

IN THE COURT OF APPEALS OF IOWA

No. 9-750 / 08-2004
Filed October 21, 2009

ANDY QUANGVAN,
Petitioner-Appellant,

vs.

DANIELLE DAWN REID,
Respondent-Appellee.

Appeal from the Iowa District Court for Muscatine County, Nancy S. Tabor, Judge.

A father appeals from the district court order granting physical care of the parties' child to the mother. **AFFIRMED.**

Chad Thomas of Thomas Law Office, West Liberty, for appellant.

Caitlin Slessor of Nazette, Marnier, Nathanson & Shea, L.L.P., Cedar Rapids, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MANSFIELD, J.

Andy Quangvan appeals the district court order awarding Danielle Reid physical care of their son, Nathan. Andy asserts that he should have been granted physical care because he is better suited to provide for the long-term best interests of Nathan. We affirm.

I. Facts and Prior Proceedings

Andy and Danielle are the parents of Nathan, born March 2006. At the time of Nathan's birth, Andy was twenty-one years old and Danielle was seventeen years old.

During the pregnancy, Andy and Danielle decided to move into an apartment together in Coralville. But, by October 2006, financial concerns forced the couple to move in with Andy's parents in Nichols, in Muscatine County. The parties admitted that while they lived together they argued a lot. Danielle also alleged there were occasions when Andy shoved her or slapped her, allegations that were denied by Andy. In addition, while the parties lived with Nathan's parents, tensions increased between Danielle and Andy's mother because Danielle felt she was very controlling with Nathan's care and often overstepped her boundaries.

In January 2007, a combination of the parties' constant arguing and the frustration with the living arrangements resulted in Danielle taking Nathan and moving to Des Moines to live with Danielle's father. For the next month, Nathan spent weekdays with Danielle in Des Moines and weekends with Andy in Nichols.

By March 2007, Danielle was having difficulty caring for Nathan. At the time, she was unemployed and struggling to find work because she was unable

to obtain daycare or transportation. Therefore, Danielle requested Andy's help by having Nathan live with him during the week and with Danielle on weekends.

This loose arrangement worked for the parties until November 2007, when Danielle began working at a daycare center. At this time, Danielle wanted to have Nathan during the week so she could enroll him at the daycare center at which she was employed. By the end of 2007, the parties were alternating care for Nathan on a weekly basis.

On January 23, 2008, Andy filed a petition for child custody and support. On February 29, 2008, a temporary custody hearing was held, and it was determined that the parties would continue to alternate weekly care while the case was pending.

The custody case proceeded to trial on November 4, 2008. Both parties testified to their abilities as parents, pointing to both their positive attributes while raising concerns of the other.

At trial, Andy emphasized his stability. He testified that he has been employed as a PC technician at ACT, Inc. in Iowa City for the last two years and he was in a stable living environment with his parents. Andy also stated that he is taking classes online so he can increase his marketability to employers while not detracting from his time with Nathan. Andy also acknowledged the help that he has received from his family in raising Nathan, and stressed the importance of keeping Nathan aware and exposed to his Thai heritage.

Andy expressed several concerns about Danielle's instability. He pointed out that since Danielle had moved to Des Moines, she worked for four different employers and had lived in three different residences. He also emphasized the

fact that Danielle had recently been charged with operating while intoxicated¹ and had only recently quit smoking.

Danielle acknowledged her employment history, but testified that her decisions were made to improve her ability to provide for herself and Nathan through better pay, benefits, and opportunities for advancement. She also testified that she is currently in a stable position working for Aerotek temp agency. As of the time of trial, she had been working there over four months. Danielle also stated that she has a stable living environment with her father and that her family also helps in Nathan's care. Danielle further stated that she had quit smoking and drinking.

Danielle raised concerns about Andy. She asserted that Andy was not the primary caregiver when they were together and often spent more time playing computer games than focusing on their relationship. She also asserted that since moving in with his parents, Andy's mother, not Andy, provided most of Nathan's daily care. As a result, Nathan began referring to Andy's mother as "momma." Andy and his mother acknowledged that this has occurred, but dismissed it as Nathan simply struggling with saying his g's. Danielle testified that she supported Nathan's exposure to his Thai heritage and tried to encourage his development of the Thai language. However, she was concerned because Nathan was babysat during the day by Andy's grandmother who could only speak Thai. This caused Nathan to be behind in his development of the English

¹ Danielle had a .12 blood alcohol level. It was anticipated that she would receive a deferred judgment for this offense, which did not occur while Nathan was in her care.

language.² Danielle also complained that, despite her efforts, Andy refused to communicate with her at transfers and did not keep her informed about Nathan's medical care.

