

IN THE COURT OF APPEALS OF IOWA

No. 1-537 / 11-0250
Filed July 27, 2011

JEREMY LOHMANN,
Petitioner-Appellant,

vs.

TRACEY SEVERSON,
Respondent-Appellee.

Appeal from the Iowa District Court for Worth County, James M. Drew,
Judge.

Jeremy Lohmann appeals the award of physical care of the parties' child
to Tracey Severson. **AFFIRMED.**

Douglas A. Krull of Krull Law Office, Northwood, for appellant.

Jeffrey H. Greve of Greve Law Office, Northwood, for appellee.

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

POTTERFIELD, J.

Jeremy Lohmann appeals the award of physical care of the parties' child, age two and a half, to Tracey Severson. He argues the court should have awarded joint physical care. Because we defer to the credibility assessments of the district court and adopt the trial court's findings as our own, we affirm.

I. Background Facts and Proceedings.

Tracey and Jeremy are the parents of a daughter, Natalee, born ten weeks prematurely in December 2008. The parties were in a relationship and living together when Natalee was born. Natalee needed special medical care and was moved to a hospital in Des Moines for ten weeks following her birth. Tracey, too, came to Des Moines to be near Natalee. Jeremy stayed in Des Moines for the first week following Natalee's birth and then returned to work in Manly, Iowa, but traveled to Des Moines on the weekends when he could arrange transportation.¹ Natalee was discharged from the hospital in February 2009. Tracey returned to work part-time on March 26, 2009, and full-time in early May. Tracey works in a radiology office earning \$22,880 annually. Jeremy is a physical therapist with annual earnings of \$75,242.

The parties separated in September 2009, at which time Tracey and Natalee temporarily moved in with Tracey's parents. Tracey filed a petition for custody, visitation, and support on September 23, 2009. Jeremy answered asking that he be awarded physical care, or in the alternative, that the parties be awarded joint physical care. On October 28, 2009, an order on temporary

¹ Jeremy does not have a driver's license as a result of three operating while intoxicated convictions; he does, however, have a work permit.

parenting was filed. The court noted the parties “have had significant difficulty compromising on the terms of Jeremy’s time with Natalee. Neither party has acted admirably in resolving these parenting issues.” Tracey was granted temporary physical care and Jeremy was to “exercise parenting time” every Tuesday and Thursday evening from 5:00 to 8:00 p.m. and every Sunday from noon to 8:00 p.m.

In April 2010, Jeremy married Carrie, who has two daughters from a previous relationship. Tracey purchased a home in Mason City and moved there with Natalee in June 2010. Tracey’s residence is approximately twenty-five minutes away from Jeremy’s residence.

A custody-related psychological evaluation was conducted by Mark Peltan, a licensed psychologist. Peltan met with each parent three times, conducting interviews and psychological testing, and observing each with Natalee. In a November 10, 2010 letter, Peltan noted “Natalee lives primarily with her mother but her father has faithfully followed the visitation schedule decreed . . . a year ago.” Peltan observed that both parents “have stable employment and living arrangements,” but “dramatically different personalities and communication styles.” Tracey was viewed as “painfully introverted” and “overly inhibited”; Jeremy as “self-aggrandizing” with a “bombastic manner.” Yet, despite their differences, Peltan believed “Natalee will continue to benefit from frequent contact with her father.” Peltan suggested a “gradual implementation of a shared custody arrangement,” which might be an “alternating three day/four day sort of schedule” by the time Natalee is three and a half years old. Peltan stated,

Things may be more complicated when Natalee starts kindergarten just because her parents don't live in the same town. In reality, it would be helpful to everyone involved if they could somehow manage to reside in the same school district.

At the December 15, 2010 trial, the evidence supported Peltan's view that the two parents have vastly different personalities and have had difficulty communicating with each other. There is no question both parents care deeply for their daughter and understand the importance of the other in Natalee's life. Tracey opined both she and Jeremy could work harder on communicating and there was no reason they could not talk together. Jeremy, too, acknowledged both could do a better job communicating. He continually stressed he wanted to have a major role in Natalee's life.

