

IN THE COURT OF APPEALS OF IOWA

No. 9-865 / 09-0552
Filed November 12, 2009

LARRY DEAN BOHLEN SR.,
Petitioner-Appellant,

vs.

EMILY CATHERINE PECK,
Respondent-Appellee.

Appeal from the Iowa District Court for Washington County, Michael R. Mullins, Judge.

Larry Bohlen appeals from the district court's ruling awarding physical care of his child to Emily Peck and ordering him to pay part of Emily's attorney fees. Emily cross-appeals seeking appellate attorney fees. **AFFIRMED.**

Larry Bohlen, Brighton, appellant pro se.

Maurine A. Braddock of Honohan, Eppley, Braddock & Brenneman, Iowa City, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Zimmer, S.J.*

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

PER CURIAM.**I. Background Facts and Proceedings**

Larry Bohlen and Emily Peck became romantically involved in 2000. They had a daughter, Lily, in 2003. In 2006, Emily became involved with another man and left Larry. The parties initially attempted to share custody of Lily, but that was unsuccessful. On May 14, 2007, the district court issued an order for temporary custody and support, which granted Emily physical care of Lily. After a three-day trial in January of 2009, the district court issued a ruling February 27, 2009, granting Emily physical care of Lily, subject to parenting time with Larry. The district court also ordered Larry to pay \$7500 toward Emily's attorney fees.

On March 6, 2009, Larry filed a motion to enlarge or amend pursuant to Iowa Rule of Civil Procedure 1.904, alleging the district court had overlooked, misstated, or misinterpreted evidence in twenty-eight different ways. The district court briefly addressed several of Larry's claims and denied Larry's motion to amend or enlarge. Larry now appeals, advancing the same twenty-eight arguments raised in his motion to amend or enlarge.

II. Standard of Review

We review this action in equity *de novo*. *In re Marriage of Kleist*, 538 N.W.2d 273, 276 (Iowa 1995). We give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. *Id.* at 278.

III. Custody

Though Larry alleges that several portions of the district court's ruling are unsupported by the evidence, the crux of his argument is that gender played a

large role in the district court's ruling. Gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in an original custody proceeding. See *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa Ct. App. 1985). We find that the district court's findings of fact were supported by the record. There is nothing in the district court's decree to suggest that its decision was influenced by the gender of the parties. Rather, the district court conducted a thorough analysis of the facts presented, the characteristics of each parent, and the likelihood that each parent would support the child's relationship with the other parent. The court determined it was in Lily's best interests that Emily receive physical care. Our primary concern is the best interests of the child. *In re Marriage of Bartlett*, 427 N.W.2d 876, 877 (Iowa Ct. App. 1988). We find the district court's ruling was in the child's best interests and therefore affirm the ruling.

IV. Attorney Fees

Larry asserts the district court erred in ordering him to pay part of Emily's trial attorney fees. He requests that, should the court award attorney fees to either party, he be reimbursed for his trial attorney fees and also be compensated for the production costs of his appeal. Emily argues she should be awarded appellate attorney fees.

An award of attorney fees lies in the sound discretion of the trial court and will not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). The district court did not abuse its discretion in ordering Larry to pay \$7500 of Emily's trial attorney fees.

An award of appellate 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). Upon consideration of the foregoing factors, we award Emily \$1000 in attorney fees.

AFFIRMED.