IN THE COURT OF APPEALS OF IOWA

No. 8-829 / 08-0060
Filed December 31, 2008

Upon the Petition of
KURTIS E. GLENN,
Petitioner-Appellee,

And Concerning
LINDSAY J. REYNOLDS,
Respondent-Appellant.

Appeal from the Iowa District Court for Mahaska County, Daniel P. Wilson, Judge.

A mother appeals from a district court ruling placing physical care of her minor child with the child's father. **AFFIRMED.**

Steven E. Goodlow, Albia, for appellant.

Victoria R. Siegel, Ottumwa, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Lindsay Reynolds appeals from a district court ruling placing physical care of her minor child with the child's father, Kurtis Glenn. We affirm the judgment of the district court.

I. Background Facts and Proceedings.

Lindsay Reynolds and Kurtis Glenn are the parents of Kaitlynn, born in November 2006. The parties were never married. Kurtis filed a petition in February 2007 seeking joint legal custody and physical care of Kaitlynn.

The district court entered a temporary order in July 2007 placing Kaitlynn in the parties' joint legal custody and in Lindsay's physical care. Shortly thereafter, the State filed a petition alleging Kaitlynn was a child in need of assistance (CINA) due to Lindsay's "history of psychiatric problems" and failure to adequately supervise Kaitlynn. The petition asserted that Lindsay left Kaitlynn alone in her apartment while she was engaged in a fight with another resident of her apartment complex. Lindsay was arrested and charged with disorderly conduct as a result of that incident. An assessment investigating the incident resulted in a founded child abuse report based in part on allegations that Lindsay had left Kaitlynn alone on numerous other occasions.

Kaitlynn was adjudicated a CINA in September 2007.[1] The juvenile court found Lindsay "has a history of mental illness resulting in her inability to care for her child." The court granted concurrent jurisdiction to the district court for litigation of "issues relating to the custody and placement" of Kaitlynn. A trial on

[1] We note that Lindsay filed a notice of appeal from this ruling on September 20, 2007.

Kurtis's petition seeking joint legal custody and physical care of Kaitlynn was subsequently held in October 2007.

At the time of the trial, Kurtis was twenty-four years old and employed full-time at Pella Corporation where he works the night shift from 4:30 p.m. until 3:00 a.m. He is very close to his parents and lives near them in a two bedroom house with a room for Kaitlynn. His mother is available and willing to care for Kaitlynn while Kurtis works at night.

Lindsay was twenty-four years old at the time of the trial and employed part-time as a waitress. She lives in an apartment, the exact address of which she refused to reveal during the CINA proceedings in order to "avoid harassment" from the police. She denied having any mental health issues at the trial on Kurtis's petition, stating she instead believes she is "under a lot of stress." She did admit, however, to being hospitalized "maybe twice for crying too much. At a bad time in my life. Years ago." Lindsay's other daughter from a prior relationship, MacKenzie,[2] was placed in the guardianship of Lindsay's mother in prior CINA proceedings.

Kurtis and Lindsay began dating in October 2005. They resided with one another from December 2005 until January 2006. Kurtis testified that he ended his relationship with Lindsay because she was "very emotional and she had ups and downs that were pretty erratic. She was very needy in her showing of getting attention and small things . . . set her off." While she was pregnant with Kaitlynn, a "hysterical" Lindsay called Kurtis and threatened to commit suicide.

[2] Lindsay's first child's name is spelled as both "Makenzie" and "McKenzie" in the district court record. However, it appears from Lindsay's brief that the correct spelling is "MacKenzie." We will therefore use that spelling in our opinion.

Kurtis testified that after Kaitlynn was born, Lindsay called him on several occasions because she was "upset" and "couldn't handle things." She reported at one point that she was "so tired that she is unable to care for the child." Kurtis filed his petition seeking joint legal custody and physical care of Kaitlynn soon after she was born.

Following the trial, the district court entered an order placing Kaitlynn in the parties' joint legal custody and in Kurtis's physical care. Lindsay appeals, claiming the court erred in placing Kaitlynn in Kurtis's physical care.

II. Scope and Standards of Review.

Our review of the district court's order regarding custody and visitation in this equity matter is de novo. Iowa R. App. P. 6.4; *Callender v. Skiles*, 623 N.W.2d 852, 854 (Iowa 2001). Although not bound by the court's fact findings, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. 6.14(6)(*g*).

