nearly verbatim." We recognize "the customary deference accorded trial courts cannot fairly be applied when the decision on review reflects the findings of the prevailing litigant rather than the court's own scrutiny of the evidence and articulation of controlling legal principles." *Rubes v. Mega Life & Health Ins. Co.*, 642 N.W.2d 263, 266 (Iowa 2002). We have compared the language in Bill's proposed decree with the court's decree. While the court's decree follows the structure of Bill's proposed decree and utilizes much of its language, our review shows the court's final decree is a heavily-edited version due to numerous, lengthy deletions and due to the court's addition of completely new language, including, but not limited to: (1) "[Bill] and Angela experienced argument and strife from the beginning of their relationship"; (2) "there being no concern that supervised visitation was warranted"; (3) "At trial both parties offered self-serving witnesses, some who offered less than credible testimony. However, among the credible testimony"; (4) "validate the Court's concern about Angela's ability"; (5) "[b]ased on the evidence at trial, the Court found [Bill] to be a more stable and responsible individual and parent"; (6) "[t]here were several instances during trial that the Court found Angela's testimony incredible"; and (7) "[t]he evidence does not support the position that." Additionally, our standard of de novo review requires us to independently examine the record and "we resolve the substantive issues presented on appeal from our independent review of the record." See *In re Marriage of Siglin*, 555 N.W.2d 846, 849 (Iowa Ct. App. 1996). "[T]he proposed decision should be a guide, with selected portions incorporated into the independent thoughts of the trial judge." *Id.* at 849.

Bill and Angela's marriage did not proceed smoothly. Angela admits she shattered a picture's glass when she threw it against the wall during an argument. In June 2008, Angela and Bill argued about a trip to Florida and Angela's physical attack on Bill while she was holding Bryan resulted in Bill receiving scratches, bruises, and a broken nose requiring surgery. Bill responded physically to Angela's attack. Subsequently, Bryan's head had a red mark for a few hours. The police arrived, arrested Angela for assault and child endangerment, and transported her to jail. Bill and Bryan went to the hospital for evaluation and treatment. A criminal no contact order between Angela and Bryan and between Angela and Bill was immediately entered. The police report states:

Angie told me that she did hit [Bill] in the face while she was holding the baby. Angie said she hits [Bill] a lot and he has never defended himself. Angie was surprised that he hit her in the head today.

Angela sought medical care upon her release from jail. At this time, Angela's son, William, was living with the parties, but April was staying primarily with her father. As a result of this event, both parties were listed on the child abuse registry and the family worked with Carly Smith, care coordinator for Life-Line Resources.

In July 2008, Bill petitioned for dissolution of marriage. The court's September 2008 temporary order placed physical custody with Bill and ordered reasonable, supervised visitation with Angela. Angela was ordered to pay \$50/month child support. In November 2008, coordinator Smith reported both parties were manipulating the situation with Angela trying to make Bill look bad

and Bill trying to control when Angela's visits would occur. In December 2008, the temporary order was modified to allow Angela increased, unsupervised visitation: every other weekend from Friday noon to Sunday at 6:00 p.m. and every week from Tuesday noon to Thursday noon. The parties were ordered to find another adult for visitation transfer and transportation.

In March 2009, the court granted Angela's application for appointment of a custody evaluator and appointed an experienced evaluator, Mary Hilliard. Hilliard's July 2009 report states she interviewed Bill, Angela, April, and William, and observed Bryan in the parties' homes. Hilliard also conducted in-person collateral interviews, however, these interviews were not helpful because "each parent's friends have rallied around him or her to the point that one cannot rely upon the veracity of their reports." The report also discusses the parties' MMPI-II psychological testing:

Bill approached the items appropriately, and his responses produced a valid, interpretive profile. His clinical profile was within normal limits, suggesting he is not experiencing any serious psychological problems.

. . . .
The standardize[d] report of Angela's MMPI-II profile cautions that her validity scale performance does not allow interpretation of the [test], while it does state that her responses represent an extreme attempt to present herself as being free of psychological problems in order to influence the outcome of the custody evaluation. . . . I have also found in Angela's report and record indications that she uses blame to avoid personal responsibility for her problems.

