

IN THE COURT OF APPEALS OF IOWA

No. 6-456 / 05-1491
Filed August 9, 2006

**BRYAN BEAUBIEN, on behalf of
BEAU VINCINT BEAUBIEN, A Minor Child,**
Petitioner-Appellant,

vs.

JUNE RENEE ALDEN,
Respondent-Appellee.

Appeal from the Iowa District Court for Floyd County, Jon Stuart Scoles,
Judge.

Petitioner-appellant appeals the decision of the district court contending he should have been granted primary physical care of his son and the visitation he was provided was too limited. **AFFIRMED.**

Lori Ubbinga, Sioux City, for appellant.

Russell Schroeder, Jr. of Schroeder Law Office, Charles City, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

SACKETT, C.J.

Petitioner-appellant, Bryan Beaubien, and respondent-appellee, June Renee Alden, are the parents of a child, Beau, born in the spring of 2003. Bryan filed this action in October of that year asking that the child be placed in his custody and that June be required to pay child support. After hearing the evidence the district court filed a decree on August 9, 2005, awarding the parties joint legal custody of Beau and placing primary physical care with June. Bryan was awarded specific visitation including two separate two-week periods. Bryan was ordered to pay child support of \$497 a month. Among other things, he was also required to maintain health insurance for the child and was given Beau's exemption for state and federal income tax purposes if he is current in his child support obligation at the end of the taxable year. Court costs were assessed to Bryan. The parties were ordered to pay their own attorney fees. On appeal Bryan contends he should have been given primary physical care of Beau and the visitation he was provided was too limited. We affirm.

This is an initial custody determination. The controlling consideration in determining custody is the interest of the child. Iowa R. App. P. 6.14(6)(o); *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa Ct. App. 1998). In deciding this question, we review the record de novo. Iowa R. App. P. 6.4. We give weight to the findings of the trial court, but are not bound by them. *In re Marriage of Barry*, 588 N.W.2d 711, 712 (Iowa Ct. App. 1998). We determine each case on its own facts to decide which parent can administer more effectively to the long-range interest of the child. *In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974). The critical issue is determining which parent will do better in

raising the child; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in an original custody proceeding. *Barry*, 588 N.W.2d at 712-13. The criteria governing custody decisions are the same regardless of whether the parties are dissolving their marriage or are unwed. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988).

The parties met through an online dating service. June lives in Charles City, Iowa, and Bryan lives and works in the Sioux City, Iowa, area. Several months into the relationship June became pregnant. At various times they discussed marriage.

Brian, who holds an Iowa teacher's license, is a teacher at the Crittenton Center in Sioux City, Iowa. He holds a bachelor's degree from Iowa State University and a master's degree in special education from Morningside College. The Crittenton Center works with at-risk children from birth to seventeen years of age. Brian earns about \$35,000 a year. The evidence is that he does his job well and is good with the children at the center. Tina Buhrman, a teacher in the Sioux City Community Schools, testified that she worked as a youth counselor at the Crittenton facility with Bryan for about two years. She testified the children who come to the center frequently try one's patience. She was complimentary of Brian's attitude with the children. Her opinion was that he was a mediator, very calm and nurturing, among other things. At the time of the hearing Brian lived in a home with his parents. He has never been married and has no other children. Testimony from his family was that he assumed responsibility for Beau during visitation periods and had a good relationship with the child.

June was not as straightforward about her background as was Bryan. A review of her testimony; her writing, particularly e-mails; and the history she gave to experts assessing her ability as a parent show June either to be an inaccurate reporter or lacking in candor. June testified she has a bachelor's degree in human services from Buena Vista University and two associate degrees from the North Iowa Community College in Mason City, Iowa. She was unclear as to how the education was paid for, except she spoke of a Pell grant for one year. She indicated the grades she received in college were A's and B's, and then indicated her grades may have been lower. Her testimony about her use of Bryan's health insurance card was contradicted by a witness from the medical clinic she utilized. At the time of the hearing she had basically been unemployed for four years or longer. Any evidence of her being employed outside the home is sketchy and confusing. The jobs she reported holding were hourly wage jobs or jobs where she was not paid in cash but received other benefits from the employment. June has not held any job for very long and offered various excuses as to why the jobs were terminated. June's landlord testified her rent is paid by the City of Charles City and she receives Title XIX benefits for Beau. June's parents, who were paying her attorney fees for this matter, denied giving her money except for the occasional gift and groceries. June has never married. She has a son who at the time of trial was a freshman at the University of Iowa. He was in her custodial care during his minority. His father testified June did a good job raising their son and they had no trouble with visitation issues. June's son testified he was on the dean's list at the university.

