IN THE COURT OF APPEALS OF IOWA

No. 9-071 / 08-1455
Filed May 6, 2009

IN RE THE MARRIAGE OF ROBERT JOHN BISPING AND KENDRA LEIGH BISPING

Upon the Petition of
ROBERT JOHN BISPING,
Petitioner-Appellee,

And Concerning
KENDRA LEIGH BISPING,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

A mother appeals a dissolution decree granting joint physical care to her and the children's father, contending that physical care should have been placed with her. **AFFIRMED.**

Robert Sudmeier and Jenny L. Harris of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellant.

Thomas Bitter of Bitter Law Offices, Dubuque, for appellee.

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

VAITHESWARAN, P.J.

Kendra Bisping appeals a dissolution decree. She contends the district court acted inequitably in refusing to grant her physical care of the children.

I. Background Facts and Proceedings

Kendra and Robert Bisping married in 2000 and had two children. They also cared for Robert's children from prior relationships. When they separated in early 2007, they structured a joint physical care plan that afforded each parent alternating weeks with their two children. Meanwhile, Kendra trained for a promotional opportunity at work that potentially required relocation from Dubuque, Iowa, to another city or state.

At trial, Kendra sought physical care of the children while Robert proposed to continue with the joint physical care arrangement. The district court granted the parents joint physical care and ordered no child support. Kendra appealed.

II. Physical Care

Kendra contends the district court should have granted her physical care of the children. She maintains the district court (A) placed too much emphasis on the parents' temporary arrangement, (B) improperly restricted her possible relocation, and (C) did not properly apply the factors set forth in *In re Marriage of Hansen*, 733 N.W.2d 683 (Iowa 2007).

A. Kendra argues the "temporary care arrangement . . . was not a factor the Court should have considered in its final physical care determination." She relies on *In re Marriage of Swenka*, 576 N.W.2d 615, 617 (Iowa Ct. App. 1998), which states, "Temporary orders awarding physical custody create no

presumption that parent is the preferred parent in a final custody decision." That language has no bearing here.

As noted, the parents voluntarily structured an arrangement that afforded each of them approximately equal time with the children. This arrangement worked effectively for eighteen months prior to trial. As the district court stated:

> [T]he parties have been exercising shared physical care since February 1, 2007. The temporary shared physical care arrangement was [Kendra's] proposal. Shared physical care has worked well. The children are happy and Kayla is doing well in school.

On our de novo review, we find support for these findings. We conclude the district court acted within its authority in considering the efficacy of the temporary arrangement. *See Swenka*, 576 N.W.2d at 618 (considering the fact that the parent who was granted temporary physical care of the children "did a good job caring for [the children] for two years after the temporary order was entered").

B. Kendra next takes issue with the district court's treatment of her possible relocation. On this question, the court noted that Kendra learned about a possible move just "a couple of weeks" before trial, and had "no idea at this time as to what city or state she would be required to relocate to." The court suggested that a move would not "offer the children the stability that they presently enjoy." Kendra maintains that the court prevented her from "continuing her career goals." On this record, we disagree.

At the time of trial, Kendra knew little about the potential relocation and its effects on the children. *See In re Marriage of Vrban*, 359 N.W.2d 420, 425 (Iowa 1984) (noting "the evidence is conflict as to whether such a move will benefit or harmfully uproot the children"). Because the details were not known, this factor

was essentially not ripe for consideration. *See In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983) ("In determining whether removal should be prevented, the trial court must consider all of the surrounding circumstances. They include the reasons for removal, location, distance, comparative advantages and disadvantages of the new environment, impact on the children, and impact on the joint custodial and access rights of the other parent."). In contrast, the record was clear that the move would deprive the children of regular contact with their father and half-siblings. In the absence of countervailing considerations, we believe the best interests of the children dictated an arrangement that would maximize their contact with their father.

C. We turn to considerations set forth in *Hansen* relevant to this appeal. The court first considered the "historic patterns of caregiving." *Hansen*, 733 N.W.2d at 697. On this issue, the pre- and post-separation patterns were significantly different. Before the parents separated, Kendra managed the day-to-day responsibilities of her children as well as her stepchildren. For example, she bought the children's clothes, did the laundry, purchased groceries, made meals, helped the children with homework, and took care of most of the children's medical appointments. While Robert was actively involved with the children and their curricular and extra-curricular activities, we agree with the district court's finding that Kendra "was the primary caregiver prior to the separation of the parties."

As noted, the parents alternated physical care of the children after the separation. Robert testified that the arrangement did not adversely affect the children and their grades did not slip. Although Kendra cited several instances of

non-cooperation by Robert, she provided scant evidence that the children were harmed by this arrangement. For that reason, we agree with the district court that the parents' willingness and ability to voluntarily implement a joint physical care plan overrides Kendra's prior role as primary caretaker.

We next consider Kendra's cited examples of non-cooperation, another factor deemed important in *Hansen.* *See id.* at 698 (considering the "ability of the spouses to communicate and show mutual respect"). Kendra complains that Robert did not allow her to transfer the children's clothes from his house to hers, did not transport one of the children to religious training classes, did not allow her to switch weeks on one occasion, and would not reimburse her for uninsured medical expenses absent a court order.

We recognize that divorce comes with a certain amount of discord. *See In re Marriage of Ellis*, 705 N.W.2d 96, 103 (Iowa Ct. App. 2005), *overruled on other grounds by In re Marriage of Hansen*, 733 N.W.2d 684 (Iowa 2007). Therefore, we are not surprised that the parents had some differences of opinion during the eighteen months preceding trial. Despite these differences, they exchanged the children, divided holidays, and managed most of the children's daily activities without court intervention. *See Hansen*, 733 N.W.2d at 697–98 (noting that where both parents have historically contributed to physical care of a child in roughly the same proportion, joint physical care is most likely in the best interests of the child). And, Kendra testified that she would be able to "cooperate with Bob here on whatever physical care or visitation arrangement" was reached. The parents' willingness to generally put the children's needs above their own militates in favor of joint physical care. *See id.* at 697 ("[L]ong-term, successful,

joint care is a significant factor in considering the viability of joint physical care after divorce.").

We find it unnecessary to discuss the remaining evidence highlighted by Kendra. On our de novo review of the record, we conclude the district court acted equitably in granting the parents joint physical care of the children. Our conclusion also makes it unnecessary to address Kendra's request for child support, as she does not seriously dispute the district court's finding that the parents had essentially equal earnings and she appears to seek support only in the event the physical care determination is modified.[1]

AFFIRMED.

[1] If Kendra is in fact contesting the district court's finding that the parents had equal earnings, we note that the record supports this finding.