IN THE COURT OF APPEALS OF IOWA

No. 7-381 / 07-0209
Filed October 24, 2007

IN RE THE MARRIAGE OF PAMELA S. BEITZ AND TRAVIS J. BEITZ

Upon the Petition of
PAMELA S. BEITZ,
Petitioner-Appellant,

And Concerning
TRAVIS J. BEITZ,
Respondent-Appellee.

Appeal from the Iowa District Court for Jones County, Nancy A. Baumgartner, Judge.

Pamela Beitz appealed challenging the district court's decision placing the parties' son in their joint physical care. **AFFIRMED.**

Marty A. Hagge, Cedar Rapids, for appellant.

Kristofer J. Lyons, Monticello, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Pamela Beitz appealed from the decree dissolving her marriage to Travis Beitz challenging the district court's decision placing the parties' son, born in 2000, in their joint physical care. Pamela claimed she should be the primary custodian. We remanded to the district court with directions and the district court filed an amended order placing primary physical care with Pamela. We affirm the order on remand.

Pamela appealed challenging the district court's original decision contending (1) there had been no request for joint physical care and consequently, she did not have the opportunity to address the issue before the district court granted it, and (2) that she should have been named primary custodian. Agreeing with Pamela that she did not have an adequate opportunity to respond to Travis's request for joint physical care, we remanded to the district court for the sole purpose of allowing the parties to present additional evidence only on the issue of joint physical care. We also directed the parties to present parenting plans indicating how they believed joint physical care should be structured. We ordered the district court, after hearing the additional evidence, to either affirm the original order or modify it to award primary physical care to one parent. If the order were modified the court was authorized to take additional evidence necessary to fix child support and visitation.

After a hearing on remand the district court changed its position and ordered that Pamela have primary physical care and that Travis be ordered to pay child support of $499 a month. A transcript of the hearing has been made

available to us. We provided the parties the opportunity to file additional briefs. Neither party has sought to do so.

SCOPE OF REVIEW. Our review of the provisions of a decree of dissolution is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1982). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998). We approach this issue from a gender-neutral position avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58 (Iowa Ct. App. 1992); *see also In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

BACKGROUND. Pamela, born in 1973, and Travis, born in 1974, were married in 1996. Both parties are employed outside the home. Pamela, at the time of the original hearing, was employed at Western Fraternal Life Association. At the time of the hearing on remand she worked for Rockwell in Cedar Rapids, Iowa. Travis is employed installing granite countertops for Lightner Granite. Since their son's birth both parties have been involved in his care. Pamela has enjoyed more flexibility in her job than has Travis. Consequently, she has been more available to stay home with their child when he is ill and has been more able to take him to medical appointments, enroll him in school, and make his day care arrangements. The child's health is good, but he has suffered an array of childhood maladies. During the parties' nineteen-month separation prior to the dissolution, the parties agreed to the child remaining in Pamela's care with Travis

having visits with him on Wednesday evenings and every other weekend. Pamela also has a daughter in her care who is seven years her son's senior. The daughter enjoys visitation with her father.

Since the parties' separation Pamela has continued to reside in the family home in Monticello, Iowa, where her son attends school. Travis lives in the lower level of a home in Hopkinton, Iowa. The two homes are fifteen miles apart and in different school districts. Travis's employer is in Monticello and he testified that he begins his work from there each day and would want the child to continue school in Monticello. Both parents have extended family in the area. Pamela testified at the original hearing that she planned either to remain in Monticello or to move to Minnesota because she believed the job market was better there. Pamela had a boyfriend who lived in Minneapolis at the time of the initial hearing but by the time of the hearing on remand he had moved to Monticello.

ISSUE ON APPEAL. The question we need to address is whether the parties should have joint physical care or whether Pamela should have primary physical care.

The statutory scheme makes joint physical care a viable option if it is in the best interest of the child. *In re Marriage of Hansen*, 733 N.W.2d 683, 692 (Iowa 2007). The district court is charged with determining the best interest of the child and the child's best interest is the overriding consideration. *Id.* at 695-96; *Fennelly v. Breckenfelder*, 737 N.W.2d 97, 101 (Iowa 2007).[1]

[1] While a best interest standard is laudable, realistically the best interest of this child would be served by living with both of his parents in a loving family home. The parents have sought to dissolve their marriage so this option is not available to us. Rather, we need to decide whether the child's interests are better served by being in the primary care of his mother or in the joint physical care of both of his parents.

PHYSICAL CARE. The question after remand is whether the award of primary care to Pamela should be affirmed or whether the record supports a finding that the parties should have joint physical care.

Unfortunately, here, as happens too frequently in custody disputes, both parents in both the original hearing and the remand proceedings have focused on negative attributes of the other. Yet the district court found it had absolutely no concerns about either Pamela or Travis and their ability to parent their son or their ability to have a shared care arrangement. On our review of the record we agree with this finding.

