IN THE COURT OF APPEALS OF IOWA

No. 8-257 / 07-1789
Filed June 25, 2008

JERRY A. RAUSCH,
Petitioner-Appellant,

vs.

AMBER L. HAHN f/k/a AMBER L. REWERTS,
Respondent-Appellee.

Appeal from the Iowa District Court for Warren County, Dale B. Hagen, Judge.

Jerry Rausch appeals from the district court order granting physical care of the parties' child to Amber Hahn. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney & Shindler, P.C., West Des Moines, for appellant.

Michael D. Holt of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellee.

Heard by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Jerry Rausch and Amber Hahn have a daughter, Dylan, born in 2003. When Dylan was three, Jerry petitioned the court for physical care of the child. Amber countered with her own request for physical care. The parties stipulated to a temporary joint physical care arrangement pending trial. Following trial, the district court granted Amber physical care of Dylan. Jerry appealed.

I. Physical Care

Jerry cites several factors that, in his view, make him the better physical caretaker of Dylan. He argues he (1) was Dylan's primary caregiver, (2) he is the more stable parent, and (3) he can support Dylan's relationship with Amber and her extended family. In assessing his argument, we review the record de novo. Iowa R. App. P. 6.4.

With respect to the first factor, the record reflects that these young parents shared their parenting obligations. When neither was available, Jerry's mother usually provided daycare.

Jerry maintains Amber's interest in Dylan was of recent vintage. He cites a 2005 letter Amber wrote to him expressing misgivings about her parenting abilities and suggesting that Jerry might be the better parent to have Dylan full-time. Amber did not deny the contents of the letter; her attorney stated at oral argument, "it is what it is." However, three months after it was written, Amber and Jerry agreed to an informal joint physical care arrangement. They worked around their employment schedules and divided their time with Dylan without a "specific schedule." The parents effectively implemented this arrangement

despite Amber's move from Des Moines to Iowa Falls. Based on this record, we are not persuaded that Amber lacked a true commitment to her daughter.

Turning to the second factor cited by Jerry, the parents' stability, both parents sometimes acted immaturely when Dylan was first born. However, they soon made Dylan a priority in their lives and actively and lovingly parented her. Jerry joined the National Guard and later secured full-time employment with the Guard in Des Moines. As noted, Amber moved to Iowa Falls and, at the time of trial, was married, employed, and expecting another child. We conclude that both parents had stabilized their lifestyle.

Finally, we examine which parent can better promote Dylan's relationship with the other. We conclude this factor, like the others, is in equipoise. There is scant evidence that either parent interfered with the other's efforts to interact with Dylan or Dylan's extended family. Amber maintained a relationship with Jerry's mother and agreed to use her as a daycare provider. Jerry, in turn, maintained an amicable relationship with Amber's husband and did not prevent Dylan from visiting Amber's aunt, uncle, and grandmother.

On our de novo review, we agree with the district court that either parent could have afforded Dylan appropriate physical care. After seeing and listening to the witnesses, the district court chose Amber to fulfill this role. *See In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). We conclude this decision was equitable.

II. Appellate Attorney Fees.

Amber seeks to have Jerry pay her appellate attorney fees. An award rests within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). Amber asks for $2500. We order Jerry to pay $1000.

AFFIRMED.