Noting Bill "responds to questions about his limiting Angela's contact with expressions of his fears of [Bryan's] safety," Hilliard concluded:

Bill has expressed concern about Angela's flash temper, and inappropriate response to frustration. Angela has expressed concern about Bill's being controlling and her fear that he will not give Bryan the freedom he needs to grow independent over the years. I believe each observation is valid. In weighing them, I have to project which tendency will have the least negative impact upon a child. Bill has presented himself to have insight into his tendencies, which suggests that he is more open to change his behavior to become more successful as a parent. Yet at the same time the record indicates that he has inappropriately acted out his frustration toward [Angela's other children], April and William, when they failed to respond in the way he expected. This use of physical aggression serves to intimidate a child. Angela's history of justifying her inappropriate behaviors by another's actions suggests that these behaviors are less available to her to work on. While I do not believe that she would be physically abusive to Bryan, her pattern of conflicted relationships over the past several years could expose him to unnecessary emotional stress. What we have observed is that the more Angela is thwarted, the more reactive she becomes. The more reactive she becomes, the more Bill has created barriers between himself, Bryan, and her.

Both parents have demonstrated a desire for Bryan to grow into a healthy child, even while they have continually asserted the other to be lacking. Bill has demonstrated his ability to provide a stable home for Bryan. He has established a history of stable employment and enjoys the support of his congregation and family. Angela shares a strong emotional attachment to her children, and has long time friends who give her support. Her life lacks historical stability; she has had more job shifts, has demonstrated poor judgment in her relationships,^[2] and as a result has contributed to her family's over all instability. It is my concern with Bill's having primary physical custody is that he would continue to restrict access, which would fuel continual distress between the two of them. Thus, it is Bill's behavior that dictates my recommendation, as I do not have confidence that he will cooperate and promote their relationship if given primary custody. Angela has an

² Angela has experience with the criminal justice system and prior domestic altercations. In 1992, she and Magneson were both arrested after police arrived to investigate a domestic argument. The police report states Angela assaulted the officer as he was attempting to arrest Magneson. Angela testified: (1) the State agreed to drop the interference with official acts charge if she pled guilty to assault on a police officer; and (2) she received a deferred judgment of six months after pleading guilty.

In 2004, Angela called the police for help during another domestic argument. Angela told the police she had a bad relationship with Darren, who had broken her arm three weeks ago, and currently was hitting her while April and William were at home.

established history of cooperation with [Magneson] her other children's father, and appreciates the importance of working toward a successful co-parenting relationship.

Hilliard recommended: (1) physical care to Angela with the "parties sharing direct care of [Bryan] on a 50%--50% rotation"; (2) the court order the parties to work with a parent coordinator for at least one year to establish a rotation, discuss co-parenting issues, and arbitrate decisions; and (3) rescinding the no contact order and limiting communication between the parties to e-mail until face-to-face communication is agreed to after working with the parent coordinator.

At trial, Hilliard testified to her post-report meeting with Bill:

And [Bill's] position was that he really needed to know more about Angela's mental health status. He still had concerns about her, how she made decisions and that she would make good decisions in behalf of keeping Bryan safe. . . . I indicated that we did not have a valid MMPI on Angela and that there were indications of elevations in terms of personality issues that suggested that she may, in fact, be unstable.

I referred them to Dr. Eva Christiansen who . . . evaluated both parties. And I got a great deal more information on them.

In August 2009, Bill filed an application to show cause alleging nonpayment of child support. In September 2009, the court sentenced Angela to ninety days in jail for nonpayment of child support and ordered her to spend one day in jail with eighty-nine days withheld upon payment. Angela was also ordered to pay Bill \$600 in attorney fees.

In November 2009, Angela continued to give Bryan medication against medical advice. Angela agreed to a written safety plan with DHS during its investigation. The safety plan stated: "Angela agrees she will not administer any

medications to Bryan Charlier without prior written approval from Dr. Zachary. The written documentation needs to include dosage as well as frequency of the medication.” In December 2009, DHS recommended “Angela make better choices in her parenting of Bryan. When it comes to medical issues, [DHS] would recommend that Angela consult Dr. Zachary regarding any medication choices for Bryan.”

