IN THE COURT OF APPEALS OF IOWA

No. 8-346 / 97-1269

Upon the Petition of BRIAN K. STRUNK, Individually and as Father and Next Friend of Angelina Renae Burns,

Petitioner-Appellee,

And Concerning DAWN MARIE BURNS,

Respondent-Appellant.

FILED
SEP 30 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Henry County, William L. Dowell, Judge.

Dawn Burns appeals the decision of the district court placing the primary physical care of the parties' child with Brian Strunk. **AFFIRMED.**

L. Jeffrey Zearley, Tipton, for appellant.

William R. Jahn, Jr., of Aspelmeier, Fisch, Power, Warner & Engberg, P.L.C., Burlington, for appellee.

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

PER CURIAM

Respondent-appellant Dawn Burns appeals the decision of the district court placing primary physical care of the parties' child with petitioner-appellee Brian Strunk. Dawn claims she has been the child's primary caretaker throughout her life and she should have been granted primary physical care. We affirm on appeal.

Dawn and Brian are the parents of Angelina, who was born in September 1995. Dawn and Brian were never married to each other. Dawn has two children, Mary and Hobart, from other relationships. Mary lives with Dawn's mother.

Dawn is employed by Alaniz & Sons in Mt. Pleasant, Iowa, as a mail sorter. She was living with Hobart and Angelina in a one-bedroom apartment in New London. In 1990, Dawn was convicted of possession of a controlled substance (crack cocaine) and placed on probation, which she has completed. At the time of the custody hearing, she was facing a charge of fraudulent use of a credit card.

Dawn has placed Angelina in the care of others from time to time. A few months after Angelina was born, Dawn's house burned down. She placed Angelina in the care of a friend, Patty Mettler, for about a month. At a later time, Dawn was living with a boyfriend and she felt his house was not suitable for Angelina. She again placed Angelina in the care of Patty for about one and one-half months. At the time of the hearing, Patty was providing care for Angelina while Dawn was at work.

Brian is employed as a security guard by Per Mar Security. He lives in a house in Dallas City, Illinois, with his fiancee. Brian testified he was unaware of Angelina's

existence until he was served papers by the Child Support Recovery Unit in March 1996. In June 1996, after a blood test showed he was Angelina's father, Brian began visitation with her. In August 1996, Brian filed the present action seeking primary physical care of Angelina. He has not been permitted to have any visitation with the child since February 1997.

The district court determined the parties should have joint legal custody of Angelina, with Brian having primary physical care. The court found Dawn had not shown as much stability as Brian. Dawn was awarded visitation and ordered to pay child support. Dawn appealed.

Our scope of review is de novo. Iowa R. App. P. 4. The criteria for determining custody are the same whether the parents are dissolving their marriage or are unwed. *Langner v. Mull*, 453 N.W.2d 644, 649 (Iowa App. 1990). In child custody cases, our first and governing consideration is the best interests of the child. *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995). The court's objective is to place the child in the environment most likely to bring the child to a healthy physical, mental, and social maturity. *In re Marriage of Rodgers*, 470 N.W.2d 43, 45 (Iowa App. 1991).

Dawn contends she should have been granted primary physical care of Angelina because she was the child's primary caretaker throughout her life. At the custody hearing, Dawn testified Angelina cried when she returned from visitation with Brian, and Dawn believed Angelina was uncomfortable with him.

After a de novo review of the record, we agree with the decision of the district court to place primary physical care of Angelina with Brian. Dawn has not shown much stability in her past. She has moved several times and has been involved in several relationships. Dawn has also placed Angelina in the care of others at various times. She has not always supported Brian's relationship with Angelina. Dawn's legal problems show she has made some poor choices. Brian, on the other hand, seems to have entered a period of stability in his life. He and his fiancee are very willing to assume care of Angelina. They are also prepared to involve Dawn in Angelina's life.

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

AFFIRMED.