IN THE COURT OF APPEALS OF IOWA

No. 1-635 / 11-0027
Filed December 7, 2011

CHRISTOPHER A. LOW,
Petitioner-Appellant,

vs.

LINDSEY S. BROOKING,
Respondent-Appellee.

Appeal from the Iowa District Court for Worth County, Bryan H. McKinley, Judge.

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

Douglas A. Krull, Northwood, for appellant.

William T. Morrison of Morrison Law Firm, Mason City, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

VOGEL, P.J.

Christopher Low appeals from a district court's ruling that placed physical care of the parties' son with the mother, Lindsey Brooking. Because we agree with the district court's ruling that placing physical care with Lindsey is in the best interests of the child, we affirm.

I. Background Facts and Proceedings

Chris and Lindsey had a brief relationship in the summer of 2008. Lindsey learned she was pregnant in September 2008, and informed Chris of the pregnancy in October 2008. Z.B. was born in May 2009. A paternity test was completed, with the August 17, 2009 test results showing Chris was the father. A follow-up test conducted at Chris's request confirmed the initial results.

This proceeding was first brought by Chris on October 23, 2009, to establish paternity, custody, and child support. The matter came on for hearing before the district court on September 15 and 16, 2010. On November 5, 2010, the district court issued its ruling, which granted the parties joint legal custody of Z.B., with physical care to Lindsey. Chris filed a motion to enlarge, taking issue with several points in the ruling. Lindsey resisted the motion and on December 6, 2010, the district court denied Chris's motion. Chris appeals.

II. Standard of Review

Our review of matters in equity is de novo. Iowa R. App. P. 6.907; *see also McKee v. Dicus*, 785 N.W.2d 733, 736 (Iowa Ct. App. 2010) ("We review child custody and support orders de novo."). "Although we decide the issues raised on appeal anew, we give weight to the [district] court's factual findings,

especially with respect to the credibility of the witnesses." *In re Marriage of Witten*, 672 N.W.2d 768, 773 (Iowa 2003).

III. Analysis

In assessing the issue of physical care, the first and governing consideration is the best interests of the child. *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998). The physical caretaker should be the parent who can most effectively administer to the long-term best interests of the child and place the child in an environment that will foster a healthy physical and emotional life. *Id.* Factors considered by the court in determining the best interests of the child include the characteristics of the child, the needs of the child, the characteristics of each parent, the capacity and interest of each parent to provide for the child, the interpersonal relationship between the child and each parent, and the effect on the child of continuing or disrupting an existing custodial status. *See In re Marriage of Winter*, 223 N.W.2d 165, 166–67 (Iowa 1974) (listing a total of twelve factors considered by Iowa courts); *see also* Iowa Code § 598.41(3) (2009) (enumerating ten similar factors for courts to consider when crafting a custody arrangement between parties). The analysis utilized by the courts in determining child custody is identical for parties dissolving a marriage, and those parties that were never married. *Jacobson v. Gradin*, 490 N.W.2d 79, 80 (Iowa Ct. App. 1992).

Chris asserts that he can minister more effectively to Z.B.'s needs, is able to support a relationship with the minor child and Lindsey, and that he could provide Z.B with greater stability—all factors in determining Z.B.'s best interests. While Chris recognizes his potential to parent Z.B. and provide him with a

lifestyle that includes growing up on his family farm, he fails to recognize that Lindsey has been Z.B.'s primary caregiver since the day he was born, and has provided well for his physical, mental, and emotional needs.

Chris argues Lindsey's moving "four to six times"—and often living with short-term boyfriends—affects her ability to provide a stable home for Z.B. The district court took note of Lindsey's challenges, recognizing her "resiliency in handling a number of sizable life issues and addressing those issues appropriately." Lindsey's living situation was only volatile from August 2009 to January 2010, and was triggered by her mother's sudden death. Since January 2010, Lindsey and Z.B. have resided with her maternal grandparents, and at trial Lindsey testified that she did not have any plans to move out of her grandparents' house, unless it would be to secure her own home.

Lindsey has also proven her ability to provide for Z.B.'s physical needs. She works twenty-five to thirty hours every two weeks, and at the time of trial was in the second term of a six-term college program where she is studying early child development. When Lindsey is working or attending classes, Z.B. is cared for by Lindsey's grandmother, her sister, or her cousin. In addition, Lindsey testified that Z.B. is where he should be in terms of height, weight, and other growth and development milestones.

The district court noted and the record supports that Lindsey has demonstrated she is a capable young woman who has accepted responsibility and worked hard to provide for her child. Chris, on the other hand, has had limited contact and participation in Z.B.'s life, contending it was "impossible to foster any consistency as a presence in Z.B.'s life" because he was "routinely

given reasons and excuses why he could not see Z.B." While we recognize that Lindsey denied Chris the opportunity to see Z.B. on several occasions, including Christmas, Lindsey testified that it was Chris's responsibility to make arrangements to see Z.B. in advance, and that these arrangements should not be made the day of the requested visit. The district court, having made strong credibility findings, further explained:

> The court would agree with Lindsey that Chris's approach to having regular and scheduled contact with Z.B. was half-hearted. Nothing prevented Chris from working with Lindsey to set up a structured visitation plan, and nothing prevented Chris from seeking the intervention of the court to determine temporary visitation during the pendency of this action since paternity had been established.
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> The court further finds that there was no pattern of Lindsey refusing or not allowing Chris to see Z.B. since there were occasional visits, including Lindsey bringing Z.B. to Chris at his home in Worth County. As time went on, prior to the hearing, Chris became less and less proactive in seeing his child, which then gave him an opportunity to complain at the time of hearing.

A custody evaluation conducted by licensed clinical psychologist, Mark R. Pelton, Ph.D., noted the strong characteristics of both Chris and Lindsey and that they "seem able to learn to interact amicably with one another in a co-parenting relationship." The district court, after placing physical care of Z.B. with Lindsey, set forth a visitation plan that gave effect to Dr. Pelton's general recommendations, and provided for a gradual increase in time with Chris, as Z.B. matures. It is a thoughtful plan that clearly was the result of the district court's careful consideration of Z.B.'s best interests.

Based on our de novo review of the record, we agree with the district court's grant of physical care to Lindsey. We therefore affirm.

AFFIRMED.