

IN THE COURT OF APPEALS OF IOWA

No. 7-431 / 06-1489
Filed July 12, 2007

MIROSLAV PRANJKOVIC,
Petitioner-Appellant,

vs.

KHAMLA SAYCHAREUN,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

Miroslav Pranjkoivic appeals the district court's ruling establishing physical
care. **AFFIRMED.**

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

Katherine Spencer, Des Moines, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

Miroslav Pranjkovic (Miro) appeals the district court's ruling establishing physical care. He argues (1) he is the better parent, (2) the district court gave too little weight to the custody evaluator's opinions, and (3) the child's mother has not supported his relationship with the child. We affirm.

I. Background Facts and Proceedings

Miro and Khamla Saychareun (Khamla) are the parents of Annabel, born in July 2002. Miro and Khamla have never been married. A court order established Miro's paternity and ordered child support on April 20, 2004. Prior to that order, Miro had not paid any child support. He had, however, visited the child a few times a month since her birth. On the same day paternity was established and child support was ordered, Miro filed a petition requesting joint legal custody, physical care with Khamla, and visitation for himself. Following mediation, the parties stipulated they would have joint legal custody with Khamla having physical care. They could not, however, agree on other issues, including Miro's visitation. On January 5, 2006, Miro filed a motion to amend his petition, requesting physical care.

Prior to trial, Miro retained Dr. Tony Tatman to conduct a custody evaluation. Miro and Annabel participated in the evaluation. Khamla, however, refused. Miro requested the court to order Khamla to participate, but his request was denied. Dr. Tatman testified that Miro appeared to be a "fit father."

Following a trial, the district court awarded Khamla physical care and Miro visitation. Miro appeals, requesting physical care and a child support and visitation schedule for Khamla.

II. Standard of Review

We review de novo. Iowa R. App. P. 6.4. Though they do not bind us, we give weight to the district court's credibility findings. *Id.* 6.14(6)(g). The criteria governing our decision are the same whether or not the parties are married. *Petition of Purcell*, 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). Our primary consideration is the best interests of the child. *In re Marriage of Decker*, 666 N.W.2d 175, 177 (Iowa Ct. App. 2003).

III. Merits

In determining which parent should have physical care, we consider the factors enumerated in both Iowa Code section 598.41(3) (2005) and *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). Our goal is to “place the child[] in the environment most likely to bring [her] to health, both physically and mentally, and to social maturity.” *In re Marriage of Hansen*, ___ N.W.2d ___, ___ (Iowa 2007).

In this case, Miro argues he should be granted physical care because Khamla has failed to support his relationship with Annabel and Khamla lives and owns a house with her brother, who pleaded guilty to involuntary manslaughter in 2004. Annabel herself is healthy and well-adjusted. Miro admits he has a good relationship with her despite his limited visitation in her early years. Khamla's brother has a full-time job which keeps him away from home Monday through Friday. He has completed his probation and has no other criminal record. No evidence indicates he has been involved in any other violent behavior.

Both parents appear to be able to love and care for their daughter. Khamla, however, has been Annabel's primary caretaker throughout the child's

life. *Id.* at ___ (stressing the importance of continuing parents' regular caretaking responsibilities); *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974) (including "the effect on the child of continuing or disrupting an existing custodial status" as a factor for consideration). Miro took no financial responsibility for Annabel until ordered by the court to do so. Further, Miro initially agreed, per the parties' signed stipulation, physical care should remain with Khamla. Finally, Miro has failed to take advantage of some visitation awarded him. We conclude it is in the child's best interests to award Khamla physical care.

Khamla has requested appellate attorney fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Khamla's request for appellate attorney fees is denied. Costs of the appeal are taxed one-half to each party.

AFFIRMED.