

IN THE COURT OF APPEALS OF IOWA

No. 0-052 / 99-852
Filed March 15, 2000

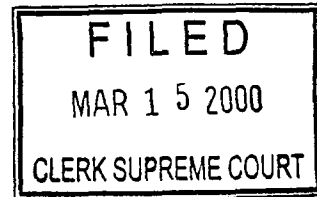
PETER JAHR,

Appellant,

vs.

RENEE WAGNER,

Appellee.



Appeal from the Iowa District Court for Floyd County, John Mackey, Judge.

Father appeals from the district court order awarding primary placement of the parties' son to the mother. **AFFIRMED.**

Mark L. Walk of Dunkelberg, McKinley, Folkers & Walk, Osage, for appellant.

Normand Klemesrud of Klemesrud Law Office, Nashua, for appellee.

Heard by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

VAITHESWARAN, J.

Peter Jahr appeals a district court ruling placing primary physical care of his son Brady with Renee Wagner. We affirm.

I. Background Facts and Proceedings

Jahr, a farmer and businessman in Mitchell County, went on a blind date with Wagner in the late summer of 1997. That fall, Wagner discovered she was pregnant. Brady was born on June 2, 1998.

On June 10, 1998, Jahr filed suit against Wagner, seeking to have paternity established and requesting temporary and permanent custody. Wagner counterclaimed for temporary and permanent custody and termination of Jahr's parental rights based on nonpayment of child support. Following trial, the district court awarded the parties joint legal custody of Brady, placed primary physical care of the child with Wagner, and afforded Jahr reasonable and liberal visitation rights. The court also ordered Jahr to pay Wagner child support in the amount of \$239 per month as well as \$2868 in accrued support. This appeal followed.

II. Scope of Review

Our review of this equity action is de novo. Iowa R. App. P. 4. The controlling consideration in determining custody is the best interests of the child. Iowa R. App. P. 14(f)(15). We strive "to place the child in the environment most likely to bring that child to healthy physical, mental and social maturity." *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988) (quoting *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981)). We will determine custody of a child of unmarried parents using the

same legal analysis employed in dissolution actions. *Id.* Therefore, we will look to the factors for determining custody set forth in Iowa Code section 598.41(3)

III. Primary Physical Care

Jahr contends the district court should not have awarded Wagner primary physical care because: (1) she will not foster a relationship between Brady and him; (2) she cannot adequately minister to Brady's needs; and (3) he is the better parent.

A. Promoting Relationship with Father

Iowa Code section 598.41(3)(e) authorizes a court to consider "whether each parent can support the other parent's relationship with the child." Jahr contends Wagner's conduct falls short in this area. We acknowledge that the relationship between Wagner and Jahr as reflected in the record has been less than amicable. Each has displayed petty and sometimes vindictive conduct which cumulatively is not in Brady's long-term best interests. *Cf. In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa App. 1998) (noting court could not "order an awakening by the parties" fully supporting each parent's interaction with the children as being in the children's best interests). However, we are not convinced that Wagner has disavowed Brady's relationship with Jahr.

During the final weeks of her pregnancy, Wagner repeatedly called Jahr to let him know the progress of her pregnancy and where she was hospitalized. Jahr afforded her no comfort or support, electing instead to visit Jahr only after the baby was born. His explanation is instructive:

[S]he was in the Mason City – 5 East a couple times during this where she was admitted and she would call a couple times saying that she's dilated to four, the baby's coming, you got to make arrangements, you got to get here and she did this for I think a week or so, two weeks.

So it got to a point whenever she called me and said it's time, it was -- I didn't know if I could believe her or not. Eventually she went to Iowa City and she was down there and that's where Brady was born. . . . [S]he said she was going to have the baby, well then again I didn't know if it was true or not and the other reason is this would have been a month early before it would have been feasible for me to be with Renee so I didn't know if it would have been my baby or not.

Jahr's own testimony, therefore, reflects Wagner's intent to reaffirm Jahr's parental relationship, rather than disavow it.

After Brady was born, Wagner conceded she was unwilling to place Jahr's name on Brady's birth certificate. She stated she was reluctant to do so because Jahr expressed an unwillingness to acknowledge Brady as his son. Specifically, Jahr told her this was not what he wanted, and he blamed Wagner for the pregnancy. Wagner did, however, notify the local newspaper that Jahr was Brady's father, again suggesting she had no intent to disavow the relationship.

