

**IN THE COURT OF APPEALS OF IOWA**

No. 8-607 / 07-1821  
Filed October 1, 2008

**COREY JOE JACOBSON,**  
Petitioner-Appellant,

**vs.**

**JESSICA B. DANIELSON,**  
Defendant-Appellee.

---

Appeal from the Iowa District Court for Howard County, John C. Bauercamper, Judge.

Corey Jacobson appeals a district court ruling on his petition to establish paternity, custody, physical care, and child support. **AFFIRMED.**

Kevin E. Schoeberl of Story & Schoeberl Law Firm, Cresco, for appellant.  
James Burns of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

**MILLER, J.**

Corey Jacobson appeals a district court ruling on his petition to establish paternity, custody, physical care, and child support. He contends the court erred in placing physical care of the parties' child with her mother, Jessica Danielson. Jessica seeks an award of appellate attorney fees. We affirm.

Corey and Jessica are the parents of Carli, born in March 2006. At the time of trial Corey was twenty years of age and Jessica was nineteen. The parties lived together for a period of time before and after Carli's birth, but were never married. Paternity is not disputed. Following their separation, in approximately June of 2006, Jessica moved back in with her parents and Corey moved to a different location. At the time of trial they had been separated for just over one year.

At the time of trial Corey was living with his grandparents and working at a hardware store on a nearly full-time basis earning seven dollars per hour. His employment history has been somewhat sporadic. Corey never completed high school and has not pursued any further education or vocational training. He also does farm work for his grandparents without pay to compensate them for their contributions to his support. Corey's sixty-nine year old grandmother provides day care for Carli when she is in Corey's care and he is at work, and also performs all of the household chores for Corey and Carli, including meal preparation and laundry. She also provides transportation for exchanges of Carli between Carli's parents. At the time of trial Corey was dating a seventeen-year-old high school student who assists him with providing care for Carli when Carli is

in his care. Shortly before trial Corey ended a relationship with an eighteen-year-old girlfriend who was apparently pregnant and has named Corey as the father of her child. Corey did attend a Children in the Middle Program.

Jessica is a high school graduate and at the time of trial was working at K-Mart approximately thirty to thirty-two hours per week earning \$6.20 per hour. She has been employed on a fairly consistent basis, both during and after high school. After the parties' separation Jessica first lived with her parents, then with her friend Joey for two months, and then in approximately July 2007 moved into a mobile home with her eighteen-year-old boyfriend, Nathan, in Mason City. Nathan purchased the mobile home with money he inherited from his father's estate. Jessica does the majority of the household chores at the mobile home, including times when Carli is in her care. Nathan has pending felony drug charges and has a history of substance abuse. However, Jessica testified he was not using drugs at the time of trial, he was working at a pizza place approximately thirty hours a week, he was attending an alternative high school, and he was participating in substance abuse counseling.

After their separation the parties shared physical care of Carli, alternating care on a weekly basis. The district court found that Jessica had been Carli's primary caretaker until their shared care arrangement began in approximately March of 2007. In making this determination the court noted that Jessica had arranged for Carli's medical care as well as participation in WIC, Title 19, and other appropriate public assistance programs to assist herself and Carli.

Marcia Bannister, a HAWC Empowerment family worker, testified at trial that she had worked with Jessica and Carli on almost a monthly basis from the time of Carli's birth until Jessica moved to Mason City. Bannister stated that she worked primarily with Jessica, only seeing Corey on a few occasions and only having brief interactions with him. She was complimentary of many of the characteristics that Jessica brought to motherhood and testified that Jessica had done a lot of growing up in the year she had worked with her. She was especially impressed by the fact Jessica had taken the initiative to sign up for the WIC and Title 19 programs and have them in place immediately upon her move to Mason City. Bannister opined that Jessica would do a good and adequate job as Carli's primary caretaker.

Corey notes, and the record demonstrates, that Jessica's contact with Carli decreased significantly for approximately a month and a half to two months beginning in late December 2006. Corey then became the primary caretaker of Carli for that period of time. The testimony is conflicting as to why this occurred. Corey alleges Jessica had no interest in seeing Carli and would only come to see her periodically for an hour or so at a time. Jessica claims she wanted to see Carli and have visitation with her, but Corey refused to let her take Carli and allowed her only brief contact with her. Carli's stepfather testified there was "probably a little of both" of these problems going on. He stated that Jessica did have postpartum depression during this time period. However, he further testified Corey was also upset at that time because Jessica did not get back together with him when he asked her to around Christmas, implying Corey

probably kept Carli from Jessica and her family due to Jessica's refusal to renew her relationship with him.

Corey filed his petition to establish custody, physical care, visitation, and support in February 2007. Jessica then employed an attorney to represent her. Through their attorneys the parties were able to reach an agreement and by March 2007 they had resumed the alternating weekly care arrangement. This arrangement continued from March 2007 until the time of trial in August 2007.

