IN THE COURT OF APPEALS OF IOWA

No. 2-244 / 11-1966
Filed May 23, 2012

CHAD HARE,
Plaintiff-Appellant,

vs.

BRANDY GRAY,
Defendant-Appellee.

Appeal from the Iowa District Court for Ida County, James D. Scott, Judge.

A father appeals a district court decree granting physical care of his child to the mother. **AFFIRMED AS MODIFIED.**

A. Eric Neu of Neu, Minnich, Comito & Neu, P.C., Carroll, and Erin E. McCullough of Erin E. McCullough, P.C., Lake View, for appellant.

Karen Goldsmith and Peter Goldsmith of Boerner & Goldsmith Law Firm, P.C., Ida Grove, for appellee.

Heard by Eisenhauer, C.J., and Vogel and Tabor, JJ.

EISENHAUER, C.J.

A father appeals a district court decree granting physical care of his child to the mother. He also seeks modification of the decree's transportation and uncovered medical expense provisions. We modify the decree's uncovered medical expense provision and affirm.

I. Background Facts and Proceedings.

In 1999, Brandy Gray and Chad Hare began cohabitating in Ida Grove. Brandy's two children, now teenagers, lived with them. In the summer of 2006, B.H. was born to Chad and Brandy. The parties separated in October 2008. They agreed to alternate physical care of B.H. on a weekly basis.

In May 2010, Chad filed a petition initiating this action. Brandy now resides in Schleswig with her boyfriend. In the summer of 2011, Chad moved to Ankeny to accommodate his girlfriend's employment and for his own employment advancement. The parties continued to alternate care weekly until the 2011 school year.

At the October 13, 2011 trial, both parties sought physical care of B.H. On October 21, 2011, the district court found:

> [I]n the fall, Brandy agreed that Chad could enroll [B.H.] in the Ankeny school so that B.H. would spend the weekdays with Chad in Ankeny and weekends with her in Schleswig. [Brandy] made this agreement so that B.H. would have the most stable environment possible under the circumstances, with the understanding that it would not be a factor to work against her in the custody trial. Brandy acted in B.H.'s best interests in this regard. Chad now seeks to renege on this agreement and understanding . . . .
>
> Since moving to Ankeny, Chad has not been as supportive of Brandy's relationship with B.H. as he should.

The district court applied the factors enunciated in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974), in determining the best interests of B.H. Noting both parents "have favorable and unfavorable characteristics" and "[t]his is a difficult case," the court awarded physical care to Brandy with liberal visitation for Chad. Further: "Chad shall deliver physical care of B.H. to Brandy on October 28, 2011." The court awarded joint legal custody.

Chad now appeals seeking physical care of B.H.

II. Scope of Review.

We review the trial court's decision de novo. *In re Marriage of McKenzie*, 709 N.W.2d 528, 531 (Iowa 2006). We examine the entire record and decide anew the legal and factual issues properly presented. *In re Marriage of Rhinehart*, 704 N.W.2d 677, 680 (Iowa 2005). "However, we recognize that the district court was able to listen to and observe the parties and witnesses." *In re Marriage of Gensley*, 777 N.W.2d 705, 713 (Iowa Ct. App. 2009). Consequently, we give weight to the district 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).

III. Physical Care.

Chad argues the district court should have awarded him physical care of B.H. with visitation to Brandy. Physical care is the right and responsibility to maintain a home for the child and provide for the routine care of the child. *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). The child's best interest is the overriding consideration. *Id*.

The district court found "[b]oth parents can provide a suitable environment." We agree. After reviewing the record, we also agree with the district court's discussion of the strengths and weaknesses of each party. While we review de novo, we defer to the district court's fact findings and credibility assessment. *Gensley*, 777 N.W.2d at 713. Specifically:

> A trial court . . . "is greatly helped in making a wise decision about the parties by listening to them and watching them in person." In contrast, appellate courts must rely on the printed record in evaluating the evidence. We are denied the impression created by the demeanor of each and every witness as the testimony is presented.

In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984) (quoting *In re Marriage of Callahan*, 214 N.W.2d 133, 136 (Iowa 1974)) (citations omitted).

The district court properly considered all the appropriate factors when it made its physical care determination. Because the district court had the opportunity to observe the parties and witnesses and concluded it was in B.H.'s best interests to grant physical care to Brandy, we decline to reverse that judgment. *See Fennelly*, 737 N.W.2d at 101 (recognizing the district court's opportunity to observe the witnesses). Therefore, we affirm the district court's physical care award.

IV. Transportation for Visitation.

Chad appeals the district court's ruling: "Transportation for visitation shall be shared, with Chad providing transportation at the beginning of visitation and Chad meeting Brandy halfway at the end of visitation." After considering the circumstances of the parties, we find no inequity and decline Chad's request to modify this provision.

V. Uncovered Medical Expenses.

Because we have declined to reverse the court's physical care award, we address Chad's request we modify the decree to have Brandy, as custodial parent, pay the first $250 of uncovered medical expenses. Chad argues the district court failed to follow the child support guidelines requirement: "The custodial parent shall pay the first $250 per year per child of uncovered medical expenses." *See* Iowa Ct. R. 9.12(5).

We note the district court did not make a "written finding that the guidelines would be unjust or inappropriate" under Iowa Court Rule 9.11. Accordingly, we modify the decree to provide Brandy shall pay the first $250 per year of B.H.'s uncovered medical expenses.

Costs of this appeal are taxed to Chad.

AFFIRMED AS MODIFIED.