

IN THE COURT OF APPEALS OF IOWA

No. 1-680 / 11-0369
Filed September 21, 2011

JUSTIN G. GREVE,
Petitioner-Appellee,
vs.

ANDREA A. ANDEREGG,
Respondent-Appellant.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

A mother appeals the district court order in a paternity case granting the parties joint physical care of their minor child, ordering her to pay child support, and allocating the income tax dependency exemption for their child. **AFFIRMED.**

Bart K. Klaver of Jacobson, Bristol, Garrett & Swartz, Waukon, for appellant.

John T. Nemmers of Reynolds & Kenline, L.L.P., Dubuque, for appellee.

Considered by Potterfield, P.J., Danilson, J., and Miller, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.**I. Background Facts & Proceedings**

Justin Greve and Andrea Anderegg are the parents of a minor child who was born in November 2007. The parents were never married, but lived together from October 2007 until March 2009. The parties both live in Guttenberg, Iowa. After they separated, they reached an informal agreement whereby Justin would pick the child up from daycare between 3:00 p.m. to 4:00 p.m., when he was done with work, and keep her until about 7:00 p.m. in the evening when Andrea got off work.¹ The child stayed with Justin overnight on Wednesday nights, and every other weekend.

On July 6, 2009, Justin filed a petition to establish paternity, establish joint legal custody and joint physical care, determine child support, and award the income tax dependency exemption. On January 3, 2011, he filed a motion to amend his petition to raise an alternative request for physical care of the child. The district court granted the motion to amend.

A hearing in this case was held on January 13, 2011. At that time Justin was twenty-eight years old. He had a high school degree. Justin was employed at Kann Manufacturing, where he earned \$11.80 per hour. He earned \$20,700 in 2010. He provided health insurance for the child through his employment. Justin lives in a two-bedroom home that he rents. He is in good health.

At the time of the hearing Andrea was twenty-four years old. She had recently completed an associate of arts degrees in accounting and general

¹ This schedule varied slightly from day to day. On Mondays, Andrea worked later and Justin took care of the child until about 8:00 p.m. Andrea did not work on Thursdays, and so Justin was not required to pick the child up from daycare on those days.

education. Andrea was taking college classes online through the University of Phoenix, and expected to complete a degree in business administration in May 2012. Andrea was employed at the Guttenberg Care Center, where she earned \$11.31 per hour. In 2010, she earned \$24,869.68. She testified that when she completed her degree she intended to stay in the area. Andrea lived in an apartment. She is also in good health.

The district court entered a decree on January 18, 2011. The court placed the child in the joint legal custody of the parents. The court ordered, "[t]he parties shall equally share placement of the child, with placement alternated between the parents on a weekly basis, and exchanges shall occur on Sundays at 5:00 p.m." The court stated the parents were free to agree to a different placement schedule, such as the one currently in place. The court ordered Andrea to pay child support of \$105 per month. Justin was ordered to provide health insurance for the child. The court determined that the parties would be entitled to claim the child as a dependent for income tax purposes in alternating years.

Andrea filed a post-trial motion pursuant to Iowa Rule of Civil Procedure 1.904(2). She asked the court to place the child in her physical care, rather than in joint physical care. Andrea asserted that she had been the child's primary caretaker throughout the child's life. She also raised the issues of child support and the tax exemption. The court denied the motion. Andrea now appeals.

II. Standard of Review

Issues ancillary to a determination of paternity are tried in equity. *Markey v. Carney*, 705 N.W.2d 13, 20 (Iowa 2005). We review equitable actions de

novo. Iowa R. App. P. 6.907. When we consider the credibility of witnesses in equitable actions, we give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 6.904(3)(g).

III. Physical Care

Andrea contends it would be in the child's best interests to be placed in her physical care, instead of in the parties' joint physical care. Andrea states she has been the child's primary caretaker since birth. She asserts that during the time the parties lived together Justin watched the child until she got home from work, and then he withdrew and she would take care of the child. Andrea claimed it would be difficult for the child to change her schedule.

