

IN THE COURT OF APPEALS OF IOWA

No. 9-350 / 08-1882
Filed June 17, 2009

**IN RE THE MARRIAGE OF REBECCA
JUNE KIA VANDERHOLM
AND PAUL GEORGE VANDERHOLM**

**Upon the Petition of
REBECCA JUNE KIA VANDERHOLM,**
Petitioner-Appellee,

**And Concerning
PAUL GEORGE VANDERHOLM,**
Respondent-Appellant.

Appeal from the Iowa District Court for Montgomery County, J.C. Irvin,
Judge.

A father appeals from the district court's decree that awarded physical
care of the children to their mother. **AFFIRMED.**

Jay W. Mez of Law Office of Jay W. Mez, Council Bluffs, for appellant.

Michael J. Winter, Council Bluffs, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

Paul and Rebecca Vanderholm married on June 3, 1995. Three children were born during the marriage. The children were ages eleven, nine, and three at the time of trial. Paul and Rebecca separated in August of 2007. Rebecca filed a petition for dissolution on January 7, 2008.

Both parents agreed to share joint legal custody of the children. Paul requested an award of joint physical care, but Rebecca sought physical care of the children. After trial, the district court awarded Rebecca physical care of the children. Paul appeals, arguing the district court erred in granting physical care of the children to Rebecca without making specific findings of fact and conclusions of law regarding why an award of joint physical care would not be in the best interests of the children.

II. Standard of Review

Our standard of review in this equitable proceeding is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999). We give weight to the district court's findings of fact, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Joint Physical Care

Paul asserts the district court failed to make specific findings as to why joint physical care was not in the children's best interests. Joint physical care is

an award of physical care of a child to both parents. Iowa Code § 598.1(4) (2007). Iowa Code section 598.41(5)(a) provides:

If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child.

Our supreme court recently devised a nonexclusive list of factors to be considered when determining whether a joint physical care arrangement is in the best interests of the children.

The factors are (1) “approximation”-what has been the historical care giving arrangement for the child between the two parties; (2) the ability of the spouses to communicate and show mutual respect; (3) the degree of conflict between the parents; and (4) “the degree to which the parents are in general agreement about their approach to daily matters.”

In re Marriage of Berning, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007) (quoting *In re Marriage of Hansen*, 745 N.W.2d 683, 697-99 (Iowa 2007)).

Because the district court did not award joint physical care, it is required to “specifically explain why joint physical care is not in the children’s best interest.” *In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007). The district court made the required specific findings of fact and conclusions of law. The district court considered testimony regarding Paul’s controlling behavior, citing three specific concerning incidents. The district court also discussed Paul’s inflexibility and lack of cooperation concerning care of the children under the temporary order. The district court stated that considering the parties’ schedules, the only way joint care could be accomplished would be if the parties agreed to cooperate with one another, but Paul had not demonstrated such cooperation in the past.

For these reasons, the district court determined the best interests of the children would be served by placing their physical care with Rebecca. We conclude that the district court properly made the required specific findings of fact and conclusions of law explaining why joint physical care was not in the children's best interests.

On our de novo review, we also agree with the district court that Paul demonstrated an inability to communicate effectively with Rebecca and a lack of respect for her. Paul's suspicion of Rebecca and his covert surveillance of her created a degree of conflict that is not conducive to shared physical care. Although Paul historically was an active parent of the children, his actions at the end of the marriage make shared physical care unworkable. For these reasons, we agree that the best interests of the children are supported by the award of physical care to Rebecca.

IV. Appellate Attorney Fees

Rebecca filed an application for attorney fees on March 13, 2009, requesting that Paul pay her appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's sound discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). The court considers the needs of the party making the request, the ability of the other party to pay, and whether the party making the request is obligated to defend the trial court's decision on appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). Applying these factors to the circumstances in this case, we award Rebecca \$1000 in appellate attorney fees.

AFFIRMED.