IN THE COURT OF APPEALS OF IOWA

No. 6-509 / 06-0452
Filed August 9, 2006

UPON THE PETITION OF JUSTIN R. COATS,
Petitioner-Appellant,

And Concerning

ANN KLUVER,
Respondent-Appellee.

Appeal from the Iowa District Court for Sac County, Joel E. Swanson, Judge.

A father appeals the physical care provision of the district court's ruling. **AFFIRMED.**

James R. Van Dyke of Van Dyke & Werden, P.L.C., Carroll, for appellant.

David P. Jennett, Storm Lake, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Justin Coats and Ann Kluver are the unmarried parents of Riley Ann Coats, born in September 2005. Shortly after her birth, Coats petitioned for joint legal custody and joint physical care of Riley. *See* Iowa Code ch. 600B. The district court declined his request for joint physical care, electing instead to grant Kluver physical care of the child. Coats appealed.

A district court may award joint physical care when it is in the best interests of the child, but the court is not required to do so. *See* Iowa Code § 598.41(5) (2005).[1] As our court recently stated, "the statute's language following the 1997 amendment, as well as its language following the 2004 amendment, constitutes neither a ringing endorsement of joint physical care, nor a mandate for courts to grant joint physical care unless the best interest of the child requires a different physical care arrangement." *In re Marriage of Ellis,* 705 N.W.2d 96, 101-02 (Iowa Ct. App. 2005).

As a preliminary matter, Coats argues that the district court harbored a bias against joint physical care, especially in the case of unmarried parents. He points to an off-the-record discussion held in chambers prior to trial. Kluver counters that this issue was not preserved for our review. We agree.

Coats did not seek to have the statements placed on the record until after trial. At that point, Coats filed a "statement of proceedings when no report was

[1] Although the petition in this case was filed under Iowa Code chapter 600B, the criteria governing physical care determinations are the same for unmarried parents as they are for parents who are dissolving their marriage. Iowa Code § 600B.40; *Jacobson v. Gradin*, 490 N.W.2d 79, 80 (Iowa Ct. App. 1992); *Hodson v. Moore*, 464 N.W.2d 699, 700 (Iowa Ct. App. 1990). Therefore, we look to the custody standards set forth in Iowa Code chapter 598.

available," with an accompanying affidavit which attested to the discussion. *See* Iowa R. App. P. 6.10(3). Kluver filed objections to this statement. Under the pertinent rule, the statement and objections were to be "settled and approved" by the district court. Iowa R. App. P. 6.10(3). This did not happen. Therefore, error was not preserved.

We turn to the substance of the district court's ruling. The court cited several reasons for denying Coats's joint physical care request, including the absence of a relationship between the parents following their brief dating experience, Coats's lack of interest in the pregnancy and birth and lack of involvement in the child's medical care, and disputes about the child's care. The substance of the court's ruling is set forth below:

> Justin and Ann did not carry on a relationship for at least five months before the birth of their daughter. Justin provided no physical, emotional, or financial support during Ann's nine months of pregnancy. He elected not to be present at the birth of his daughter, provided no financial support for the birth or post-birth expense. No support was paid until he was required by Court Order to do so. Justin and Ann do not agree on the manner of raising a child, i.e. Riley's well-being. They do not agree on early childhood development, bonding of an infant, the importance of a schedule for feeding/sleeping, the brand of baby food, the size or type of diaper to be used. Some of these differences may appear insignificant but cooperation, understanding and agreement provide consistency in Riley's growth.
>
> Julie Perkins, M.D., is Riley's physician and her statement, as contained in the record, is that she has never met Justin. Justin is unfamiliar with Riley's medical history and has not participated in appointments with Riley's physician. Ann continues to be the primary source of Riley's health needs including doctor's appointments and dispensing medication.
>
> Justin currently has plans to marry someone other than Ann, which if his request was granted as to custody, would create an instant blended family and a new "parent" figure.

> Currently Riley is just 120 days old and is in early childhood development, which was a major emphasis in Ann Kluver's education. As a licensed and practicing teacher, Ann Kluver knows the needs and requirements for early childhood development. The current visitation schedule, combined with the work hours of both Justin and Ann, provide a difficult situation for this child to appropriately bond with anyone. As Riley develops, it would be important that she have some degree of stability and the appropriate opportunity to bond.
>
> * * *
>
> The Court has no question as to Justin Coats's desire to be a part of his daughter's life and to participate appropriately in her rearing. Given the current employment of both Justin and Ann, the educational background and understanding of the needs of a small child, future plans of both Justin and Ann, this Court is of the opinion that joint physical care would not be in the best interests of Riley Coats.

Coats argues that the problems the court cited were minor. He notes that he and Kluver were the same age, had approximately the same work schedules, and lived in the same town where they had lived all their lives, all factors that would militate in favor of a joint physical care arrangement.

On our de novo review, we acknowledge that these factors find support in the record. Coats and Kluver were twenty-three years old at the time of trial. Coats worked approximately forty hours a week as a plumber and Kluver worked about the same hours as a special education teacher. Both parents lived in Sac City.

We also acknowledge both parents actively parented young Riley. At the time of trial, Kluver lived with her parents, who provided daycare for Riley. Although she had recently purchased a home, there is no evidence the day care arrangement with her parents would change. When Riley was in Coats's care, he served as her primary caretaker during non-working hours. On occasion, he

left Riley with his mother or older sister. Disagreements concerning Riley's care primarily related to diaper size, food brands, and pacifier types.

While these factors weigh in favor of a joint physical care arrangement, there was also evidence that the frequent overnight exchanges that took place pursuant to a temporary physical care ruling were proving disruptive to five-month-old Riley's sleeping and eating patterns. In light of this evidence, we conclude the district court acted equitably in placing physical care of Riley with Kluver.

Our ruling does not mean that Coats must minimize his active involvement with the child. The district court's ruling approved "[w]hatever visitation schedule the parties may agree upon." This language allows Kluver to facilitate maximum contact between Coats and Riley.

AFFIRMED.