Dr. Christiansen’s December 2009 report states Angela’s newly-administered MMPI-II “was valid but defensive and guarded.” This test “raises questions about her easily becoming resentful and jealous, and controlling others or trying to control them by losing her temper . . . which may cause problems in her supporting Bill’s relationship to Bryan.” Bill’s newly-administered MMPI-II showed “no traits that were likely to interfere with daily functioning, including his carrying out parental responsibilities.”

Dr. Christiansen also administered MCMI-III tests. Bill’s results “indicate that he is likely to be sociable and friendly but that he is irritable and demanding under his outward sociability.” Angela’s result “was defensive with an avoidance of self-disclosure.” However, the test showed “she can become resentful when compliance does not lead to the consequences she desires.”

Dr. Christiansen did not make a custody recommendation, but concluded:

Parenting Challenges and Strengths

Bill’s question about Angela having a significant mental health disorder is a reasonable concern in the context of parenting. The evaluation indicates that she has had depressive episodes and is more likely to have them again than is someone [without] such a history. . . . [D]epression is a risk in parenting adequately. Her use of antidepressant medication is appropriate. There may be times

that additional intervention, such as a brief series of counseling sessions, could be helpful.

These parents may benefit from work on handling emotions more appropriately. . . .

Both present concerns about commitment to support or encourage Bryan to have good accessibility to the other parent. It will be important to plan a shared-time plan for parenting that maintains contact with each parent. Angela and Bill can be expected to have difficulties with trust issues. . . . Overall, in looking at the results of the evaluations, I think Angela and Bill can each be at least adequate parents for Bryan.

In January 2010, Hilliard sent the court an addendum to her original custody evaluation. Hilliard recommended Bill “be granted Primary Custody of Bryan,” while again recommending a “50% - 50% rotation that is developmentally appropriate.” Hilliard’s addendum explained her new physical care recommendation:

[In my] previous recommendations I focused on Bill’s restrictions on Angela’s access to Bryan as an indication of his unwillingness to promote Bryan’s psychological attachment with his mother. In light of the new information from the psychological evaluation and continued contact with the parties I am changing my recommendation that Angela be the primary physical custodian. While I continue to believe that she loves her son deeply, I no longer have confidence in her ability to make thoughtful decisions about his best interests. Bill’s lack of experience with children is compensated with his community of supportive people, and his willingness to seek advice.

In February 2010, the three-day dissolution trial commenced. Angela admitted to a temper problem, but stated it was “in the past.” Hilliard testified: “Dr. Christiansen didn’t give [Angela] a diagnosis. She describes a lability of mood, of extremes, and an underlying depression. That would be consistent with both major depression disorder or with . . . difficulties with borderline personality.”

Further:

One of the things that Dr. Christiansen uses is something that I have not had access to, is a structured interview that looks at history a little more completely than the strategy I've used so far. And one of the things that became evident is how [Angela's] stress level has been consistent throughout her life; that there has been far more difficulties and stresses.

.....

[Angela's conduct] "suggests to me a very manipulative approach to coming forward with information."

.....

I have called into question Angela's ability to make ultimate decisions. And yet . . . she has a lot to offer that Bill doesn't. And Bill has things to offer that she doesn't. And I think that needs to be balanced for this child.

.....

I think the questions I have here are that—certainly there's a question of who [Angela] surrounds herself with. But I think that mostly, it's—just how she organizes her life in general. For the most part, if she has been successful with her own children [April, William] part of that success has come, I think, from—their ongoing contact with their biological paternal side of their family.

.....

I told [Angela] that for the most part my change of heart came from my reading of both of their general function and stability issues.

After reviewing pictures and information about Angela's residence, Hilliard recommended forty percent Angela/sixty percent Bill in order for Bryan to be "in a situation that is a little less chaotic."

In June 2010, the district court awarded physical care to Bill with visitation to Angela, stating:

Among the most compelling evidence were photos of the interior of Angela's residence where she and her two children resided just before the parties' marriage. . . . Taken by the Des Moines Public Housing Authority in conjunction with that agency's eviction procedures, the photos validate the Court's concern about Angela's ability to provide a suitable home for young children.

Based on the evidence at trial, the Court found [Bill] to be a more stable and responsible individual and parent. [Bill] has always been gainfully employed. He and Bryan have obviously formed a significant bond insofar as [Bill] has been Bryan's primary

care provider now for over 95% of Bryan's life. [Bill] reported that he and Bryan have settled into a routine and by all accounts, including Doctors reports, Bryan is flourishing in his present environment.