III. Discussion.

"When considering the issue of physical care, the child's best interest is the overriding consideration." *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). We are guided by the factors set forth in Iowa Code section 598.41(3) (2007) as well as those identified in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). *See Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994) (noting these criteria apply regardless of parents' marital status). Among the factors to be considered are whether each parent would be a suitable custodian for the child, whether both parents have actively cared for the

child before and since the separation, the nature of each proposed environment, and the effect on the child of continuing or disrupting an existing custodial status. *See* Iowa Code § 598.41(3); *Winter*, 223 N.W.2d at 166-67. The ultimate objective is to place Kaitlynn in the environment most likely to bring her to healthy physical, mental, and social maturity. *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007). With these principles in mind, we find the district court was correct in placing Kaitlynn's physical care with Kurtis.

Lindsay argues the district court did not properly consider the evidence of her role as the primary caretaker of Kaitlynn. However, while "stability and continuity of caregiving are important factors that must be considered in custody and care decisions," there may be circumstances such as those present in this case that outweigh these factors. *Id.* at 696-97.

The evidence presented at the trial establishes that Kaitlynn has been exposed to risk of serious injury on multiple occasions while she was in Lindsay's care. Lindsay left Kaitlynn alone and unsupervised "numerous times" while she was an infant. One such occasion resulted in Lindsay's arrest for disorderly conduct after she provoked a physical altercation with another resident of her apartment complex. Lindsay also failed to keep doctors' appointments for Kaitlynn, who suffered from jaundice, after she was born. She admitted to difficulty in caring for Kaitlynn, informing a representative from the Iowa Department of Human Services (DHS) that "it is hard for her to care for Kaitlynn when she gets up in the morning, because she is so weak that she cannot lift her

arms." Lindsay has contacted Kurtis on several occasions, sometimes in the middle of the night, for his assistance in caring for Kaitlynn.

Lindsay's unresolved mental health issues are also concerning. Although she was participating in counseling at the time of the trial, she denied having any mental health issues and minimized her past mental health hospitalizations, testifying she was hospitalized "maybe twice for crying too much." During the juvenile court proceedings, Lindsay admitted to making "approximately twenty reports . . . to the local police department in which the police determined that no action was necessary." She refused to reveal her address at a juvenile court hearing because she thought the "assistant county attorney would tell the police where [she] was living, and the police would be at [her] apartment all the time harassing her." She also refused to inform Kurtis of her address and occasionally denied him and his family contact with Kaitlynn. *See In re Marriage of Will*, 489 N.W.2d 394, 399 (Iowa 1992) (stating the denial by one parent of the child's opportunity to have meaningful contact with the other parent is a significant factor in determining a physical care arrangement); *see also* Iowa Code § 598.41(1)(a).

The district court found Lindsay's "mental health status, her volatility in dealing with others, [and] her attention-seeking behavior" militates against placing Kaitlynn in her physical care. The court further found that "Kurtis will provide the more stable home and environment within which Kaitlynn will be raised" as demonstrated by his "stability in his community, school, . . . church"

and job. Our de novo review of the record reveals no reason to disturb these findings in light of the evidence highlighted above.

We reject Lindsay's argument that the district court erred in separating Kaitlynn from her half-sister, MacKenzie. Our supreme court has "expressed a strong interest in keeping children of broken homes together." *In re Marriage of Orte*, 389 N.W.2d 373, 374 (Iowa 1986). However, MacKenzie is in the care and guardianship of Lindsay's mother and has not resided with Lindsay since before Kaitlynn was born. *See Will*, 489 N.W.2d at 398 (stating the separation of siblings is generally opposed "because it deprives children of the benefit of constant association with one another"). Furthermore, the presumption that siblings should not be separated is "not ironclad . . . and circumstances may arise which demonstrate that separation may better promote the long-range interests of children." *Id.* We believe such circumstances exist in this case.

While we do not doubt that Lindsay sincerely loves Kaitlynn, we find Kaitlynn's best interests will be better served by placing her in Kurtis's physical care. She will be more likely to reach healthy physical, emotional, and social maturity in his care given Lindsay's unresolved mental health issues and demonstrated difficulty in providing a safe and stable home for her. The judgment of the district court is accordingly affirmed.

AFFIRMED.