Pamela focused her argument on the fact that she had more hands-on involvement with her son than has Travis, an argument which the district court accepted. While both parties have been involved in their son's life, they both work outside the home and the child spends a substantial amount of his time in school and day care. Pamela, who has had more flexibility in her employment, has assumed greater responsibility for taking the child to medical appointments, enrolling him in school and making arrangements for child care. The district court found she was the parent primarily responsible for the child's care. The fact one parent has been the primary custodian is a factor that may well negate against the award of joint physical care, there being a concern that joint physical care may be disruptive to the emotional development of a child. *See Hansen*, 733 N.W.2d at 698. Obviously, such a disruption is less significant here where both parents work outside the home and the child spends substantial time in child care and school than it would be in a situation where one parent remained home with the child. Furthermore, we have recognized that even if one parent had

been the primary caretaker prior to separation, this does not assure that the parent will be the custodial parent. *In re Marriage of Kunkel*, 546 N.W.2d 634, 635 (Iowa Ct. App. 1996); *see also In re Marriage of Toedter*, 473 N.W.2d 233, 234 (Iowa Ct. App. 1991) (affirming physical care with father despite mother's role as primary caretaker); *Neubauer v. Newcomb*, 423 N.W.2d 26, 27-28 (Iowa Ct. App. 1988) (awarding custody of a child who had been in mother's primary care for most of life to father). However, Pamela's primary care responsibilities are a factor to consider strongly in determining whether she should be named primary custodian. *See Hansen*, 733 N.W.2d at 696-97.

Pamela points to the fact that her son has a bond with his half-sister in her care as a factor to support her claim for primary physical care. Siblings in dissolution actions should be separated only for compelling reasons. *See In re Marriage of Gonzales*, 373 N.W.2d 152, 155 (Iowa Ct. App. 1985); *In re Marriage of Mayer*, 347 N.W.2d 681, 684 (Iowa Ct. App. 1984). The principle also has been recognized as having application to half-siblings. *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993); *see also In re Marriage of Orte*, 389 N.W.2d 373, 374 (Iowa 1986); *In re Marriage of Hunt*, 476 N.W.2d 99, 102 (Iowa Ct. App. 1991). In a joint physical care situation this factor ceases to carry as much weight; for a child will have a substantial and continual opportunity to maintain his or her relationship with his or her half-sibling during the time the child is in the half-sibling's parent's care. Consequently, the child here, if joint physical care is ordered, is not being deprived of a relationship with a half-sibling to the extent he would be if his father were granted primary physical care.

In reaching its initial decision to award joint physical care, the district court put considerable weight on its concern Pamela would move to Minnesota with a boyfriend and that Pamela elected to provide minimal detail about this man[2] other than that he is divorced with children and is finishing his college education. The court also did not find Pamela credible in testifying she would not move. The court on remand noted the boyfriend had moved to Monticello and indicated the court's hope that Pamela and her boyfriend would continue to put the needs of the children[3] first and remain in the Monticello area where they can enjoy frequent contact with their respective fathers.[4]

On remand the district court found that according to Pamela, the children enjoy the time they spend with her boyfriend. We are concerned, as was the district court, that Pamela provided little information about the boyfriend who has a part in her son's life. If a parent seeks to establish a home or a relationship with another adult, that adult's background and his or her relationship with the children becomes a significant factor in a custody dispute. There are two reasons for this: (1) because of the place the companion will have in the child or children's lives, and (2) not less significantly, because the type of relationship the parent has sought to establish, and the manner he or she has established it, is an indication of where that parent's priority for his or her children is in his or her life. *See In re Marriage of Decker*, 666 N.W.2d 175, 179 (Iowa Ct. App. 2003).

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[2] The district court wrote, "Remarkably, no evidence was presented with regard to her boyfriend's age, living arrangements, or even what town he lives in. All we know about him is that he is divorced, has two small children, and is about to graduate from college."

[3] By children, it appears the district court means the parties' son and his half-sister.

[4] From this reference it appears that both of Pamela's children's fathers live in the Monticello area.

A determination of joint physical care requires the consideration of certain factors, one of the most important being the parents' ability to work with each other. It is critical that the parties can communicate effectively on a myriad of issues that arise in routine care of a child. *In re Marriage of Mynick*, 727 N.W.2d 575, 580 (Iowa 2007). The evidence at the remand hearing was that the parties were unable to communicate and a good part of the inability to communicate was due to Travis's failure to discuss with Pamela issues concerning their son's welfare. Considering this factor with others, we affirm the district court's decision to award Pamela primary physical care.

ATTORNEY FEES. Both parties request appellate attorney fees. Travis's annual income in the prior year was $39,529 and Pamela's was $36,000. We award Pamela $1500 in attorney fees.

AFFIRMED.