

**IN THE COURT OF APPEALS OF IOWA**

No. 0-040 / 09-1153  
Filed February 24, 2010

**CHRISTOPHER BODENSTADT,**  
Petitioner-Appellant,

**vs.**

**JENNIFER HAMBOR,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Mark Cleve, Judge.

A father appeals the district court order placing the parties' children in the mother's physical care. **AFFIRMED.**

M. Leanne Tyler of Tyler & Associates, P.C., Davenport, for appellant.

Jennifer Olsen of Olsen Law Office, Davenport, for appellee.

Considered by Vogel, P.J., and Eisenhauer, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MAHAN, S.J.****I. Background Facts & Proceedings**

Christopher Bodensadt and Jennifer Hambor are the parents of twin girls, Autumn Raine and Shy Love, who were born in October 2001. The parents began living together in Ohio in 1999 after Jennifer graduated from high school. The parents never married. They were still living together when the children were born, but thereafter separated. Jennifer was the primary caretaker for the children during the separation.

The parties reconciled in 2003. Christopher's parents moved to Iowa and offered financial assistance to the family if they also moved to Iowa. Christopher, Jennifer, and the children moved to Davenport. Christopher worked as a self-employed carpenter. Jennifer first worked at a credit union, and then at Goodwill Industries. Christopher's mother, Benita, watched the children while the parents were at work. Benita developed a very close relationship with the children.

The parties separated again in 2006. As before, the children remained with Jennifer. Jennifer first moved with the children to Moline, Illinois, but then returned to Davenport in order to facilitate Benita's continued care of the children during the day while Jennifer was at work.

Jennifer and the children suddenly moved to Ohio in August 2008. She called Christopher and Benita while she was already on the way to Ohio, informing them of the move. Jennifer testified she moved without notice to Christopher because he had told her he would not allow her to move the children

from the Quad Cities area and she was afraid of what he might do if he found out she was moving.

Jennifer and the children live in the small town of Fairport Harbor, Ohio, near Jennifer's sister, Rebecca, and other relatives. They live in an apartment about one block from the children's school. Both children are doing well in school. After school the children stay with Rebecca until Jennifer gets off work at about 5:00 p.m. Jennifer is the manager of a Little Caesar's Pizza restaurant, where she earns about \$22,880 per year.

Christopher's parents visited the children twice in Ohio, but Christopher did not accompany them, stating he needed to work. Christopher remains self-employed as a carpenter, and has annual income of about \$13,551. The children have also returned to Iowa for visitation.

Christopher filed a petition to establish paternity and asking for physical care of the children. The district court granted the parties joint legal custody, with Jennifer having physical care. Christopher was granted seven weeks of visitation during the summer, plus time during the children's Christmas and spring breaks from school. Christopher may also visit the children in Ohio "for any reasonable period of time" provided he gives written notice at least seven days in advance. Christopher was ordered to pay child support of \$339 per month for the children. Christopher appeals the district court's order placing the children in Jennifer's physical care.

## **II. Standard of Review**

Issues ancillary to a determination of paternity are tried in equity. *Markey v. Carney*, 705 N.W.2d 13, 20 (Iowa 2005). We review equitable actions de novo. Iowa R. App. P. 6.907 (2009). When we consider the credibility of witnesses in equitable actions, we give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 6.904(3)(g).

## **III. Merits**

Christopher contends the district court should have placed the children in his physical care. Christopher and his relatives testified that Jennifer has a drinking problem. Christopher stated that Jennifer drank to excess every night. He and his relatives also testified that Jennifer was not attentive to the children's hygiene. They stated the children were often unbathed and wore dirty clothes. Christopher was critical of the fact that Jennifer smokes cigarettes.

Jennifer testified Christopher was very controlling toward her. She stated he was often out late, but did not want her to go out with her friends. She testified Christopher was verbally demeaning, and on one occasion shoved her into a wall. Jennifer was also concerned that Benita wanted to supplant her position as the children's mother, and she undermined Jennifer's parenting decisions.

In determining physical care for a child, our first and governing consideration is the best interest of the child. Iowa R. App. P. 6.14(6)(o). When physical care is an issue in a paternity action, we apply the criteria found in Iowa Code section 598.41 (2007). Iowa Code § 600B.40. Our analysis is the same

whether the parents have been married, or remain unwed. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988); *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994). Our objective is to place the child in an environment likely to promote a healthy physical, mental, and social maturity. *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007).

The district court entered the following findings:

It is apparent to the Court that both parties deeply care for and are bonded to their children. The Court further determined that [Jennifer] has consistently been the primary physical caretaker of the children both during the times when the parties lived together and when they were separated. Moreover, in resolving the disputed evidence on the issue the Court further determines that overall [Jennifer] has done well in that role and that the children have thrived in her care. The Court also finds the children's paternal grandmother, Benita Martinkowski, has, after [Jennifer], provided the most significant amount of day-to-day care for the girls and they are also bonded with her and her husband. While the Court commends her for the depth and breadth of her efforts on behalf of the children as their grandmother, it is apparent that at times she has exceeded that role and has acted more as an additional parent of the children. Finally, the Court finds that although [Christopher] has not over the long term been involved in the physical care of the children to the degree [Jennifer] or [Christopher's] mother has, he has nonetheless had a substantial amount of involvement with them and has been a very positive influence in their lives.

Generally, we give considerable deference to the district court's credibility determinations because the court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992); *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007). A district court decision in dissolution cases "is greatly helped in making a wise decision about the parties by listening to them and watching them in person." *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984) (citation omitted).

Appellate courts, on the other hand, must rely on the printed record in evaluating the evidence. *Id.*

Although there were many allegations by both parties, the district court was in the best position to evaluate the credibility of the witnesses and their statements. Therefore, we defer to the district court's determination that it would be in the children's best interests to be placed in the physical care of Jennifer. We affirm the decision of the district court.

#### **IV. Attorney Fees**

Jennifer seeks attorney fees for this appeal. Section 600B.25 provides, "The court may award the prevailing party the reasonable costs of suit, including but not limited to reasonable attorney fees." Thus, in paternity actions, an award of attorney fees may only be made to the prevailing party. Iowa Code § 600B.25. "An award of appellate attorney fees is within the discretion of the appellate court." *Markey*, 705 N.W.2d at 26. We deny the request for appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed one-half to each party.

**AFFIRMED.**