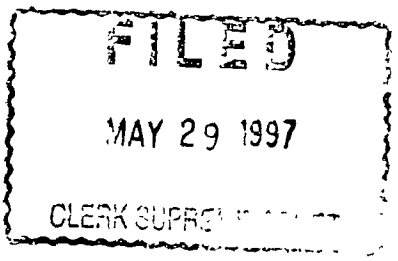
IN THE COURT OF APPEALS OF IOWA

000169

No. 7-110 / 96-1363



THOMAS EDWARD FREESE,
Appellant,

vs.

GLORIA J. STOCKS,
Appellee.

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley, Judge.

Thomas Freese appeals a district court ruling awarding primary physical care of his son, Sterling Freese, to the child's mother, Gloria Stocks. **AFFIRMED.**

Roger L. Sutton of Sutton & Troge's Law Office, Charles City, for appellant.

DeDra Schroeder-McCarty of Schroeder Law Office, Charles City, for appellee.

Considered by Sackett, P.J., and Cady and Vogel, JJ.

VOGEL, J.

This is an appeal by a father claiming the district court should have granted him primary physical care of his son.

Thomas Freese and Gloria Stocks are the parents of Sterling Freese, who was born on December 16, 1993. Thomas and Gloria cohabited for a period of time, but never married. Gloria has since married Dennis Theilen.

On September 5, 1995, Thomas filed a petition seeking custody of Sterling. The district court granted the parties joint legal custody, with Gloria having primary physical care. This placement was made subject to Gloria receiving services from the Department of Human Services. Thomas was ordered to pay child support of $200 per month. Thomas now appeals.

Thomas asserts the district court should have granted him primary physical care of Sterling. He states he can better minister to Sterling's needs. In child custody cases, our first and governing consideration is the best interests of the children. *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995). The court's objective is to place the children in the environment most likely to bring the children to a healthy physical, mental, and social maturity. *In re Marriage of Rodgers*, 470 N.W.2d 43, 45 (Iowa App. 1991).

In this equity case, our review is de novo. Iowa R. App. P. 4. While not bound by the district court's determination of factual findings, we will give them

considerable weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

The district court found neither party in this case was credible and that both parties had major problems. Thomas had several convictions for operating while intoxicated, driving while under suspension, and assault. He had also been convicted of possession of marijuana and domestic abuse. Gloria was convicted of simple assault. There was evidence both parties used marijuana and drank to excess. Both parties were unemployed.

In awarding primary physical care to Gloria, the district court noted Thomas had limited reading skills. The court found this was a safety concern because Thomas was unable to read medicine labels. The court also found Thomas's home was unsafe because there had been a stabbing there recently. The court noted Gloria had voluntarily attended substance abuse treatment and seemed to recognize she had a problem with alcohol, while Thomas had only gone to treatment when ordered to do so by the court, and he continued to drink.

In the present case, we defer to the district court's assessment of credibility. We affirm the award of primary physical care of Sterling to Gloria. The evidence showed Gloria had a well-kept home and was receiving services to improve her parenting skills. In addition, she was taking steps to address her alcohol problems.

Both parties seek attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial

positions. *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine Thomas should pay $500 for Gloria's attorney fees for this appeal.

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

AFFIRMED.