Beau has been in his mother's custodial care since his birth. Brian was present at the child's birth in May 2003 and provided assistance, both personal and financial, following the birth. He sought to establish custody in October of that year when his relationship with June deteriorated. He began paying child support and in December 2003 he and June agreed that he would have visits with the child every other week and that they would exchange the child at a Hardee's restaurant in Humboldt. In January 2004 the district court entered an order on temporaries and approved the agreement and ordered the parties have joint legal custody of Beau, but the child was to reside with his mother.

Either party can adequately parent Beau. The focal question is: Who is the better parent? The district court found that Beau had lived with his mother since his birth and is a happy and healthy child and there was not substantial evidence June failed to meet Beau's physical or emotional needs and that June cooperated in arranging visits. The court further found there was no substantial evidence Bryan fails to properly supervise Beau or fails to provide for his needs when the child is in his custody. The court found both parties had done some things they were not proud of doing.

Brian contends June has not been cooperative with visitation and makes it difficult for Beau when the parties transfer custody. He points out that twice she made allegations he abused the child, which allegations the Department of Human Services after an investigation determined were unfounded. The district court specifically found that June may be hyper-vigilant as to these issues, which finding is supported by evidence that though the child has been generally healthy she very frequently takes him for doctor visits.

June contends she successfully raised her older son and cooperated with his father. She also argues that Beau has lived exclusively with her since his birth, he has a close relationship with his brother, she has been cooperative in facilitating a relationship between Bryan and his son, the custody arrangement had been in effect for two years at the time of trial, and Beau was a happy and healthy child. She further alleges Bryan was abusive and grabbed her hair, pulled her head back, grabbed her face, and poked her with his finger. She also contends Bryan was either negligently or intentionally abusive to Beau.

While admitting becoming so frustrated with June on one occasion that he punched the windshield of his car causing it to crack and that he screamed at June, Bryan denies that he ever physically abused June or Beau. June puts emphasis on the time Bryan broke the windshield of his car. There appears to be little disagreement about the facts surrounding the event. Brian admitted he hit the windshield and yelled at June. He explained he was frustrated over his efforts to have June and Beau visit with his family in western Iowa. He went to Charles City for the weekend and the plan was that June and Beau would return with him on Sunday. They did not. On Monday June e-mailed Bryan telling him she wished he had begged her to go one more time. Bryan told June he would meet her in Humboldt and she got a ride there. He picked up June and Beau and took them to his aunt's house where he had arranged for them to stay. June was at the aunt's house for fifteen minutes, they got the car unloaded and she wanted to go home saying it was not a comfortable place. He was taking Beau and June back to Charles City when in frustration he said he stopped outside of Cherokee and pulled to the side of the road and turned the car off and asked her

to let him turn around. She refused and he got outside of the car screaming and it was then that he broke the windshield. These actions were disturbing to June and Beau and were not appropriate.

June has at times made visitation difficult. She had her telephone disconnected for a period during which she contended she was moving to marry a gentleman she met through an internet contact. That man testified that the engagement had subsequently been terminated. However, the evidence showed that while still engaged to this man June was talking to Bryan about marriage. Furthermore, at the time June was alleging Bryan had abused his son she wanted to get back together with Bryan.

Both parties have strengths and weaknesses. Bryan clearly loves his son and would make a good father. June loves her son and has to this date been a good custodial parent. However, she must continue to cooperate with Bryan and be forthright with him, something she has not always done in the past. This is a close case, but giving the required deference to the district court we affirm the award of primary physical care to June. We have examined the visitation schedule set by the district court and find no reason to modify it.

June contends that she should have had attorney fees at the trial court level. She has not filed a cross-appeal so that issue is not before us. She asks for attorney fees on appeal. She cites no authority to support her position that attorney fees are allowed in a custody case between parents who have never been married.¹ Consequently, we deny her request.

AFFIRMED.

¹ She cites two cases to support her position but both are dissolution cases.