IN THE COURT OF APPEALS OF IOWA

No. 9-302 / 08-1789
Filed June 17, 2009

IN RE THE MARRIAGE OF CAROLYN MICHELLE REED AND DONALD DEAN REED

Upon the Petition of

CAROLYN MICHELLE REED,
Petitioner-Appellee,

And Concerning

DONALD DEAN REED,
Respondent-Appellant.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady, Judge.

Donald Reed appeals from the physical care provisions of the district court's decree dissolving his marriage to Carolyn Reed. **AFFIRMED.**

Tarek A. Khowassah of Holland & Anderson, L.L.P., Iowa City, for appellant.

Matthew J. Hayek and Alison Werner Smith of Hayek, Brown, Moreland & Smith, L.L.P., Iowa City, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

Donald Reed appeals from the physical care provisions of the district court's decree dissolving his marriage to Carolyn Reed. He contends the court erred in placing physical care of the parties' child with Carolyn. We affirm.

The parties were married in May 2000 and have one child together, a daughter, A.R., born in May 2001. Carolyn filed a petition for dissolution of marriage on May 18, 2007. In an order regarding temporary matters the court placed physical care of A.R. with Carolyn and awarded Donald liberal visitation. Following the grant of Donald's request for continuance, trial was held on August 11 and 12, 2008. The parties agreed prior to trial they should have joint legal custody of A.R. However, each party sought physical care of A.R. and this was the main issue at trial.

Carolyn was thirty-seven years of age at the time of trial and residing in Hampton with her parents. She has a bachelor's degree in psychology and human services and has completed substantial work toward a master's degree in social work. The district court found her employment history to be sporadic at best. Her income for 2007 was $14,800 from working at the University of Iowa Hospitals and Clinics and various other temporary jobs. She had been unemployed since she moved to Hampton to reside with her parents in February 2008, but expected to begin working at Franklin General Hospital as a part-time nurse's aide shortly after the trial.

Carolyn met Donald in 1999 in a mental health group therapy session where she was receiving counseling for borderline personality disorder and

Donald was being treated for major depressive disorder. At the time of trial Carolyn was not receiving any mental health treatment or services. She had received a deferred judgment for an operating while intoxicated arrest that occurred in April 2008.

Donald was thirty-three years of age at the time of trial and living in Coralville. He was working as a licensed massage therapist and his gross income from his work was approximately $12,900 in 2007. Donald also receives social security disability income in the net amount of $871 per month. Donald suffers from Marfan's Syndrome that has resulted in his being legally blind and having to have valves replaced in his aorta. He also suffers from major depressive disorder as well as diabetes, high blood pressure, and high cholesterol. Donald was receiving ongoing mental health counseling at the time of trial for depression and was taking prescription medications for depression, Marfan's Syndrome, and diabetes. Donald had previously been diagnosed with schizophrenia and antisocial personality disorder, although the record casts some doubt on the accuracy of these additional diagnoses. He has attempted suicide various times in the past and has been hospitalized for psychiatric problems.

Donald was hospitalized for five days in 2007 for transient ischemic attacks (TIAs) after being struck in the head and neck during an assault some six days earlier. A.R. was in his care for a three-week visit when this occurred and he did not inform Carolyn he had been hospitalized. Carolyn called to talk to A.R. and learned about Donald's hospitalization.

A.R. also suffers from Marfan's Syndrome. As a result she has limited sight and must take "heart medication." She attends regular elementary school in the Hampton-Dumont school district. A.R. has a learning plan at Hampton-Dumont that accommodates her vision issues. She has and uses sight-related mechanical aids and was doing well in school at the time of trial.

In a written decree of dissolution filed October 7, 2008, the district court placed physical care of A.R. with Carolyn subject to liberal visitation with Donald. Donald appeals, contending the court erred in placing physical care of A.R. with Carolyn. He argues Carolyn is a less suitable caretaker than he, in part citing her lack of stability and mental health issues. He also contends he would be a more suitable caretaker and that the record does not support certain findings made by the court.

We conduct a de novo review of physical care orders. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). We give weight to, but are not bound by, the district court's factual findings and credibility assessments. Iowa R. App. P. 6.14(6)(*g*). We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Reinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but instead make such findings and conclusions as from our de novo review we find appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (Iowa 1968).

When considering the issue of physical care, our overriding consideration is the children's best interests. Iowa R. App. P. 6.14(6)(*o*); *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997). In assessing which physical care arrangement is in the children's best interests, we are guided by the factors set forth in Iowa Code section 598.41(3) (2007), as well as those identified in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). *In re Marriage of Hansen*, 733 N.W.2d 683, 696 (Iowa 2007). The ultimate goal is to provide a child the environment most likely to bring them to healthy physical, mental, and social maturity. *Murphy*, 592 N.W.2d at 683. The critical issue is which parent will do better in raising the children; gender is irrelevant, and neither parent has a greater burden than the other. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa Ct. App. 1996).

