

IN THE COURT OF APPEALS OF IOWA

No. 3-487 / 13-0005
Filed June 26, 2013

**IN RE THE MARRIAGE OF MICHAEL LEE HILL
AND JAMIE LYNN HILL**

**Upon the Petition of
MICHAEL LEE HILL,**
Petitioner-Appellant,

**And Concerning
JAMIE LYNN HILL,**
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Michael Hill appeals the physical care provision of the parties' dissolution
decree. **AFFIRMED.**

Scott D. Fisher of Fisher Law Firm, P.L.C., West Des Moines, for
appellant.

Timothy M. Duffy of Timothy M. Duffy, P.C., and Patrick W. O'Bryan, Des
Moines, for appellee.

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

POTTERFIELD, J.

Michael Hill and Jamie Hill were married in June 2006. They have two children, a five-year-old boy and a two-year-old girl. Michael and Jamie separated in 2010. Both parents continued to live in Polk County and shared physical care of the children. In 2012 Jamie moved to Oakland, Iowa, in Pottawatomie County after losing her employment because she could live there rent-free in a house owned by her father. Michael then filed a petition for dissolution of their marriage.

Michael appeals only the physical care provision of his dissolution decree. We review actions involving the dissolution of marriage de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

We have fully reviewed the record. We find no reason to disagree with the trial court's findings of fact. As observed by the district court, both parties are loving and capable parents. Jamie has been the children's primary parental caregiver.¹ She is in a stable relationship and her schedule allows her to be available to the children. Michael works more than forty hours per week and recently moved in with a woman about whom the court was given little information. We affirm the award of physical care to Jamie without further opinion. See Iowa Ct. R. 21.26(a), (d), (e) (2013).

Jamie seeks an award of appellate attorney fees. Appellate attorney fees are not a matter of right, but rather rest in this court's discretion. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Factors to be considered in

¹ The district court recognized that Michael's mother was actively involved in the children's care while Jamie and Michael were working.

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 Geil*, 509 N.W.2d 738, 743 (Iowa 1993). Jamie was obligated to defend the district court’s decision, is unemployed, and her unemployment benefits were set to terminate in December 2012. Michael has greater income. We award Jamie \$1000 in appellate attorney fees.

Costs are assessed to Michael.

AFFIRMED.