Jahr also asserts Wagner obstructed visitation. The record suggests the contrary. Jahr sought to take Brady to his home on the first weekend after Brady was born. Although Wagner agreed, her mother understandably stated a change of environment at such an early age was not wise. Wagner's mother nevertheless offered Jahr the chance to stay at her home, where Wagner was temporarily staying with the baby. Jahr refused the offer and spent only an hour or two visiting the baby. The district court stated, "the fact that Pete wished to wrest the newborn infant immediately after birth from Renee so that he could show off his accomplishment to his family conclusively demonstrates Pete is not capable of placing Brady's interests above his own." We agree.

Additionally, for the ten months after Brady's birth, Wagner regularly permitted Jahr to have visitation. Jahr initially elected to exercise visitation for only an hour a week. Later, he took Brady to his home every other weekend. However, during planting season in October 1998, Jahr chose not to see Brady for approximately three weeks. Wagner ultimately called Jahr's mother and offered to take Brady to Jahr's house for a visit. On this record, we are not convinced Wagner impeded visitation between Brady and his father. *Cf. In re Marriage of Barry*, 588 N.W.2d 711, 713 (Iowa App. 1998) (finding visitation complaints minimal and easily rectified).

Jahr also asks us to look to problems Wagner's former husband had in maintaining contact with their two daughters. We decline to do so. Wagner's ex-spouse and his new girlfriend conceded they had no personal knowledge of how Wagner dealt with Jahr on issues relating to Brady. Therefore, problems they had with Wagner and her first two children have little bearing on this proceeding.

Jahr's contention that Wagner willfully cancelled a scheduled baptism is the only event cited by him that smacks of vindictiveness on Wagner's part. However, we are not inclined to alter the district court's custody determination on the basis of an isolated event.

We conclude Wagner has supported Jahr's relationship with Brady, and we accordingly reject these grounds for altering the physical care arrangement.

B. Wagner's Parenting

Jahr contends Wagner suffers from a documented mental illness which precludes her from adequately ministering to Brady's needs. The record reflects

Wagner suffers from bipolar disorder. Two mental health professionals testified at trial. We have carefully reviewed their testimony and pertinent medical records. Both stated that the key to Wagner's well being was her medication. When she chose to discontinue the medication, she experienced delusions, agitation, and impaired judgment. When she consistently took the medication, these problems essentially resolved themselves. For example, Wagner was most recently treated for delusions in May 1998. She had not been taking her medication. For the ten months following Brady's birth, however, she had remained on her medications and had experienced no delusional episodes.

We have stated "prior incapacitating mental or physical disability once corrected will not stand as a bar to the grant of otherwise appropriate custodial rights." *Cramer v. Cramer*, 185 N.W.2d 787, 789-90 (Iowa 1971). On the basis of this record, we cannot find Wagner's mental illness has impaired her ability to minister to Brady's needs or has compromised Brady's well being. *Cf. Marriage of Bergman*, 466 N.W.2d 274, 276 (Iowa App. 1990) (noting mother's deterioration in mental and physical condition had affected child's welfare). As of the time of trial, she had remained on her medications for ten months, had attended counseling sessions, and had developed contingency plans for Brady in the event delusional episodes recurred. Her illness, therefore, is not grounds for changing the physical care arrangement.

C. Jahr's parenting

Jahr finally argues that as a "rock-solid" member of his community, he is better equipped to care for Brady. As the district court stated, there is no question

Zahr "has attained all of the accoutrements of a successful business life." However, we agree with the district court that Jahr "is not capable of placing Brady's interests above his own." Zahr provided Wagner with little monetary support while she was pregnant. The money he did give her during this period was in the form of a loan. He subsequently sued Wagner and obtained a judgment against her for the full amount. As previously noted, he also provided little emotional support, leaving her to fend almost entirely for herself during a high-risk pregnancy and delivery. After Brady's birth, Zahr refused to pay child support, contending to do so would constitute "double taxation," as Wagner received public assistance. His material support was limited to the purchase of diapers on two occasions and a gift of \$35 to buy Wagner new clothes for Brady. Although Jahr purchased insurance for Brady, he refused to give Wagner an insurance card until the custody issue was finally determined.

Finally, as the district court pointed out,

the available time [Jahr] could devote to raising Brady is severely limited, even if it were "quality time." The demands of his chosen careers would require that the predominant burden of raising Brady would devolve upon his sisters as well as daycare.

We have no reason to question the ability of Jahr's family to afford Brady a comfortable and secure lifestyle. *Cf. In re Marriage of Collingwood*, 460 N.W.2d 486, 488 (Iowa App. 1990) (concluding long term stability afforded by father's extended farm family supported district court's decision to place children with him). However, the issue facing us is which *parent* can better minister to Brady's needs. We agree with the district court that Jahr's "level of maturity [is] lacking to be an

adequate full-time parent." Accordingly, we find no reason to alter the physical care arrangement ordered by the court.

AFFIRMED.