. . . .

There were several instances during trial that the Court found Angela's testimony incredible. . . . In light of various inconsistencies in Angela's testimony coupled with the results of her psychological testing and the Court's observance of Angela's demeanor at trial, the Court finds [Bill] to be the far more credible of the two.

. . . .

The Court finds that when the present custody arrangement is coupled with evidence of [Bill's] vast support network there can be little question that Bryan's overall long-term best interests are best served by having [Bill] continue primary physical care.

The court ordered Angela to pay child support and awarded her visitation every other weekend from Friday at 6:00 p.m. to Sunday at 7:00 p.m. and every Wednesday from 4:00 p.m. to 7:00 p.m. Further, the Court expanded Angela's midweek visitation to starting Tuesday noon and ending Thursday noon "at such time as [Hilliard], or an alternative professional designated by the court shall file a report to the court that [Angela] has adequately addressed her mental health issues."

The court ordered the parties to attend and split the costs of monthly co-parenting classes, "until in the opinion of the instructor, maximum benefit is achieved."

Angela now appeals seeking physical care of Bryan and requesting monthly co-parenting sessions "for at least one year" with Bill paying the total cost. Angela also seeks appellate attorney fees.

II. SCOPE OF REVIEW.

As an equitable action, we review dissolution proceedings de novo. Iowa R. App. P. 6.907. We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but make such findings and conclusions from our de novo review as we deem appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). We, however, give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 6.904(3)(g). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

III. MERITS.

The sole issue is whether Bill or Angela should be awarded physical care. "Physical care issues are not to be resolved based upon perceived fairness to the spouses, but primarily upon what is best for the child." *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007). Therefore, in determining physical care, our overriding consideration is Bryan's best interests. See Iowa R. App. P. 6.904(3)(o). In assessing which physical care arrangement is in Bryan's best interests, we utilize the factors in Iowa Code section 598.41(3) (2007), as well as the factors identified in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). "[N]o one criterion is determinative" and we apply a multi-factored test.

Hansen, 733 N.W.2d at 697. Our ultimate goal is to place Bryan in the environment most likely to bring him to healthy physical, mental, and social maturity. See *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). We conclude Bill will provide a more stable environment and note Hilliard attributes part of the success of Angela's older children to "ongoing contact with their biological paternal side of their family." In fact, at the time of the parties' argument over the Florida trip, April was living with her father. Additionally, Angela has a history of prior domestic altercations.

The ability of each parent to actively support the other parent's relationship with the child is an important factor in deciding physical care. Iowa Code § 598.41(3)(e); *In re Marriage of Manson*, 503 N.W.2d 427, 429 (Iowa Ct. App. 1993). "More importantly, the ability of each parent to do so is instrumental in the successful mental, emotional, and social development of the [child]." *Morris*, 503 N.W.2d at 429. We note Hilliard concluded Bill's concerns about Angela's mental health status were valid in the context of appropriate visitation for Angela during the pendency of this action. Further, Dr. Christiansen's testing revealed "problems in [Angela] supporting Bill's relationship to Bryan."

We also consider Angela's history of repeatedly hitting Bill during the marriage. Cf. Iowa Code § 598.41(2)(c) (custody of children). Evidence concerning Bill's relationship with his ex-wife was not included when the district court detailed the credible evidence.

Finally, the district court's evaluation of the parties is particularly helpful. See *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993) ("The

trial court had the parties before it and was able to observe their demeanor and was in a better position than we are to evaluate them as custodians.”). The court specifically found “Angela’s testimony incredible” in “several instances.” Upon our de novo review, we agree with the district court’s decision, after its opportunity to observe Bill and Angela and evaluate their credibility, to place physical care of Bryan with Bill.

We decline Angela’s request to modify the court’s order regarding co-parenting classes.

Angela requests appellate attorney fees. Appellate attorney fees are discretionary. *In re Marriage of Krone*, 530 N.W.2d 468, 472 (Iowa Ct. App. 1995). We decline to award appellate attorney fees and tax costs one-half to each party.

AFFIRMED.