In determining physical care for a child, our first and governing consideration is the best interest of the child. Iowa R. App. P. 6.14(6)(o). Our analysis is the same whether the parents have been married, or remain unwed. *Lambert v. Everist* 418 N.W.2d 40, 42 (Iowa 1998); *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994). Our objective is to place the child in the environment most likely to promote a healthy physical, mental, and social maturity. *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007).

A court may grant the parents joint physical care, or choose one parent to be the caretaker of the children. *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). Joint physical care is a viable option when it is in the child's best interest. *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). The court considers the following factors in determining whether to grant joint physical care: (1) the historical care giving arrangement for the child between the parents; (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 the parents are in general agreement about their approach to parenting. *Hansen*, 733 N.W.2d at 697-99; *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007).

Historically, Andrea was the primary caregiver for the child. Because Andrea gets off of work later than Justin, however, Justin has played a large role in caring for the child. The record shows the parents are able to communicate regarding the child. We note Andrea testified about Justin, "I really have no concerns about his parenting skills. I know he is very competent in being a parent, and [the child] loves being around him." Likewise, Justin testified he believed the parties could continue to get along without any major incidents. The record did not show disagreements between the parents about their approach to parenting.

We note the parties were able to cooperate for about two years under their informal agreement, and we believe they will continue to be able to cooperate, as this is in the child's best interests. There was evidence the child was adaptable, and enjoyed going to the home of each parent. We do not believe Andrea's concerns about changing the child's schedule are justified. The joint physical care arrangement will provide the child with the maximum opportunity to spend time with each parent. We agree with the district court's determination that joint physical care is in the child's best interest, and affirm its decision on this issue.

IV. Child Support

Andrea contends that she should not be required to pay child support. She states that she earns \$11.31 per hour and works 39.5 hours per week, while Justin earns \$11.80 per hour and works an average of forty-two hours per week. Andrea asserts that if these numbers are used to calculate each parties' child support obligation, and the amounts offset based on the joint physical care decision, she should not have a child support obligation. She states she and Justin have essentially equivalent incomes.

A court must determine each parent's income from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). In this case, the most reliable evidence presented of Justin's income was his pre-close W-2 report for tax year 2010, which showed he earned \$20,780.76 that year. In 2009 he earned \$19,104.63 and in 2008 he earned \$17,949.40. Andrea testified she earned \$24,869.68 in 2010. We conclude the district court properly determined each party's income, calculated their respective child support obligations, offset these amounts, and found Andrea should pay child support of \$105 each month. If Justin's income increases in the future, Andrea has the option of filing a petition to modify the child support obligation. We affirm on this issue.

V. Tax Exemption

Andrea claims she should have been awarded the tax exemption for the minor child each year. Andrea claims that awarding her the tax exemption each

year would be in the child's best interest because the money from the tax refund would be used exclusively for the child.

A court has authority to award the tax exemption in order to achieve an equitable resolution of the economic issues in a case. *In re Marriage of Okland*, 699 N.W.2d 260, 269 (Iowa 2005). Generally, the parent who has physical care of a child is entitled to claim the child as a tax exemption. *Id.* In cases involving joint physical care, "the allocation of deductions should be based upon the impact on the children's interests." *In re Petition of Seay*, 746 N.W.2d 833, 836 (Iowa 2008). The parties' incomes are not greatly different, and the child's best interest is served by the district court's order alternating the exemption. We conclude the court properly determined the parties would be entitled to claim the child as a dependent for income tax purposes in alternating calendar years, and affirm on this issue.

VI. Appellate Attorney Fees

Justin requests attorney fees for this appeal. In paternity actions, section 600B.25 provides, "[t]he court may award the prevailing party the reasonable costs of suit, including but not limited to reasonable attorney fees." "An award of appellate attorney fees is within the discretion of the appellate court." *Markey*, 705 N.W.2d at 26. "Factors to be considered in determining whether to award attorney fees include: 'the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal.'" *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006) (quoting *In re Marriage of Okland*, 699

N.W.2d 260, 270 (Iowa 2005). Justin is the prevailing party, and we determine Andrea should pay \$1000 toward his appellate attorney fees.

We affirm the decision of the district court. The costs of this appeal are taxed to Andrea.

AFFIRMED.