IN THE COURT OF APPEALS OF IOWA

No. 0-966 / 10-1273
Filed March 30, 2011

IN RE THE MARRIAGE OF
ADAM DANIEL BIEBER
AND APRIL MARIE BIEBER

Upon the Petition of
ADAM DANIEL BIEBER,
Petitioner-Appellee,

And Concerning
APRIL MARIE BIEBER,
Respondent-Appellant.

Appeal from the Iowa District Court for Allamakee County, Richard D. Stochl, Judge.

A mother who shared physical care of her son with the child's father appeals a ruling modifying that arrangement. **AFFIRMED.**

Dale L. Putnam of Putnam Law Office, Decorah, for appellant.

Laura J. Parrish Maki of Miller, Pearson, Gloe, Burns, Beatty & Parrish, P.L.C., Decorah, for appellee.

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

VAITHESWARAN, P.J.

A mother who shared physical care of her son with the child's father appeals a ruling modifying that arrangement.

I. Background Facts and Proceedings

Adam and April Bieber married and had one child, born in 2005. They divorced in 2007 and, pursuant to a stipulated decree adopted by the district court, agreed to joint physical care of their son. The parents and the court also agreed the court would retain "jurisdiction to decide the issue as to what school system the minor child will be enrolled in upon starting kindergarten in the fall of the year 2010." At the time the decree was entered, both parents lived in Waukon, Iowa, and alternated care on a weekly basis.

Shortly after the decree was filed, April moved to Kasson, Minnesota, about 110 miles away. The parents continued to maintain the alternating week physical care schedule.

Meanwhile, April remarried a man who, like her, had every-other-week joint physical care of his ten-year-old daughter. April's son and her new husband's daughter shared a close relationship.

When April and Adam's son turned five, Adam filed an "application for determination of school district." The district court treated the application as a request to modify the joint physical care arrangement. After a hearing, the court granted Adam physical care of the child, reasoning as follows:

> Both parties must be commended for the fine parenting they have demonstrated. Both have proven capable of providing a stable nurturing environment for [the child]. Both have demonstrated the ability to co-parent and communicate for the best interest of [the child]. Both clearly love the child and are bonded to him. This is a

> very close case and screams for shared placement. The child has thrived in a shared placement environment and would likely continue to do so but for the location of each of his parents. Shared placement cannot work due to the distance between the parties' residences. Unfortunately for [the child] and the parties, the court must choose one parental home over the other. In doing so, the court is confident that whichever placement is made, [the child] will be very well cared for. The court elects to place [the child] with Adam due to the support and stability of family in the Waukon area. He is surrounded by family in Iowa. He has no family other than his mother and step-father in Minnesota.

April appealed.

II. Analysis

The parties agree April's move amounted to a substantial change of circumstances requiring a modification of the joint physical care arrangement. *See Melchiori v. Kooi*, 644 N.W.2d 365, 368 (Iowa Ct. App. 2002). They disagree on which parent can provide "better" care. *Id.* at 368–69. April contends she is the better parent because, in her view, (1) "[t]here are not sufficient reasons to separate [the child] from his step-sister" and remove him from a nuclear family setting, (2) she is better able to provide for the child's material needs, and (3) the city she lives in has better educational and cultural opportunities than the city Adam lives in. Adam responds that (1) his schedule is flexible, (2) "he has a strong active family network in Waukon," (3) he is "dedicated to promoting a relationship between" April and the child, and (4) he is dedicated to "encouraging [the child's] best interests."

The third and fourth factors cited by Adam are equally applicable to April. Both parents supported the child's relationship with the other, agreeing to share the costs of transporting him to and from Minnesota and generally communicating with each other about his interests and activities. Both parents

also set aside their differences to act in the child's best interests. These factors, therefore, do not support a modification of the joint physical care arrangement. We turn to the remaining factors cited by the parents.

April correctly notes that our state has expressed a strong interest in not separating siblings, including half-siblings. *See In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993). Nonetheless, there may be circumstances where separation of siblings will "better promote the long-range interests of children." *In re Marriage of Jones*, 309 N.W.2d 457, 461 (Iowa 1981). Such circumstances exist here.

Adam, who worked on his family's farm with his grandfather, father, and uncle and lived within a few hundred feet of his parents' home, enjoyed his mother's assistance in caring for the child, and had flexible hours to transport the child to and from preschool. He continued to maintain a close relationship with April's family and went so far as to include some of them in events involving the child. It is clear, therefore, that although Adam lived alone, the child was not isolated. *See In re Marriage of Burkle*, 525 N.W.2d 439, 442 (Iowa Ct. App. 1994) (stating an "appropriate factor to consider is whether the environment offered by a custodial parent will include extended family members").

Adam was also financially able to care for the child. While he took a pay cut to work on the farm, he lived in a rent-free home, obtained food from the farm, and had sufficient funds to provide the child with books, toys, and other childhood accoutrements. In short, while April earned more than Adam on paper, this fact did not weigh in favor of granting her physical care. *See In re Marriage of Gravatt*, 371 N.W.2d 836, 840 (Iowa Ct. App. 1985) ("Poverty alone has never

been accepted as a sound basis for declining to give either parent the custody and control of the issue of the marriage, providing they are otherwise equipped and the child's welfare would not be jeopardized.").

Finally, there is scant evidence that the child's education, cultural experiences, and medical care were substandard. *See In re Marriage of Williams*, 589 N.W.2d 759, 762 (Iowa Ct. App. 1998) (noting "our case law places greater importance on the stability of the relationship between the child and the primary caregiver over the physical setting of the child"); *see also In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993) ("We do not award custody by determining whether a rural or urban Iowa upbringing is more advantageous to a child. . . . We attempt to look to determine which parent will in the future provide an environment where the child is most likely to thrive."). Adam's surroundings, like April's, were conducive to a child's healthy physical and mental development. This factor, therefore, did not militate in favor of granting April physical care.

We conclude the district court acted equitably in finding Adam the "better" parent and in modifying the dissolution decree to grant him physical care of the child.

III. Appellate Attorney Fees

Adam requests a $3000 award of appellate attorney fees. Such an award rests within our discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). Because April earns slightly more than Adam and was unsuccessful in her appeal, we conclude she should pay Adam $1000 in appellate attorney fees.

AFFIRMED.