IN THE COURT OF APPEALS OF IOWA

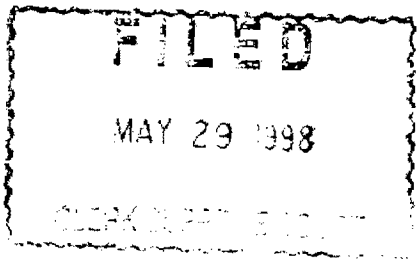
No. 8-220 / 97-1366

Upon the Petition of
BRETT KNAPP,

Petitioner-Appellee,

And Concerning
ANGELA M. ACHOR,

Respondent-Appellant.



Appeal from the Iowa District Court for Linn County, Larry J. Conmey, Judge.

Angela Achor appeals from a district court ruling awarding custody of her minor son to his father, Brett Knapp. **AFFIRMED.**

Douglas E. Johnston, Muscatine, for appellant.

Jeffrey P. Taylor of Klinger, Robinson & Ford, L.L.P., Cedar Rapids, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

SACKETT, P.J.

Respondent-appellant Angela Achor appeals from a district court ruling awarding custody of the parties' son, Chase J. W. Knapp, born February 1, 1996, to his father, petitioner-appellee Brett Knapp. Angela contends she, not Brett, should be the physical custodian. We affirm.

Angela and Brett never married, although they lived together for some period. In April of 1996 they separated, and on September 6, 1996, Brett filed a petition to establish his paternity, to fix physical custody, and to provide for child support. On April 22, 1997, the district court entered an order finding Brett to be Chase's biological father. The court temporarily ordered Brett and Angela have shared physical custody and ordered Brett to pay Angela $100 a month child support.

A trial was held on June 25, 1997. The trial court subsequently entered an order finding both parties had the necessary parenting skills to care for Chase and they had shared time with him almost equally. The court concluded the parties should be given joint legal custody and awarded physical custody of Chase to Brett. The court found Brett had shown more stability in employment and living arrangements, had a stronger work ethic, more flexible hours, excellent family support, and was supportive of Angela's role as Chase's mother. The court awarded visitation and ordered Angela to pay $258 per month in child support.

Angela contends she is the better custodian. She contends Brett's schedule will not be as flexible as hers. She claims she has significant family support. She maintains Brett introduced her to controlled substances. She contends the trial court did not give sufficient consideration to what she terms domestic abuse by Brett.

We review de novo. Iowa R. App. P. 4; *In re Marriage of Riggert*, 537 N.W.2d 789, 791 (Iowa App. 1995); *In re Marriage of Harris*, 499 N.W.2d 329, 330 (Iowa App. 1993). The question is which parent will do the better job of raising Chase. *In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa App. 1991). We look to the factors set forth in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The ultimate question is always which parent can minister more effectively to the long-range interests of this child. *In re Marriage of Castle*, 312 N.W.2d 147, 149 (Iowa App. 1981).

We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Yet, we are not bound by these determinations. *Id.* We base our decision primarily on the particular circumstances of the parties before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3). *See id.* at 355-56; *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974); *Neubauer v. Newcomb*, 423 N.W.2d 26, 27 (Iowa App. 1988). We attempt to determine which parent will in the future provide an

environment where Chase is most likely to thrive. *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa App.1993).

Brett lives in Cedar Rapids. He works with his father in their business, B & W Locksmithing. Angela lives in Illinois and works full-time for a temporary agency at Heinz USA from 2:30 to 11:00 p.m. Brett has stability in both employment and residence. Angela, in the two years prior to trial, had at least seven jobs. She has moved frequently. Brett's grandmother has provided help with child care, contrary to Angela's assertions. The flexibility of Brett's employment allows him to spend time with his son during daylight hours.

Both parties have used illegal controlled substances. The evidence at trial was that they both had taken steps to eliminate its use. There was evidence Angela and Brett have used physical force against each other, and the trial court found that to be a fact. Our review of the record causes us to agree with this conclusion. Brett pled guilty to domestic abuse. He was given a deferred sentence and attended a batterer's program. The fact Angela was not charged with domestic abuse on other occasions does not render her actions any less serious.

Angela and Brett both love their son. Brett has at times assumed the primary responsibility for Chase's care. There are negative aspects in the lives of both parties. We have considered these factors. Yet, the primary focus is on where Chase will have the better chance growing up. We agree with the trial court that Brett shows

greater stability. He has substantial family support. We find no valid reason to disagree with the conclusion of the trial court and affirm.

Brett seeks appellate attorney fees, contending Angela currently has an income greater than his. An award of fees is not a matter of right, but rests in the court's discretion when considered with the financial positions of the parties. *See In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995). We award Brett $500 in appellate attorney fees. Costs on appeal are taxed to Angela.

AFFIRMED.