IN THE COURT OF APPEALS OF IOWA

No. 3-083 / 12-1646
Filed March 13, 2013

JOHN D. FITCH,
Plaintiff-Appellee,

vs.

SHELLY E. WURTZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge.

A mother appeals from a district court ruling establishing joint physical care, child support, and a notice requirement before relocating. **AFFIRMED.**

Sabrina L. Sayler of Crary, Huff, Ringgenberg, Hartnett & Storm, P.C., Sioux City, for appellant.

Elizabeth A. Rosenbaum, Sioux City, for appellee.

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

POTTERFIELD, J.

Shelly Wurtz appeals from the district court ruling on John Fitch's petition regarding their child. She contends the district court erred in three ways: by not awarding her physical care of the child, by not ordering John to pay child rearing expenses in addition to support, and by placing a requirement of advance notice before relocation. She also requests appellate attorney fees. We affirm, finding the physical care, child support, and relocation notice provisions of the decree to be in the best interests of the child. We decline to award appellate attorney fees.

I. Facts and Proceedings.

Shelly and John were in a relationship from May of 2010 until August of 2011, during which their child, S.L.F. was born.[1] After Shelly and John separated, John filed a petition to establish paternity, custody, visitation, support, and related matters on October 7, 2011. A temporary order granted Shelly physical care and awarded John visitation. John exercised his visitation and cared for S.L.F. almost exactly fifty percent of the time prior to trial. Trial took place in July of 2012. At the time of trial, John was a six-year veteran patrolman with the police department; Shelly worked part time and attended community college.

At trial, the court heard testimony from John and Shelly, as well as Shelly's mother, John's father, and John's friend. Both parties introduced exhibits. These exhibits included records of text messages sent between the parties documenting communications regarding S.L.F. Both testified regarding

[1] Shelley and John did not marry. Shelley also has a child from a prior marriage who is not at issue in these proceedings.

these communications, as well as the level of conflict between the two parties. The court found John minimized communication problems and Shelly exaggerated them. It noted "[b]oth parents have engaged in conduct which is contrary to generally recognized joint custody principles." However, it concluded, "While neither party is perfect, the Court finds that they generally have been able to make joint decisions, even though sometimes they initially don't agree."

The court granted the parents joint legal custody and joint physical care, and alternated the dependency tax exemption. The court also ordered John to maintain health insurance for S.L.F., to pay $376.36 per month to Shelly in child support, and to pay $2500 towards Shelly's attorney fees. The court ordered that if either parent relocated more than thirty miles away from Sioux City, they were required to give ninety days' written notice to the other parent. Shelly appeals from these proceedings.

II. Analysis.

Our review of child custody proceedings is de novo. *In re Marriage of Hansen*, 733 N.W. 2d 683, 690 (Iowa 2007). "We give weight to the findings of the district court; especially to the extent credibility determinations are involved." *Id.*

A. Physical Care.

Shelly argues the court should have awarded her physical care of S.L.F.; she cites a lack of communication as the primary argument against joint physical care. When determining whether joint physical care is appropriate, "our case law requires a multi-factored test where no one criterion is determinative." *Id.* at 697.

> We continue to believe that stability and continuity of caregiving are important factors that must be considered in custody and care decisions. . . . All other things being equal, however, we believe that joint physical care is most likely to be in the best interest of the child where both parents have historically contributed to physical care in roughly the same proportion. . . . A second important factor to consider in determining whether joint physical care is in the child's best interest is the ability of spouses to communicate and show mutual respect. . . . Third, the degree of conflict between parents is an important factor in determining whether joint physical care is appropriate.

Id. at 696–98.

The court found that S.L.F. thrived during the months while the parents shared care under the temporary arrangement. S.L.F. spent time equally with each parent during this period. The court found the most important factor weighing against joint physical care was the parties' difficulty in communicating. The parties testified most of their communication took place by text message. The text message transcripts admitted at trial show that at times the communications between the parties were less than amicable, but overall they were able to work together to provide for S.L.F. At trial, Shelly testified that the parties' problems, as well as the parties' overall level of conflict, were much more extensive, and John testified these problems were negligible. The district court evaluated the credibility of both Shelly and John, finding Shelly overstated their communication problems, and that John downplayed them. We give particular deference to such a credibility determination. *Hansen*, 733 N.W. 2d at 690.

Upon our de novo review of the record, we agree with the district court. While there is some evidence of conflict between the parties, the parties have successfully cared for S.L.F. jointly, and the child has done well under that arrangement. Joint physical care is appropriate.

B. Child Support.

Shelly next contends the district court erred in failing to consider the expenses of raising S.L.F. when it set the amount of child support payments. The court calculated child support for each parent, and offset the guideline support for Shelly ordering John to pay $376.36 each month. In addition to child support, the court also ordered each parent to pay half of S.L.F.'s preschool expenses. Neither party appeals from the child support plus preschool costs order. Shelley, however, contends the court erred in failing to designate the parent responsible for winter coats and boots, summer camp, and other expenses. She states "[t]he Court ordered shared physical care, but there is no provision for S.L.F.'s expenses."

> The purpose of the child support guidelines is to set an amount of support that will cover the normal and reasonable costs of supporting a child. The amount of support determined by the guidelines is designed to encompass the normal needs of a child, except for medical support and postsecondary education expenses. Thus, it would be necessary to supplement the amount of support as provided under the guidelines with additional support provisions, or otherwise deviate from the guidelines, only to take into account unique expenses of a child not contemplated under the guidelines.

In re Marriage of Okland, 699 N.W.2d 260, 268–69 (Iowa 2005) (internal citations omitted); *see also* Iowa Ct. R. 9.3 ("The purpose of the guidelines is to provide for the best interests of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes").

Shelly offers no specific argument that S.L.F. has unique expenses not contemplated under the guidelines and the court's order. Therefore, we find

deviation from the guidelines in the form of an extra expense provision in this case is not justified. *See id*.

C. Relocation Notice.

Finally, Shelly argues the relocation notice imposed by the district court was improper. When one parent relocates, it may deprive a child of the benefit of joint physical care. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). A parent with primary physical care determines where the child's home will be, even if that home is away from the other parent; however, in a joint physical care situation, neither parent has the final say. *Id.* (*citing In re Marriage of Frederici*, 338 N.W.2d 156, 159–60 (Iowa 1983)). In such a situation, the custody arrangement may need to be modified. *See id.* Our primary consideration with any custody provision is the best interests of the child. *In re Marriage of Williams*, 589 N.W.2d 759, 762 (Iowa Ct. App. 1998).

The district court in this case provided that, in case either parent decides to move more than fifty miles outside of Sioux City, ninety days' written notice should be given to the other parent. Because the parties have joint physical care of the child, such notice prior to a move allows both parents to plan and provide for continuing emotional stability even though one of the parents is moving. We find such a notice provision to be in the best interests of S.L.F.

We deny Shelly's request for appellate attorney fees.

AFFIRMED.