

IN THE COURT OF APPEALS OF IOWA

No. 6-988 / 06-0668
Filed February 14, 2007

Upon the Petition of
CAROLINE LUTER-FRENCH,
Petitioner-Appellee,

And Concerning
GEORGE HENDRED,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan,
Judge.

George Hendred appeals from the ruling on Caroline Luter-French's
petition to establish custody, physical care, child support, and visitation.

AFFIRMED.

Caroline Luter-French, Cedar Rapids, pro se.

Sheree L. Smith, Cedar Rapids, for appellant.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

George Hendred and Caroline Luter-French are the unmarried parents of Cair'ron, born in 2001, and Calaisha, born in 2003. The parents separated in 2005. Luter-French filed a petition to establish custody, physical care, child support, and visitation. Following trial, the court determined that "it would be in the long-term best interests of the minor children . . . that [Hendred and Luter-French] have joint physical care of the two minor children." Hendred has appealed this aspect of the court's ruling, contending he should have been awarded physical care of the children. He also argues that the court should have imputed additional income to Luter-French in calculating child support.

I. Physical Care

A district court may award joint physical care when it is in the best interests of the children. See Iowa Code § 598.41(5) (2005). The district court cited several reasons for granting joint physical care in this case. The court noted that a temporary joint physical care arrangement to which the parents stipulated had worked well for the parents. The court also stated that the parties cooperated and communicated well with each other and the children had thrived under the arrangement.

Hendred asserts that Luter-French has several parenting deficiencies. We do not have the benefit of a responsive brief from Luter-French. However, on our de novo review, we acknowledge his itemization of deficiencies finds support in the record. For example, Luter-French had an ongoing relationship with a person who was once convicted of distributing heroin. There was evidence that Luter-French traveled out of state to see him, leaving the children in the care of

relatives. There was also evidence that this person temporarily lived with Luter-French in Cedar Rapids. And, there was evidence that this person's brother, with whom Luter-French became acquainted, had a sex abuse conviction.

Despite this troubling evidence, certain witnesses testified the former heroin distributor had forsworn his past. As for the brother, Hendred admitted the man lived in Marshalltown and had limited contact with Luter-French. Additionally, Hendred presented no evidence that Luter-French allowed the children to spend time with him.

The record also reveals that Hendred was not without his own flaws. Luter-French testified that he had a strong temper. Hendred confirmed at least one physical altercation with Luter-French involving a telephone that was thrown at a window.¹

Despite these and other charges and counter charges, each parent admitted that the other loved the children. Luter-French testified “[George] loves his kids, without a doubt. He spends quite a bit of time with his kids. And right now with the separation I don't mind allowing him any time that he wants to see the kids.” She continued, “the days he has them now, he's not working. He's available to be at the school volunteering, doing anything he wants with the kids, full days.” She opined, “I believe that we both are good parents.” Similarly, Hendred testified:

Me and Caroline have learned to put our differences and our past aside for the sake of the kids. We've been getting along for at least a year. We definitely communicate really well. Things have been going really good.

¹ Luter-French also testified that Hendred struggled with gambling debts. Hendred responded that he rarely gambled after the birth of his children.

He continued, "I wanted to have shared custody of our kids. And since we're getting along so well over the last year, you know, I know it's going to work." Hendred was then asked what he meant by shared custody. He responded, "[s]hared physical care. 50 percent of the time the kids are with her. 50 percent of the time the kids are with me. That was all I asked for the last year and a half."²

Based on this testimony, we conclude the district court acted equitably in awarding the parents joint physical care. See *In re Marriage of Swenka*, 576 N.W.2d 615, 617 (Iowa Ct. App. 1998) ("If the parents of the children are able to cooperate and respect each other's parenting and lifestyles, a joint care arrangement can work.").

II. Child Support

Hendred agreed to pay Luter-French temporary child support of \$650 per month. Following trial, the court determined Hendred earned \$49,992 per year and Luter-French was unemployed. In calculating child support, the court imputed \$14,820 to her. This sum was apparently the amount of unemployment compensation Luter-French received after being laid off from a manufacturing job. Based on these findings, the court ordered Hendred to pay child support of \$697.27 per month.

On appeal, Hendred argues that the district court should have imputed \$24,900 of annual income to Luter-French, rather than \$14,820. See *In re Marriage of Salmon*, 519 N.W.2d 94, 97 (Iowa Ct. App. 1994) (finding it

² Hendred alternately asked for physical care.

appropriate to consider earning capacity rather than actual earnings in applying the uniform guidelines if to do so would promote justice between the parties). It appears from questions posed by Hendred's trial counsel that this figure came from evidence in another case involving these parents. There was also testimony that this was an amount Luter-French could earn with recent medical assistant training she received. However, Luter-French had yet to obtain her certification to work as a medical assistant, and she testified that the market was competitive and was unlikely to afford her the twelve dollars per hour wage on which the higher income figure was based. In light of this testimony, we conclude the district court acted equitably in imputing the lower income figure to Luter-French.

AFFIRMED.