IN THE COURT OF APPEALS OF IOWA

No. 9-284 / 08-1421
Filed June 17, 2009

IN RE THE MARRIAGE OF LESLIE ANN BLOHM SCHELLHORN AND CRAIG ARLAN SCHELLHORN

Upon the Petition of
LESLIE ANN BLOHM SCHELLHORN,
Petitioner-Appellant/Cross-Appellee,

And Concerning
CRAIG ARLAN SCHELLHORN,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Leslie Schellhorn appeals, and Craig Schellhorn cross-appeals, from the district court's decree dissolving their marriage. **AFFIRMED.**

Frank J. Nidey and Mark D. Fisher of Nidey Peterson Erdahl & Tindal, P.L.C., Cedar Rapids, for appellant.

John J. Wood of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MAHAN, P.J.

Leslie Schellhorn appeals the physical care provisions of the district court's decree dissolving her marriage to Craig Schellhorn, arguing the court erred in awarding joint physical care of the children and in failing to award Leslie physical care. Craig Schellhorn cross-appeals, arguing the court erred in deviating from the child support guidelines and in failing to order Leslie to pay child support. He also requests appellate attorney fees. We affirm.

I. Background Facts and Proceedings.

Craig and Leslie Schellhorn began living together in 1998 and were married in August 2002. They have two children: Kaitlyn, born in December 2003, and Cayden, born in March 2005. At the time of trial, Leslie was thirty-three years old and Craig was forty-one years old. Neither party has any physical or mental limitations, although Craig does have a history of severe chronic obstructive sleep apnea.

Both parties continue to be employed in the same jobs they had prior to and throughout their marriage, with stable futures in those positions. Craig is a paramedic/firefighter for the City of Waterloo. He works a typical firefighter schedule and is on call at the station for twenty-four straight hours and then is off work for forty-eight straight hours. He has the flexibility to choose his work days and off days for the following calendar year. Leslie is an emergency room nurse at Allen Memorial Hospital. She works approximately forty hours per week, with varying hours, and is required to work every third weekend.

Craig and Leslie separated in April 2006, and Leslie filed a petition for dissolution soon thereafter. On August 24, 2006, the district court ordered joint

temporary custody and joint physical care of the children during the pendency of the dissolution proceedings. Under the court's order, the parties alternated care of the children each week. Upon the parties' separation, Leslie and the children moved out of the family's residence in Elk Run Heights and into Leslie's parents' home in Reinbeck. She later moved into a rental home in Reinbeck. At the time of trial, Leslie had moved into her boyfriend's house in Cedar Falls, with whom she had a baby in December 2007. Her boyfriend also had joint physical care of two young children from his previous marriage. Craig is also involved in a new relationship, but is "taking things very slow" with his girlfriend.

The parties tried their dissolution action over two days in May 2008. The main issue before the court was placement of the parties' children. Leslie requested physical care of the children and entered "in excess of 200 pages of documents" to support her request. Craig requested joint physical care of the children, or in the alternative to have physical care placed with him. On July 29, 2008, the court entered a written ruling dividing the assets and liabilities of the parties and awarding joint legal custody and joint physical care of the children. The court found sufficient reason to deviate from the child support guidelines and declined to order Leslie to pay Craig $202.59 per month for child support after offsetting each party's child support obligation. Leslie appeals the district court's physical care provisions. Craig cross-appeals the court's failure to order Leslie to pay child support. He also requests appellate attorney fees.

II. Scope and Standard of Review.

We review dissolution decrees de novo. Iowa R. App. P. 6.4; *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007). We give weight to the

fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006).

III. Issues on Appeal and Cross-Appeal.

A. Physical Care.

Leslie argues the district court erred in awarding the parties joint physical care of the children and thereby failing to award her physical care. She alleges there is substantial evidence that joint physical care is not in the children's best interests. She further contends the district court failed to consider the factors enunciated by the supreme court in *In re Marriage of Hansen*, 733 N.W.2d 683, 698 (Iowa 2007).

Joint physical care is an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child. Iowa Code § 598.1(4) (2007). These rights and responsibilities include sharing parenting time of the child, maintaining homes for the child, and providing routine care for the child. *Id*. With joint physical care "neither parent has physical care rights superior to the other parent." *Id*. Any consideration of joint physical care must be based on Iowa's traditional and statutorily required child custody standard of the best interests of the child. *Id*. § 598.41(5)(a); *Hansen*, 733 N.W.2d at 695. According to section 598.41(5)(a):

> If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. . . . If the court denies the request for joint physical care, the determination shall be accompanied by *specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interests of the child*.