The district court concluded both parents are capable of caring for Carli and awarded them joint legal custody. It went on to conclude,

Although neither parent has shown exceptional maturity [or] stability, [Jessica] has been the child's primary caretaker for most of her life and has shown the strongest commitment to the role of caretaker. Therefore, the court concludes that it is in the child's best interest to place her in [Jessica's] primary care. Extensive visitation should be granted.

Corey appeals, contending the district court erred in placing physical care of Carli with Jessica.

In this equity case our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). "Prior cases have little precedential value, except to provide a framework

for analysis, and we must base our decision on the particular facts and circumstances before us.” *Id.*

The criteria governing physical care determinations are the same whether the parents are dissolving their marriage or have never been married to each other. *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). Carli’s best interests are paramount in making a physical care determination and the objective is to place her “in the environment most likely to bring her to healthy physical, mental, and social maturity.” *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995). The court considers several factors in determining what custody arrangement is in the long-term best interests of the child. See Iowa Code 598.41(3) (2007); *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997). Although not controlling, due consideration should be given to the fact one parent has been the historical primary caregiver during the marriage. *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa Ct. App. 1996). Greater primary care experience is one of the many factors the court considers in making physical care determinations, but it does not ensure an award of physical care. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996).

We, like the district court, conclude that neither parent here has shown exceptional maturity or stability. However, we find Jessica is further along the path to maturity and stability and agree with the court that she has shown the stronger commitment to the role of primary caretaker. With the exception of the approximately two-month period discussed above, it appears from the record that

Jessica has been Carli's primary caretaker the majority of her life. We do not dismiss the role Corey has taken in caring for Carli. Considering their ages and circumstances we believe that both parties have done well in taking on their parenting responsibilities and we commend them both for that. However, we believe that Jessica's character and level of maturity is more suitable for the role of primary caretaker at this point in time.

In addressing why Corey apparently became Carli's primary caretaker for approximately two months beginning in late December 2006, we find it was most likely the result of acts or omissions by both parties. It appears that Jessica was suffering from postpartum depression at that time, for which we note she properly sought medical help. Her temporary depression may have affected her desire to then care for Carli. However, it also appears Corey was withholding Carli from both Jessica and her family during that time period. Jessica's step-father testified he and his wife tried numerous times to get in touch with Corey, both by telephone and by physically going to his residence, in an attempt to see Carli but Corey was hostile and would not allow them to see her. It was not until the parties retained counsel that an agreement was reached and Jessica was once again able to have Carli during alternating weeks.

In addition, we believe Corey is currently somewhat more dependent on adult family members both for his and Carli's day-to-day basic needs than is Jessica. He is living with his grandparents and depends on his grandmother for cooking, cleaning, laundry, and other services. When Carli was in Corey's care, his grandmother did all of the day-to-day household chores for Corey and Carli,

transported Carli to and from her times with Jessica, and did the majority of the communicating with Jessica concerning Carli. By contrast, Jessica is currently living on her own with her boyfriend in a mobile home he owns and she herself performs all necessary household and homemaking chores. We note again that Jessica took the initiative to apply for and participate in various appropriate public services and programs to assist herself and Carli. Jessica also actively participated in all of the services offered by HAWC, including at times initiating calls to Bannister when she had questions or concerns, and made a great deal of progress and did a lot of maturing in the period of about a year that she utilized these services. It appears that Corey did not participate in those services or take as much interest in utilizing them as Jessica did. We note that Jessica's boyfriend's past use of illegal drugs and criminal behavior is somewhat troubling. However, it appears that at the time of trial he was not using drugs and had adopted a more responsible, mature lifestyle. He was participating in substance abuse counseling, had a job, was attending an alternative school, and was buying his own mobile home.

Both Jessica and Corey appear to be dedicated to the nurturing and upbringing of Carli. Both parents appear capable of adequately caring for her. However, upon our de novo review of the evidence we agree with the trial court that Carli's best interest will be best served by placing her physical care with Jessica. We recognize this is a close case. We give weight and careful consideration in close custody disputes to the trial court's findings. *See In re*

*Marriage of Wilson*, 532 N.W.2d 493, 495-96 (Iowa Ct. App. 1995) (citing *In re Marriage of McDowell*, 244 N.W.2d 238, 239 (Iowa 1976)).

We note the fact that Corey will not be Carli's primary caretaker does not mean Carli will no longer enjoy the benefits of extensive contact with her father. The visitation ordered by the court was extensive, and as Carli's joint custodian Corey has the right to continuing physical and emotional contact with her and is entitled to share in the rights and responsibilities of raising her. *Kunkel*, 555 N.W.2d at 254.

Jessica seeks an award of appellate attorney fees from Corey. Appellate attorney fees are not a matter of right, but rather rest in the appellate court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). We consider the needs of a party seeking an award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* Applying these factors to the circumstances in this case, we award Jessica \$750 in appellate attorney fees.

**AFFIRMED.**