The district court found that "both parents are extremely bonded to the child, both parents have good qualities, and both parents are able to meet the child's physical and emotional needs." Nonetheless, the district court determined Danielle "would be in the best position to provide the future long-term care for [Nathan]" and awarded her physical care. Andy has appealed this determination.³

II. Scope and Standard of Review

We review child custody determinations 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 principal consideration is the best interests of the child. *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007).

III. Analysis

This is a case that has to be called a ball or a strike. The parents live three hours apart, and only one of them can be granted physical care of Nathan.

² This problem has subsequently been resolved, and Nathan is now conversant in both Thai and English.

³ The district court also awarded joint legal custody and set visitation and child support. Andy has not challenged these determinations on appeal.

Andy asserts that he should have been that person. In making a physical care determination, the district court is guided by the factors enumerated in Iowa Code section 598.41(3) (2007),⁴ as well as factors set forth in *In re Marriage of Winter*, 233 N.W.2d 165, 166-67 (Iowa 1974). *Id.* The ultimate objective of a physical care decision is to place the child in an environment most likely to bring him to healthy physical, mental, and social maturity. *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007). As each family is unique, the decision is primarily based on the particular facts and circumstances of each case. *Id.* at 696.

The record shows that Nathan is a healthy, bright, and well-adjusted child and both parents love him and are strongly bonded to him. Also, the record shows that both Andy and Danielle have positive and negative attributes as parents. However, in weighing the factors on our de novo review, we agree with the district court's decision awarding Danielle physical care of Nathan.

Danielle is the parent who most "actively cared for [Nathan] before and since the separation." See Iowa Code § 598.41(3)(d). Andy's own testimony at trial established that while Nathan was in his care, Andy's mother provided Nathan with most of his care, including waking him up every morning and taking him to Andy's grandmother's house, as well as picking him up every night and feeding him before Andy would get home from work. By contrast, Danielle

⁴ In a paternity/custody case such as this, if a judgment of paternity has been entered and the mother has not been awarded sole custody, Iowa Code section 600B.40 grants the district court authority to determine matters of custody and visitation as it would under section 598.41. See *Montgomery v. Wells*, 708 N.W.2d 704, 707 (Iowa Ct. App. 2005). This includes the physical care determination. See *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995).

provided for Nathan's daily needs when he was with her. In addition, the district court specifically found:

Based on Andy's mannerisms of answering questions, his demeanor in court, his looking down and putting his head down when Danielle was testifying in court, the Court finds Danielle's testimony more credible, believes her testimony that Andy was more interested in his computer programs than their relationship [and] believes that she was primary caregiver while the parties were together.

Although it is not binding upon us, we give weight to this credibility determination because we were unable to observe or evaluate the demeanor of the parties. See *Fennelly*, 737 N.W.2d at 101; *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999); *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa Ct. App. 1996); *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993).

In addition, there is a legitimate concern as to whether Andy can communicate with Danielle regarding Nathan's needs. See Iowa Code § 598.41(3)(c). On cross-examination, Andy admitted that he rarely talks to Danielle at all. For example, it was undisputed that Andy never told Danielle of Nathan's two-year wellness examination.

Although Andy argues that Danielle lacks the stability to be granted physical care of Nathan, the record shows Danielle is a suitable custodian for Nathan. See Iowa Code § 598.41(3)(a). Danielle now has stable employment, a stable and wholesome living arrangement with her father, and support from family members. Although there is concern about Danielle's choices regarding drinking and smoking, she took responsibility for her actions. From our independent review of the record, we agree that Danielle has overcome

considerable adversity, is gaining maturity, and is focused on the well being of her son.

Upon our de novo review of the record, we agree with the district court's decision awarding Danielle physical care of Nathan. Therefore, we affirm.

AFFIRMED.