**IN THE COURT OF APPEALS OF IOWA**

No. 9-299 / 08-1779
Filed May 29, 2009

**Upon the Petition of**
**WHITNEY MARIE SCHREDER,**
Petitioner-Appellant,

**And Concerning**
**DAVID DANIEL KELCHEN,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, Judge.

In this paternity action, the mother appeals the district court decision placing the parties' child in their joint physical care. **AFFIRMED.**

Jacob R. Koller of Simmons Perrine Moyer Bergman, P.L.C., Cedar Rapids, for appellant.

Thomas J. Viner of Hallberg, Jacobsen, Johnson & Viner, P.L.C., Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Eisenhauer, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**BEEGHLY, S.J.**

## I. Background Facts & Proceedings

Whitney Schreder and Daniel Kelchen are the unmarried parents of Kaylie, born in August 2006. At the time of Kaylie's birth, both parents were college students. Whitney at the University of Iowa and Daniel at Cornell College in Mount Vernon. They lived together in Mount Vernon, Iowa, until September 2007.

After the parties separated they agreed to a joint physical care arrangement where Kaylie spent equal time with each parent. On November 13, 2007, Whitney filed a petition for adjudication of paternity, custody, visitation and support. A temporary order filed on December 21, 2007, placed Kaylie in the physical care of Whitney, with Daniel having visitation.

At the paternity hearing held in August 2008, Whitney sought physical care of Kaylie, while Daniel sought joint physical care. Whitney is still attending school and plans to become an accountant. In addition to attending college, Whitney works thirty to thirty-five hours per week as an administrative assistant at Koppenhaver Associates, where she earns $23,000 per year. Daniel graduated from Cornell College in June 2007, and plans to become a chef. He is employed by Sodexho U.S.A., and works in the cafeteria at Cornell College. He has annual income of $18,720. Both parents still live in Mount Vernon.

The district court entered a decision on September 10, 2008, granting the parties joint legal custody and joint physical care of Kaylie. The court stated, "While the communication between Whitney and Daniel is not always perfect,

they have succeeded in putting aside their disappointment in one another so that K.D. can benefit from frequent contact with each other." The court concluded, "Any problems Whitney and Daniel have had with communication are minor." The court also stated it was "very impressed with the respect both Whitney and Daniel showed one another during the court proceeding and the respect they have for the other as both a parent and a person." The court did not order either party to pay child support.

Whitney filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) raising issues of child support, the child dependency tax exemption, and uncovered medical expenses. The court addressed these issues. Whitney now appeals the district court's decision granting the parties joint physical care of Kaylie.

## II. Standard of Review

This action for custody and visitation was filed in equity. *See* Iowa Code § 600B.40 (2007). In equity cases our review is de novo. Iowa R. App. P. 6.4. "In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them." Iowa R. App. P. 6.14(6)(*g*). Our governing consideration is the best interests of the child. Iowa R. App. P. 6.14(6)(*o*); *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995).

## III. Joint Physical Care

In child custody cases where the parents have never married, our legal analysis is the same as child custody cases in dissolution of marriage

proceedings. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988). We consider the factors listed in section 598.41(3) and *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). *Id.* Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. *Phillips*, 541 N.W.2d at 847.

Joint physical care is a viable option when it is in the child's best interests. Iowa Code § 598.41(5)(a); *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). In considering whether joint physical care is in the best interests of the child, we consider the following factors: (1) approximation, which reflects the historical care-giving arrangement for the child; (2) the ability of the spouses to communicate and show mutual respect; (3) the degree of conflict between the parents; and (4) the extent to which the parties agree on matters of routine, daily care. *In re Marriage of Hansen*, 733 N.W.2d 683, 700 (Iowa 2007); *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007).

Whitney was the primary caregiver for Kaylie, except for the three and one-half months when the parties had joint physical care. The district court found the parties had the ability to communicate, stating their communication problems were minor. The court found the parties showed mutual respect, finding it "was very impressed with the respect both Whitney and Daniel showed one another during the court proceeding and the respect they have for the other as both a parent and a person." The court did not find conflict between the parties, stating they had put aside their disappointment in one another. The court noted that while Whitney and Daniel have different personalities, "nothing in the record

suggests that their parenting styles are on opposite ends of the spectrum and would lead to any ongoing arguments about child rearing." After reviewing these factors, the court concluded that it would be in Kaylie's best interests to be placed in the joint physical care of both parents.

On appeal Whitney claims the parties cannot communicate, that they have a conflicted relationship, and that their differing personalities would lead to arguments about child rearing practices. "Generally, we give considerable deference to the district court's credibility determination because the court has a firsthand opportunity to hear the evidence and view the witnesses." *Berning*, 745 N.W.2d at 92. The district court, which had the opportunity to view the parties, came to the conclusion that the parties respected each other and were able to communicate sufficiently so that they could share joint physical care of their child.

We find the district court properly found joint physical care was in the best interests of the child. Whitney stated Kaylie had a strong bond with Daniel, "[l]ike every daughter should have with her father." She stated she felt free to call Daniel when she needed to speak to him. Daniel testified, "I have no qualms whatsoever with regards to Whitney's abilities as Kaylie's mother. I believe she does a fantastic job, and I respect that entirely." He also stated he believed the parties had made "huge amounts of progress in the ability to communicate."

On our de novo review of the record, we affirm the district court's decision granting the parties joint physical care of Kaylie.

## IV. Attorney Fees

Daniel seeks attorney fees for this appeal. An award of attorney fees is permissible in a paternity action under section 600B.25(1). An award of appellate attorney fees is within the discretion of the appellate court. *Markey v. Carney*, 705 N.W.2d 13, 26 (Iowa 2005). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *Id.* We determine each party should pay his or her own appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Whitney.

**AFFIRMED.**