**IN THE COURT OF APPEALS OF IOWA**

No. 2-892 / 11-1900
Filed October 31, 2012

**BRAD TURKLE,**
Petitioner-Appellant,

**vs.**

**LAURA McALONEY,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, David H. Sivright Jr., Judge.

A father appeals from the district court's ruling on physical care of the child and the award of trial attorney fees. **AFFIRMED.**

Carrie E. Coyle of Carrie E. Coyle, P.C., Davenport, for appellant.

Lauren M. Phelps, Davenport, and David Cunningham of Winstein & Kavensky, Rock Island, Illinois, for appellee.

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

**POTTERFIELD, P.J.**

Brad Turkle filed a petition to establish custody and visitation for his son born to Laura McAloney in November 2007. The district court awarded the parties joint legal custody and placed the child in the mother's physical care. On appeal, the father contends the district court's physical care determination is not in the minor child's best interest and was based solely on the mother being the primary care giver.

When petitioned, the court is required to decide which parent is best able to care for a child born to parties whose relationship falls apart. *See McKee v. Dicus*, 785 N.W.2d 733, 737 (Iowa Ct. App. 2010) ("The ultimate objective of a physical care determination is to place the child in the environment most likely to bring him to healthy mental, physical, and social maturity."). Here, the district court found the choice difficult because "[a]lthough the parties clearly have great love and affection" for their child, "neither has inspired the Court's confidence in their abilities to effectively parent their three-year-old son." A detailed recital of the respective parents' strengths and faults will serve no useful purpose. As the district court summarized:

> Despite their acrimonious relationship, it is clear both parents are devoted to [their child]. Both are capable of meeting his basic material needs, and both use appropriate discipline when necessary. However they have not learned how to work with each other in a mature fashion for the benefit of their son. Each of them has contributed to the ongoing conflict.
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> The issue presents a close question. While both parties must be commended for overcoming their addiction to illegal drugs, both have had difficulty coping with their impulses and frustrations. Both have repeatedly exercised questionable judgment and both have made mistakes as a parent. Based upon the evidence and the application of the relevant criteria, the Court finds [the child]

> should remain in the physical care of his mother. The Court finds the testimony of the non-family witnesses who have interacted with [the child] and Laura's twins [from a prior relationship] the most credible and entitled to the most probative value. Despite Laura's personal shortcomings, these witnesses establish she is meeting her children's long-term best interests, and is providing them an environment likely to bring them to healthy physical, mental, and social maturity. She seems to have done well raising [the child] to date. Hopefully, she will continue to apply her parenting skills in a consistent and productive fashion.

Upon our de novo review and in light of the weight we afford the factual findings of the district court, who was able to listen to and observe the parties and witnesses, *see In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006), we find no reason to disturb the district court's decision to place the child in Laura's physical care.[1] *See* Iowa Code § 598.41(3) (2011); *In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974).

We also find no abuse of discretion in the trial court's award of attorney fees. *See McKee*, 785 N.W.2d at (noting an award of trial attorney fees will not be disturbed on appeal in the absence of an abuse of discretion.). Considering Laura's need and Brad's ability to pay, we find the award of attorney fees was reasonable.

Laura also requests appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). In determining whether to award

[1] We acknowledge the district court was mistaken in stating "[n]either party advocates an award of sole legal custody"; Laura's answer did make such a request. However, we do not conclude sole legal custody is warranted here. *See In re Marriage of Liebich*, 547 N.W.2d 844, 848 (Iowa Ct. App. 1996) (discussing relevant factors). While we recognize the parties' uncivil conduct towards one another during these proceedings, both obviously love their son, have actively cared for him, and a continuing relationship with both parents is in the child's best interests. We encourage the parties to set aside their acrimony and communicate with each other regarding the child's needs.

appellate attorney fees, we consider the parties' financial positions and whether the party making the request was obligated to defend the trial court's decision on appeal. *Id.* After considering the appropriate factors, we award Laura $1000 in appellate attorney fees. Costs on appeal are assessed to Brad.

**AFFIRMED.**