IN THE COURT OF APPEALS OF IOWA

No. 7-490 / 97-276 000313

IN RE THE MARRIAGE OF KRISTI LEE YAMILKOSKI AND MATTHEW ANTHONY YAMILKOSKI

Upon the Petition of
KRISTI LEE YAMILKOSKI,
Appellee,

And Concerning
MATTHEW ANTHONY YAMILKOSKI,
Appellant.

FILED
DEC 29 1997
CLERK SUPREME COURT

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

Matthew Yamilkoski appeals the custody and visitation provisions of the decree dissolving his marriage to Kristi Yamilkoski. **AFFIRMED.**

Eric C. Syverud of Blackstock Law Offices, Cedar Rapids, for appellant.

Patricia C. Kamath of Kamath Law Office, Iowa City, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Matthew Yamilkoski appeals from the decree dissolving his marriage to Kristi Yamilkoski as he contends the district court erred in (1) awarding Kristi primary care of the parties' minor child, and (2) giving him insufficient visitation.

Background facts. Matthew (Matt) and Kristi Yamilkoski were married on August 18, 1990. They had daughter, Korin, born in July 1990. Kristi filed a petition for dissolution of marriage on January 9, 1996. The district court granted Matt temporary custody of Korin and ordered Kristi to pay child support.

At the time of trial in November 1996, Kristi was twenty-five years old and lived in North Liberty, earning a gross income of $1405 per month at the veterinary department of the University of Iowa.

Matt was twenty-six and was a self-employed construction worker living in Toddville. Matt apparently reported an income of $4500 on his tax return for 1995 but estimated he would make $32,000 the next year.

The district court entered its dissolution decree, granting joint legal custody but gave primary care of Korin to Kristi. The court granted Matt visitation of every other weekend, three consecutive weeks in the summer, alternating holidays, and Father's Day.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the

issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984).

I. Primary physical custody. Matt argues the trial court erred in awarding primary physical care of Korin to Kristi. He maintains he has been integrally involved in Korin's caretaking throughout the marriage. Matt additionally asserts he has a flexible schedule and is able to adapt to Korin's needs and maintains he has a strong family support system.

The controlling consideration regarding placement of the children is their best interests. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The court determines placement according to which parent can minister more effectively to the children's long range best interests. *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995) (citing *In re Marriage of Vrban*, 359 N.W.2d 420, 424 (Iowa 1984)). The court's objective is to place the children in the environment most likely to bring them to a healthy physical, mental, and social maturity. *Kunkel*, 555 N.W.2d at 253.

The trial court found Korin had done well in Matt's care, but that others had supplied most of the care giving. The trial court found Matt and his girlfriend tended to ridicule Kristi about her weight, and Matt was very controlling regarding the

mother/daughter relationship. The court found Kristi would promote a positive relationship between Korin and Matt. It also stated Kristi was the more sensitive, caring parent than Matt. The trial court characterized Matt as "arrogant, abusive, [and] hypocritical." The trial court found Kristi was credible but Matt lacked credibility, especially regarding his income. We do give weight to the trial court's assessment of the parties. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986).

On our de novo review, we find the trial court appropriately determined Kristi should have primary physical custody of Korin. In the past, Matt has denied Kristi any contact with Korin—once for a period of five weeks. He was also inflexible concerning the visitation schedule and has made the exchange of Korin for visitation difficult. Conversely, the evidence supports that Kristi will foster positive relations with Korin and Matt and will not resist visitation by Matt. The fact that Kristi has agreed to allow Matt an additional week of summer visitation, without court order, is a testament to her willingness to cooperate and facilitate positive relations with Matt and Korin. Additionally, Kristi has been much more involved with Korin's day-to-day life.

Moreover, Matt was charged with burglary in the state of New Mexico in December of 1994. Although Matt testified he was not officially arrested, he

nevertheless paid restitution toward his victim as an alternative to standing trial. We agree with the trial court's overall assessment of Matt's credibility.

We accordingly affirm the trial court's primary physical placement of Korin with Kristi.

II. Visitation. Matt argues the visitation schedule established by the trial court is inadequate. He alleges he should be granted midweek visitation, additional summer visitation, and visitation when Kristi has to work on weekends.

A. Midweek. Kristi argues more physical exchanges of Korin between Kristi and Matt creates an increased potential for conflict, which would be disruptive to Korin's schedule and thereby affect Korin's sense of stability. We agree that this would likely take an emotional toll on Korin. *See In re Marriage of Hickey*, 386 N.W.2d 141, 143 (Iowa App. 1986) (noting "midweek visitation, in addition to visitation on alternate weekends would involve excessive shifting of the child between parents and could impair the child's sense of stability."). Matt cites *In re Marriage of Ertmann*, 376 N.W.2d 918, 921-22 (Iowa App. 1985) in support of his position visitation should be allowed midweek. However, this case deems such visitation appropriate as long as it is not disruptive. *See In re Marriage of Fish*, 350 N.W.2d 226, 230-31 (Iowa App. 1994). We accordingly decline Matt's request for midweek visitation.

B. Summer. Kristi has expressed a willingness to cooperate and accommodate Matt's visits by extending his time with Korin an additional week in the summer. The trial court granted Matt visitation for three consecutive weeks in the summer. We affirm.

C. Other visitation. As primary physical care giver, Kristi makes the decision as to who cares for Korin when Kristi is at work. We find no reason to disturb the trial court's determination of this issue and accordingly affirm.

Having carefully considered the record adduced at trial and all arguments before us on appeal, we affirm the trial court's decision. Costs on appeal are assessed to Matt.

AFFIRMED.