

IN THE COURT OF APPEALS OF IOWA

No. 3-529 / 12-2144

Filed July 10, 2013

**IN RE THE MARRIAGE OF MARCUS R. ULFERTS
AND NICHOLE A. ULFERTS**

**Upon the Petition of
MARCUS R. ULFERTS,**
Petitioner-Appellee,

**And Concerning
NICHOLE A. ULFERTS,**
Respondent-Appellant.

Appeal from the Iowa District Court for Jones County, Ian K. Thornhill,
Judge.

In this dissolution action concerning Nichole and Marcus Ulferts, Nichole
appeals the district court's award of shared physical care of the parties' child.

AFFIRMED.

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West
Des Moines, for appellant.

Janette S. Voss of Remley, Willems, McQuillen & Voss, L.L.P., Anamosa,
for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DANILSON, J.

In this dissolution action concerning Nichole and Marcus Ulferts, Nichole appeals the district court's award of shared physical care of the parties' twenty-month-old child. Upon the strength of the trial court's observation of the demeanor of the parents and the evidence of the parties' ability to co-parent, we affirm.

The couple married on July 10, 2010, and had their son on November 8, 2010. They began to live together in December 2010. They separated in February 2011. A temporary order placed the child in Nichole's physical care, for the most part due to the fact that Nichole was the child's primary care giver and the couple had "actually lived together for, at most, six weeks," of their nine-month marriage.

Following the dissolution trial, the district court entered a decree dissolving the parties' marriage and ordering shared physical care of the child. The court found:

The Court finds joint physical care is in [the child]'s best interest. Both Marcus and Nichole are young parents with a lot to learn. They have both leaned on their families for help in raising [the child]. There is certainly nothing wrong with that. With the unplanned pregnancy, the quick wedding, and the maturity level of both parties at the time, stress and uncertainty certainly dominated both. With Nichole carrying the baby and being so close to her mother, it was logical that Nichole would lean on her throughout the process and beyond. Likewise, Marcus was faced with new responsibilities as a father and did not handle situations well at times. Nevertheless, both parties are [the child]'s parents, both parties love [the child] unconditionally, both parties have responsibilities to [the child], and both parties sincerely desire to be a major part of [the child]'s life. From observations in court, the Court believes that both parties are ready to step up and take on more responsibility as parents. This does not mean they should

reject the assistance being given by their families. Rather, the parties should take advantage of the assistance being provided to grow into better parents for [the child].

Nichole has some legitimate concerns about Marcus's ability to care for [the child] based upon past experiences. However, the Court believes Marcus has matured as a parent over the last two years. Moreover, like Nichole, the Court does not believe Marcus ever intentionally hurt [the child]. As [the child] grows older, both Marcus and Nichole will continue to make mistakes. This is true for all parents. They will continue to learn from these mistakes and become better parents.

One of Nichole's major concerns is the dangers of farm life. Farming is a dangerous occupation. However, from the evidence presented at trial, the Court finds Marcus is taking the necessary precautions in introducing [the child] to his family business in age appropriate ways. Being a farmer certainly does not disqualify Marcus as a physical care parent. Moreover, Marcus' mother is no less capable of providing daycare for [the child] than Nichole's mother just because Marcus' mother is also a farmer.

[The child] has two parents who love him and want to be engaged in his life. Maximizing his relationship with both parents, under the circumstances, is in his best interest. For this reason, the Court orders joint physical custody in this case.

Upon our de novo review, see *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006), and giving deference to the trial court, which is in a better position to assess the parties' demeanor and credibility, see *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998), we agree with the trial court's findings of fact and physical care award.

The trial court considered all relevant factors and legal principles in concluding that Marcus's request for shared care was in the child's best interests.¹ See Iowa Code § 598.41 (2011); see also *In re Marriage of Hansen*, 733 N.W.2d 683, 695-700 (Iowa 2007) (discussing *non-exclusive* list of factors to

¹ While the trial court did not cite to *Hansen*, it did cite other pertinent cases, which are not inconsistent with *Hansen*. Moreover, relevant factors were considered and no improper factors were cited.

consider in determining whether joint physical care is in child's best interests, including (1) continuity, stability, and approximation, (2) ability of the parents to communicate and show mutual respect, (3) degree of conflict, and (4) whether parents share agreement on their approach to parenting).

We acknowledge that prior to the parties living together, and then pursuant to the temporary order upon the parties' separation, Nichole was the primary care giver for the infant. However, that arrangement does not require an award of physical care to Nichole as this is but one factor to be considered—albeit an important factor—and the parties' unique living arrangements and young age of the child also played roles in that arrangement. The ultimate objective is to place the child in the environment most likely to bring them to healthy physical, mental, and social maturity. *Hansen*, 733 N.W.2d at 695.

Notwithstanding hostility between the families initially, Nichole acknowledges that the parties' "fighting subsided" after they separated and prior to trial, and further that the child "settled into" the parents' post-divorce lives. We conclude the degree of conflict that was evident during the couple's short-lived marriage is likely to continue to subside.

Nichole argues that the award of shared care requires that the parents "must always communicate and decide what is best for the child on nearly every aspect of [the child's] life" and "forces the parents who do not like each other to continually have to communicate." We would agree that divorced parents must transition from a warm relationship to a working relationship but this circumstance is not peculiar to a shared arrangement. Moreover, it is not just

shared care that requires communication, but parenting itself. Nichole and Marcus have demonstrated an ability to co-parent by passing a communication log back and forth as well as jointly discussing the method of potty training the child. In fact, each purchased matching potty trainers. They also formulated a plan that they each followed to address the child's stage of hitting others. We trust that the parties will settle into their post-divorce lives and do what is best for their child. Our review of the record indicates that the parties are able to sufficiently communicate in a joint physical care arrangement for the sake of their child.

We affirm the award of shared care as it is the arrangement most likely to maximize the child's time with both parents, which will in turn, support and strengthen the child's relationship with each parent—a relationship both parents acknowledge is important.

Costs are assessed to Nichole.

AFFIRMED.