(Emphasis added.)

The court is to determine placement according to which parent can minister more effectively to the children's long-term best interests. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996). "The objective of a physical care determination is to place the children in the environment most likely to bring them to health, both physically and mentally, and to social maturity." *Hansen*, 733 N.W.2d at 695; *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa Ct. App. 1998) ("The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a greater burden than the other.").

According to our supreme court, the following nonexclusive factors are to be considered when determining whether a joint physical care arrangement is in the best interests of the children: (1) "approximation," or what has historically been the care giving arrangement for the children between the parents; (2) the ability of the parents to "communicate and show mutual respect"; (3) the "degree of conflict" between the parents; and (4) the ability of the parents to be in "general agreement about their approach to daily matters." *Hansen*, 733 N.W.2d at 697-99; *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007).

In this case, although Leslie was the main caregiver to the children as newborns and infants, the record shows both parents have worked throughout the children's lives while the children have attended daycare. Leslie and Craig, however, have remained active and interested parents, and their work schedules allow them both to spend large amounts of quality time with the children. Furthermore, as the district court noted, "Both parties have presented themselves

as appropriate caretakers for the children although dealing with the children in different styles." Overall, we find the parties have managed to agree on daily matters of child care and seem to complement each other well with regard to child rearing style, discipline, and support of the children's activities.

The record demonstrates several incidents of conflict and lack of communication between the parties. Specifically, the district court noted much of the testimony presented by Leslie was critical of Craig for various reasons. The district court further noted, however, that the record shows "the children have done well under the present one-week on, one-week off arrangements with their parents . . . ." The court determined "after peeling back all of the issues and disparaging remarks which the parties made against one another, the Court believes that the children are best suited by a shared physical care arrangement."

We agree. After reviewing the evidence of this case and considering the foregoing factors, we conclude the district court properly awarded joint physical care in this case. We find the district court carefully reviewed the record for relevant and significant factors with regard to joint physical care. We further conclude the award of joint physical care of Kaitlyn and Cayden was in the children's best interests. We agree with the district court that a joint physical care arrangement will be best able to provide the children stability, and offers the environment most likely to cultivate physically, mentally, and socially healthy individuals. *See Hansen*, 733 N.W.2d at 695. Accordingly, we deny Leslie's request for physical care and affirm the district court as to this issue.

B. Child Support.

Craig argues the court erred in deviating from the child support guidelines and in failing to order Leslie to pay child support. He contends the court should have ordered Leslie to pay $202.59 per month in child support.

Under Iowa law, courts are required to use the offset method for calculating child support in cases involving joint physical care. Iowa Ct. R. 9.14; *In re Petition of Seay*, 746 N.W.2d 833, 835 (Iowa 2008). After applying the offset method, the party with the higher child support obligation shall pay the difference unless variance from this rule is warranted under Iowa Court Rule 9.11. *See* Iowa Ct. R. 9.14. As our supreme court recently stated:

> [U]nder Iowa Court Rule 9.11, the amount of child support for parents awarded joint physical care pursuant to Iowa Court Rule 9.14 is a guideline that is presumptively valid but may be varied *if the district court makes written findings that application of the guidelines would be unjust or inappropriate according to established criteria*.

Seay, 746 N.W.2d at 836 (emphasis added).

In this case, the district court awarded joint physical care and therefore, rule 9.14 is applicable. The court correctly utilized the offset method to calculate Leslie's child support obligation in the amount of $202.59 per month. However, the court found sufficient reasons to deviate from the child support guidelines and decided not to award child support. The court made the following written findings to that regard:

> Given the large amount of debt that the parties have incurred and the fact that the parties have provided well for the children the last two years without either party paying the other child support, the Court finds no reason to implement a child support order at this time.

Upon our review, we find no error in the court's decision not to award child support. The court used the correct method in determining the obligation, and made sufficient written findings noting its decision to deviate from the guidelines.[1] We affirm as to this issue.

C. Appellate Attorney Fees.

Craig requests attorney fees on appeal. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id*. Given the relative asset positions of the parties and the debts the parties have incurred, we deny Craig's request for appellate attorney fees. Costs on appeal are assessed one-half to Leslie and one-half to Craig.

IV. Conclusion.

Having considered all issues raised on appeal and cross-appeal, we affirm.

AFFIRMED.

[1] Craig further argues the court erred in failing to allocate uncovered medical expenses in proportion to the parties' incomes. We also find no error in the court's decision with regard to medical expenses.