

IN THE COURT OF APPEALS OF IOWA

No. 8-949 / 08-1010
Filed February 4, 2009

CHAD HUNTER,
Petitioner-Appellee,

vs.

MEGAN MCNAMARA,
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Michael J. Moon,
Judge.

Megan McNamara appeals from the district court's custody order granting
Chad Hunter physical care of their daughter. **AFFIRMED.**

Diane Dornburg of Carney & Appleby, P.L.C., Des Moines, for appellant.
Norma Meade of Moore, McKibben, Goodman, Lorenz & Ellefson, L.L.P.,
Marshalltown, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

Megan McNamara appeals from the district court's custody order granting Chad Hunter physical care of their daughter, Madison. She contends the order is not supported by the record and is not in the best interests of the child. We affirm.

I. Background Facts and Proceedings

Chad and Megan are the parents of Madison, born in August 2003. Although never married, the couple lived together periodically from May 2003 until their final separation in May 2004. At that time, Megan and Madison moved in with her parents, and Chad moved into his grandparents' house. Madison lived with Megan until January 2006, with Chad visiting her multiple times per week. In January 2006, Chad requested an alternating week visitation schedule, and Megan agreed. This arrangement continued for approximately two years and three months, until March 2007, when Megan informed Chad that she was planning to move to Cedar Rapids and would like to change the visitation schedule.¹ That announcement put a strain on Chad and Megan's relationship, as each struggled to keep Madison's best interests paramount, yet protect their individual relationships with her. In September 2007, Chad filed a petition for custody determination of Madison.

In November 2007, a temporary custody order granted Chad and Megan joint legal custody and shared physical care, similar to what Chad and Megan had informally established in January 2006. Each Friday, Madison's physical care switched from one parent to the other, while Chad and Megan shared

¹ Cedar Rapids is approximately sixty-five miles from Marshalltown.

equally in her expenses. In April 2008, after a trial on the matter, a district court judge granted joint legal custody to Chad and Megan, with Chad having physical care of Madison, and granting Megan reasonable and liberal visitation. Megan appeals, asserting the district court erred as: (1) she was Madison's primary caregiver; (2) she can provide Madison with more stability; and (3) she is more supportive of Madison's relationship with Chad than Chad is of Megan's relationship with Madison.

II. Standard of Review

We review child custody orders de novo. Iowa R. App. P. 6.4. However, we recognize that the district court was able to listen to and observe the parties and witnesses. *In re Marriage of Zebecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). Our overriding consideration is the best interests of the child. Iowa R. App. P. 6.14(6)(o); *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007) (stating that in determining whether to award joint physical care or physical care with one parent, the best interests of the child remain the principal consideration).

III. Physical Care

The ultimate objective of a physical care determination is to place the child in the environment most likely to bring her to healthy physical, mental, and social maturity. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). As each family is unique, the decision is primarily based on the particular circumstances of each case. *Hansen*, 733 N.W.2d at 699.

Evidence introduced at trial demonstrates that both Chad and Megan have been active parents in Madison's life. Although Megan claims to have been Madison's primary caregiver, the record clearly reveals that Chad has been a shared-care parent for a substantial amount of time. In addition, both parties have supported the other's relationship with Madison. They have generally agreed on their approach to day-to-day parenting and have historically been able to cooperate and work together in raising a happy, well-adjusted child. Madison seems to have adapted and flourished under the shared physical care arrangement. The district court was faced with the fortunate situation of having to make a decision as between two competent and loving parents, each of whom had demonstrated an excellent ability of providing for Madison's care.

In addition, both parents have been able to structure their work schedules in a way that assures Madison's needs come first. However, at the time of trial, Megan was pregnant with twins and planned to move to Cedar Rapids, where her fiancée, Josh, lives. As both Megan and Chad are from Marshalltown, and have extended family in the area, such a move would place a distance between Madison and the non-physical care parent. We, like the district court, believe it is in Madison's best interests to place her in the situation which will preserve the greatest amount of stability. *Id.* at 696-97. The district court discussed both emotional stability as well as physical stability. *See In re Marriage of Williams*, 589 N.W.2d 759, 762 (Iowa Ct. App. 1998). Recognizing Madison's close bond with both parents and hence her emotional stability in the care of either parent, the district court then considered the effect of moving Madison from Marshalltown to Cedar Rapids. In Marshalltown, Madison is surrounded by grandparents,

aunts, uncles, and friends. Megan's family in particular has been an integral part of Madison's life. She is well adjusted in her school, day-care, and home routines. In this case where both parents agree that the other is a capable, loving parent, each of whom provides emotional stability, we concur with the district court that it is in Madison's best interests to allow her to "stay in the community where she has a solid base, familiar surroundings, friends and loving extended family members."

We conclude that the district court's factual findings were fully supported by the record. Further, the district court's ruling reflects it carefully considered and weighed the appropriate factors in determining the physical care award. Iowa Code § 598.41(3) (2007); *Hansen*, 733 N.W.2d at 696-99. Therefore, we affirm the district court's decision. We decline to award any attorney's fees on appeal. Costs are assessed to Megan.

AFFIRMED.