IN THE COURT OF APPEALS OF IOWA

No. 7-692 / 06-1944
Filed November 29, 2007

**IN RE THE MARRIAGE OF MELISSA A. HITE
AND GREGORY D. HITE**

**Upon the Petition of
MELISSA A. HITE,**
Petitioner-Appellee,

**And Concerning
GREGORY D. HITE,**
Respondent-Appellant.

Appeal from the Iowa District Court for Clayton County, George Stigler, Judge.

Gregory Hite appeals from the district court's physical care award. **AFFIRMED AS MODIFIED AND REMANDED.**

Theodore Sporer and Maegan Lorentzen of Sporer & Ilic, P.C., Des Moines, for appellant.

John Carr of Carr & Carr Attorneys, Manchester, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Gregory and Melissa Hite married and had three children. After approximately ten years of marriage, Melissa petitioned for a dissolution. While the action was pending, the parents shared care of the children based on their work schedules. At trial, Gregory asked the district court to adopt the joint physical care arrangement they had voluntarily implemented. Melissa requested physical care of the children. Following trial, the district court awarded Melissa physical care. Gregory appeals.

As Gregory points out, the district court's decree does not include an explanation of why the joint physical care option was rejected as required under Iowa Code section 598.41(5)(a) (Supp. 2005). In fact, the district court found that "no such evidence exists here." Despite the absence of findings on this issue, the record is adequate to permit de novo review of whether joint physical care was in the children's best interests.

Joint physical care is:

> an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.

Iowa Code § 598.1(4). Joint physical care is a viable option if the parents are able to "cooperate and respect each other's parenting and lifestyles." *In re Marriage of Swenka*, 576 N.W.2d 615, 617 (Iowa Ct. App. 1998). We agree with Gregory that this is a paradigm case for joint physical care.

During the marriage, the parents lived in a house outside Strawberry Point that the two rented from Melissa's parents. After Gregory and Melissa separated, Gregory remained in the home and Melissa rented another place. Several months later, Melissa returned to the home with a boyfriend and Gregory moved to a "pole building" about thirty feet from the home.

Much of the testimony at trial related to the suitability of this building as a family home. On this question, the district court found, "[t]he feeling that the pole building is not a suitable residence for the children is not based upon concerns of safety or suitability, but rather upon aesthetics." We agree with this assessment.

The pole building was constructed to house equipment Gregory used for a part-time job. Gregory subsequently decided to make a home in the building and Melissa agreed he could stay there until their youngest child graduated from high school. While Melissa and her witnesses variously described the building as "a garage" or "shed," the record reveals that Gregory substantially remodeled the building to serve as more than a storage facility. He created an upstairs living space consisting of a 1200 square-foot "open loft" on one side and a 360 square-foot bedroom on the other that had a bunk bed and Gregory's king-sized bed. Gregory partitioned one area of the loft to serve as a bedroom for his oldest daughter. He also refitted a downstairs bathroom to make it "more accessible for younger kids." Although the bathroom was not fully constructed at the time of trial and Gregory conceded other work needed to be done in the loft area, he testified he could have it completed within two weeks of trial. His representations were supported by his proven abilities as a "handy-man" and his father's credentials as a certified electrician and welder. Based on this evidence, we

concur with the district court's finding that "[o]nce the necessary completions are made to the pole building, its living quarters will be similar to the living areas of any given loft."[1]

More importantly, we are convinced Gregory's choice to make the pole building his home rendered joint physical care an especially viable option. The children were within thirty feet of both parental homes and lived 500 yards from their maternal grandparents and uncle, all of whom assisted with transport and care. Although Gregory would have preferred to "live closer to" his workplace in Palo, he testified that he chose to remain in the area because "my children mean more to me than anything else." He also expressed a commitment to remaining there as long as his children attended the nearby all-grade school complex. The parents' proximity, therefore, facilitated a joint physical care arrangement.

The parents' high level of effective communication and respect for each other also favored a joint physical care arrangement. *See In re Marriage of Hynick*, 727 N.W.2d 575, 580 (Iowa 2007) ("The critical question in deciding whether joint physical care is . . . appropriate is whether the parties can communicate effectively on the myriad of issues that arise daily in the routine care of a child."). Melissa testified the children "adore[d]" their father and needed to have a relationship with him. She said she sometimes visited her youngest daughter when the child was in Gregory's care. Similarly, Gregory expressed no animosity toward Melissa or her new boyfriend. While he stated he had not

[1] We recognize that, before trial, a radiant heating system in the loft malfunctioned, damaging much of the building, and an electrical heater malfunctioned, filling the loft with smoke. However, Gregory testified to the manner in which he intended to resolve the heating problems and Melissa admitted her concerns about the building would be calmed if these problems were corrected.

wanted a divorce, he said he did not "have a problem with [Melissa's] boyfriend" and characterized him as "a really good guy." He went so far as to say that, on weekends, he tried to give Melissa and her boyfriend some privacy by taking the children to his parents' home.

The only issue on which the parents expressed some disagreement was how to allocate the children's expenses. Melissa asserted that "[t]he majority of the time I . . . pay for everything," including the kids' clothing, school supplies, school registration, school lunches, sports expenses, and daycare. However, Gregory testified he covered the children's health, dental and optical insurance, which cost him about $300 per month, as well as many of the children's uncovered medical expenses. Additionally, he said he was willing to reimburse Melissa for other expenses the children incurred. Finally, Melissa conceded Gregory's mother regularly purchased clothes for the children. We are not persuaded that these disagreements about child-related expenses precluded a joint physical care award. *See In re Marriage of Ellis*, 705 N.W.2d 96, 103 (Iowa 2005), *overruled on other grounds by In re Marriage of Hansen*, 733 N.W.2d 683 (Iowa 2007) ("[W]hen a marriage is being dissolved we would find excellent communication and cooperation to be the exception and certain failures in cooperation and communication not to be surprising.").

We turn to the parents' respective parenting abilities. *Hansen*, 733 N.W.2d at 684. Melissa suggested Gregory did not properly supervise the children on one or two occasions and did not adhere to a potty-training schedule for the youngest child. On our de novo review, we are not persuaded that Gregory placed the children's health or welfare in jeopardy on any of the

occasions cited by Melissa. As the district court found, "[b]oth parents would make ideal placement parents."

This brings us to the question of whether one parent served as primary caretaker of the children during the marriage and should receive some preference in the physical care determination as a result. *Id.* at 697. There is scant evidence that either parent assumed this role. Although Melissa testified she was the children's "scheduler," she conceded that Gregory "follow[ed] through" with her directions on where and when to take the children. This factor does not weigh in favor of either parent.

In the end, the record reveals two loving and capable parents who placed the children's needs first and successfully implemented a joint physical care arrangement for several months prior to trial. We conclude joint physical care was in the children's best interests.

We modify the decree to provide that the parents shall exercise joint physical care of the children. We remand for reconsideration of child support in light of this opinion. Costs are taxed to Melissa.

AFFIRMED AS MODIFIED AND REMANDED.