

IN THE COURT OF APPEALS OF IOWA

No. 1-399 / 10-1890
Filed July 13, 2011

GEORGE VAN PELT,
Petitioner-Appellant,

vs.

BRANDI L. EGNEW,
Respondent-Appellee.

Appeal from the Iowa District Court for Dickinson County, Patrick M. Carr,
Judge.

A father appeals the physical care provisions of the district court's decree.

AFFIRMED.

Jack. B. Bjornstad of Bjornstad Law Office, Spirit Lake, for appellant.

Sean J. Barry of Montgomery, Barry, Bovee & Barry, Spencer, for
appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

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

George Van Pelt and Brandi Egnew are the unmarried parents of Damien Van Pelt, born in 2006. For most of the time relevant to appeal, George lived in Spirit Lake. In March of 2008, Brandi and Damien moved from Spirit Lake to Springfield, Illinois. The record establishes George knew Brandi was moving to Illinois with Damien.

On July 8, 2008, Brandi's cousin Andrea filed a petition in Illinois requesting guardianship of Damien, stating guardianship was necessary because Brandi was "19 and unable to provide a stable home for the child. Father has never been involved." Brandi consented to the guardianship. George was served by publication in Illinois. Brandi also testified she personally delivered to George the "court papers" regarding the guardianship.

Brandi then left Damien with Andrea for roughly two weeks while she returned to Iowa to have her certified nurse's assistant (CNA) license transferred to Illinois. Brandi admitted at trial that she consented to the guardianship because she did not think she could care for Damien and needed financial and emotional support. Brandi soon returned to Illinois, where she resumed full-time care of Damien.

George testified Brandi had asked him to consent to the guardianship, but he would not. He stated he asked Brandi to allow him to care for Damien while Brandi could not support him, but Brandi would not let him. George filed a petition to revoke Andrea's guardianship, which was accomplished October 20, 2008.

On August 11, 2008, George filed a petition to establish paternity requesting the court to grant him physical care of Damien. Brandi filed an application for temporary custody for which a hearing was held on December 15, 2008. The district court granted the parties joint legal custody of the child with physical care awarded to Brandi.

In late spring or early summer of 2009, George moved to Springfield for two weeks, but he moved back home because things did not work out with Brandi.

Brandi testified George was not active in Damien's life. She stated she begged George to visit and call Damien, but he was unwilling. George denies this. George testified Brandi was not willing to drive halfway to facilitate his visits with Damien, as directed by the district court in its order on temporary visitation procedures. He testified he had offered to drive the entire way to Springfield to exercise his visitation in July 2009, but Brandi would not allow him, though he could not remember why. George stated that at the time of trial, he had not seen Damien for around five months.

Trial on the custody matter was held February 11, 2010. At the time of trial, Brandi lived with Damien and her fiancé in Illinois. She had lived at the same address since September 2009. She was working as a CNA with Regency Health Care, where she had worked since January 2009. George lived in an apartment in Spirit Lake and had been working at Midwest Garage Doors for four months at the time of trial. He testified he could provide for Damien's needs. He further testified his parents and girlfriend lived in town and would be able to provide him support.

The district court awarded the parties joint legal custody of the child with physical care awarded to Brandi. The district court concluded Brandi's status as the child's primary caregiver was entitled to the most weight.

George appeals asserting the district court erred in declining to award him physical care because Brandi does not support his relationship with Damien and because he can provide a more stable home for Damien.

II. Physical Care

George asserts Brandi has excluded him from Damien's life without just cause by: (1) moving Damien to Illinois without first informing him or providing contact information; (2) consenting to a legal guardianship of Damien despite George's objections; (3) moving to Iowa while leaving Damien in Illinois in the care of her cousin; and (4) failing to facilitate visits between George and Damien. George also asserts he can provide a more stable environment for Damien.

After a de novo review of the record, we conclude the district court's placement of physical care with Brandi is in Damien's best interests. See *In re Marriage of Roberts*, 545 N.W.2d 340, 342 (Iowa Ct. App. 1997). In reaching this conclusion, we are guided by factors enumerated in statute and case law. See Iowa Code § 598.41(3) (2007); *In re Marriage of Winter*, 223 N.W.2d 165, 166–67 (Iowa 1974).

The record reveals George knew Brandi was moving to Illinois with Damien and expected to join them at some point in the future. We acknowledge Brandi's unilateral decision to consent to guardianship of Damien is concerning, however we believe information about Brandi's behavior closer to trial is more relevant and telling of her ability to parent Damien. We disagree with George's

assertion that Brandi's decision to consent to legal guardianship of Damien approximately a year and a half before trial is conclusive in this case.

The record establishes that in the year prior to trial, Brandi was more stable than she had been in the past, holding a steady job and obtaining her own housing. Brandi was able to provide entirely for Damien's financial needs, as George did not provide Brandi child support. Further, Brandi has been Damien's primary caretaker for his entire life. Though the parent who is the primary caretaker is not necessarily awarded physical care of the child, we believe this factor weighs heavily in this case because George has not developed a close relationship with Damien. See *In re Marriage of Burkle*, 525 N.W.2d 439, 441–42 (Iowa Ct. App. 1994). Maintaining Damien in Brandi's care provides stability and continuity to Damien. *Id.*

Brandi also testified she would be supportive of George's relationship with Damien. She did not have a driver's license at the time of trial, but she testified her cousin and fiancé would be willing and able to drive Damien halfway to meet George so he could exercise his visitation. Though George suggests on appeal that Brandi was trying to exclude him from Damien's life, we agree with the district court's conclusion that logistical problems with George's visitation were not the result of an effort to exclude George from Damien's life.

Brandi has developed a safe and stable home for Damien. The record establishes he is a happy and healthy boy. Brandi has family in Springfield that provide a support system for her and for Damien.

After considering all the evidence, including George's arguments regarding Brandi's parenting faults, we agree with the district court's decision to award Brandi physical care of Damien.

AFFIRMED.