With regard to the physical care issue the district court here stated, in part:

> The court credit's Donald's testimony that each parent had periods where they were functioning as the primary care parent while they were not engaged in significant employment or educational pursuits and the other was. Both attended [A.R.'s] medical appointments and school conferences. Neither can point to any significant parenting deficits in the other, though Carolyn is concerned that Donald misses some minor problems due to his disability. Carolyn has been economically dependent on her parents for much of her adult life and continues to rely on them to take care of [A.R.] when she is otherwise engaged. Carolyn also uses [A.R.] to communicate with Donald about things that adults should discuss. Donald has built a social/therapeutic network of support from friends, coworkers and the blind community. Both parties have struggled economically. [A.R.] appears to be more emotionally dependent on her mother, a condition that Carolyn uses to her advantage. The Court finds the issue of primary care to be close. However, when the Court considers the strong family support Carolyn has, the risk, however moderate, that Donald may have another sudden hospitalization, [A.R.'s] success in her current academic setting and [A.R.'s] own emotional needs, it concludes

> that it is in [A.R.'s] best interests that Carolyn be her primary care parent. Donald will be entitled to liberal visitation.

We agree with the court that the issue of who should have physical care of A.R. is a close question here. As is often the case, deciding between these two parents is not an easy task. Placement in the home of either has merit, each parent has at various times been A.R.'s primary caretaker, and neither environment is clearly superior to the other. The parties are fairly equal with regard to financial stability, although Carolyn's stability is largely due to her parents' demonstrated willingness to continue to help and support her. Donald and Carolyn both clearly love A.R. and have demonstrated an ability to adequately parent her, but both have demonstrated weaknesses as well. During the pendency of this case each party at times abused the joint temporary custody order by violating the other parent's rights as a joint custodian. Carolyn did so by moving A.R. and changing A.R.'s school without informing Donald or allowing him the opportunity to participate in the decisions. Donald did so by not informing Carolyn when he was hospitalized for a significant time for a serious condition while A.R. was in his care. However, considering the record as a whole we, like the district court, conclude placement with Carolyn provides some advantages over placement with Donald and thus find the scales tip in Carolyn's favor.

Carolyn can offer A.R. an extended family structure in the Hampton area. A.R.'s maternal grandparents, aunts and uncles, and cousins are all in that general area and have given Carolyn continual strong family support in a multitude of ways. Although Donald may have been A.R.'s primary caretaker at

times, the record shows Carolyn has been her primary caretaker for a greater portion of A.R.'s life. Carolyn has arranged and transported A.R. to the very great majority of her doctor's appointments, daycare, and summer camps. While it is clear A.R. loves and is bonded with her father, we agree with the district court that she seems to be more emotionally close to and dependent on her mother. Thus, we again agree with the court that A.R.'s emotional needs would be better served in her mother's care.

In addition, the record shows that A.R. appears to be doing very well in her current academic setting while residing with Carolyn in Hampton. Carolyn has been actively involved in assuring A.R.'s special needs are being met at school and it appears the school district has been very responsive in meeting those needs. We acknowledge there were some issues with tardiness at school when A.R. and Carolyn were living in Cedar Rapids following the parties' separation. However, the record shows this has not been an issue since A.R. began attending school at Hampton-Dumont.

Finally, the record shows that Donald's serious, ongoing mental and physical problems have the potential to negatively affect his ability to parent A.R. This already occurred once when he had the TIAs and had to be rushed to the hospital, thus making it impossible for him to care for A.R. We agree with the district court that no matter how moderate, there is the risk that Donald may have additional sudden hospitalizations. This is unfortunate but a fact that must be taken into consideration. Although in the past Carolyn was also diagnosed with a mental illness, the record shows she dealt with and received proper treatment for

it and it appears to have been under control, at least since A.R.'s birth. She was not receiving any mental health treatment or taking any medication at the time of trial, and it does not appear that she has any physical health issues.

In summary, it is clear each party loves their daughter and would be an acceptable parent. However, given Carolyn's ability to provide A.R. with an extended family structure and strong family support, her historically somewhat greater role as A.R.'s primary caretaker, A.R.'s success in her current academic setting, A.R.'s own emotional needs, and the risks associated with Donald's physical health problems, we agree with the district court that A.R.'s long-range interests are best served by placing responsibility for her physical care with Carolyn.

Based on our de novo review, and for all the reasons set forth above, we affirm the district court's placement of A.R.'s physical care with Carolyn.

AFFIRMED.