The district court entered its custody and support decree on January 4, 2011. The court noted that "[d]espite the conflicts between them both Jeremy and Tracey love Natalee very much and desire what is best for her. The court is not always faced with parents who want to maximize their role in their child's life."

The court, however, denied Jeremy's request for joint physical care writing:

Like Dr. Peltan, this court has a favorable attitude towards joint physical care arrangements so long as the circumstances are appropriate. Here, the relevant factors do not support an award of joint physical care. Historically Tracey has been the primary caregiver. The parties do not communicate well and, although it is not severe, there is a bothersome level of conflict between Tracey and Jeremy. For the foreseeable future it is unlikely they will be in general agreement about their approach to daily matters. Thus, it does not appear a joint physical care arrangement would be in Natalee's best interests.

The district court noted that "[a]lthough Jeremy seems to have a sincere desire to be more involved in Natalee's life, the fact remains that Tracey has provided the majority of Natalee's care." The court observed "Natalee has

thrived in her care” and is “outgoing, happy and intelligent.” The court concluded it “sees no reason to interfere with what has been effective caregiving.”

The court also observed that Tracey has shown she is willing to support and encourage the relationship between father and child, as she has provided much of the transportation necessitated by Jeremy’s lack of a driver’s license. The court found Jeremy’s “last alcohol-related offense was not so long ago as to remove cause for concern.” The distance between the parties’ residences and Jeremy’s inability to legally transport Natalee weighed in favor of physical custody with Tracey.

Jeremy appeals, arguing joint physical care is in Natalee’s best interests. In the alternative, he seeks an award of physical care.

II. Standard of Review.

Our review of equity cases is de novo. Iowa R. App. P. 6.907. We give weight to the 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).

III. Physical Care.

Jeremy contends Natalee should have been placed in the parties’ joint physical care. Joint physical care is an option if it is in the best interests of the child. *In re Marriage of Hansen*, 733 N.W.2d 683, 692 (Iowa 2007). We examine the propriety of joint physical care on “the unique facts” of each custody case and do not entertain the presumption that joint physical care is disfavored. *Id.* at 695.

Many factors go into a determination of whether joint physical care is warranted. As a starting point, the factors listed in Iowa Code section 598.41(3) (2011) regarding joint legal custody are relevant to the question of joint physical

care.² *Id.* at 696. Where both parents are suitable caregivers and the question is whether joint physical care will be in the child's best interests, the *Hansen* decision directs us to four key considerations: (1) stability and continuity of caregiving; (2) the ability of the parents to communicate and show mutual respect; (3) the degree of conflict between the parents; and (4) the degree to which parents are in general agreement about their approach to daily matters. *Id.* at 696–99. “[T]he courts must examine each case based on the unique facts and circumstances presented to arrive at the best decision.” *Id.* at 700.

Although Jeremy has been an active parent, Tracey has been Natalee's primary caretaker and responsible for her day-to-day needs. *See id.* at 696 (“In considering whether to award joint physical care where there are two suitable parents, stability and continuity of caregiving have traditionally been primary factors.”). And, as the district court noted, Natalee has thrived in Tracey's care. We also give weight to the district court's finding that there is a “bothersome level of conflict between Tracey and Jeremy.”

We defer to the credibility assessments of the district court and adopt the trial court's findings as our own. The district court's written ruling reflects that it

² Those factors include: (a) whether each parent would be a suitable custodian for the child; (b) whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents; (c) whether the parents can communicate with each other regarding the child's needs; (d) whether both parents have actively cared for the child before and since the separation; (e) whether each parent can support the other parent's relationship with the child; (f) whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity; (g) whether one or both of the parents agree or are opposed to joint custody; (h) the geographic proximity of the parents; (i) whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation; and (j) whether a history of domestic abuse, as defined in section 236.2, exists. Iowa Code § 598.41(3).

considered all of the appropriate factors in making a physical care award.
Therefore, we affirm the district court's physical care decision.

AFFIRMED.