IN THE COURT OF APPEALS OF IOWA

No. 1-297 / 00-1453
Filed June 13, 2001

IN RE THE MARRIAGE OF STANTON BOYD OOSTRA AND KATHY MARIE OOSTRA

Upon the Petition of
STANTON BOYD OOSTRA,
Petitioner-Appellant,

And Concerning
KATHY MARIE OOSTRA,
Respondent-Appellee.

FILED
JUN 13 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Sioux County, Gary E. Wenell, Judge.

Stanton Oostra appeals the child custody, visitation, and support provisions of the parties' dissolution decree. **AFFIRMED.**

Bradford F. Kollars, Sioux City, for appellant.

Randall G. Sease of the Sease Law Firm, Hartley, for appellee.

Heard by Sackett, C.J., and Huitink, Mahan, and Hecht, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Stanton and Kathy Oostra's marriage was dissolved on August 4, 2000. They were granted joint legal custody of their two children: Jacob, born August 14, 1993, and Jason, born April 5, 1995. The district court, citing Kathy's greater primary care experience and flexible work schedule, placed the children in Kathy's physical care subject to Stanton's right to visitation.

On appeal Stanton contends the district court erred in awarding physical care to Kathy or in failing to award joint physical care to both parties. Alternatively, Stanton asks for increased visitation, arguing that the court failed to grant him adequate visitation. Finally, in the event we should alter the primary physical care or visitation provisions, Stanton asks that child support be recalculated.

II. Standard 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).

III. Physical Care.

We decline to consider Stanton's demands for joint physical care because this issue was not properly preserved for review. *See Mensch v. Netty*, 408

N.W.2d 383, 386 (Iowa 1987) ("An equity case is tried de novo on appeal; however, the appellant cannot try the case here on a new theory not advanced in the trial court."). Even if we were to conclude otherwise, Stanton's testimony that the court's temporary joint physical care order failed to provide the children with necessary stability provides sufficient reason to reject his demands for permanent joint physical care.

In assessing an issue of child custody, the controlling consideration is the best interest of the children. *In re Purscell*, 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). The court determines placement according to which parent can minister more effectively to the children's long-range best interests. *In re Marriage of Barry,* 588 N.W.2d 711, 712 (Iowa Ct. App. 1998). 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. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996). Insofar as is reasonable and in the best interests of the children, the court should make an award of custody that will assure the children the opportunity for the maximum continuing physical and emotional contact with both parents and which will encourage the parents to share the rights and responsibilities of raising the children. Iowa Code § 598.41(1)(a) (1999). Because prior cases have little precedential value, we must base our decision on the particular circumstances of each case. *In re Marriage of Rierson*, 537 N.W.2d 806, 807 (Iowa Ct. App. 1995).

The district court's findings of fact provide:

> The parties' ages are 32 (petitioner) and 29 (respondent). Neither has any mental or physical characteristics that require

> remark. Both are stable and understand the importance of good employment. With regard to the capacity and interest of each parent to provide for the emotional, social, moral, material and educational needs of the children, this court notes that while the boys were young, Kathy was their primary caregiver, always seeking new and different ways to promote their education and development while the petitioner's interest was primarily in hunting, fishing, sports and his employment. The respondent has taken a different job to be more accessible to her children while there was no testimony forthcoming from the petitioner as to his seeking day shifts only or severely limiting his night shift duty for the foreseeable future. The petitioner's unavailability for substantial periods of each month when his attention may be necessary and his willingness to place the boys with his parents ahead of their mother are important factors underlying the court's custodial decision.
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> Respondent's past insistence on the boys' relationship with their father along with the priority she has attached to their interests coupled with the petitioner's unavailability to the boys (due to employment limitations) requires this court to place their physical care with the respondent and award visitation to the petitioner.

These findings of fact are supported by the record, and we adopt them as our own. Although we assign considerably less weight to the parties' work schedules than the district court did, we nevertheless agree that Kathy should be awarded physical care. Like the district court, we believe Kathy's greater primary care experience and willingness to support Stanton's relationship with the children distinguish her as the preferred physical care provider.

In reaching this conclusion we do not intend to minimize Stanton's past or future parenting role. Neither his commitment to the welfare of his children or parental competence can be seriously questioned. His continued commitment to Jacob and Jason's parenting is essential to their immediate and long-term best interests. As a joint custodian, Stanton enjoys considerable parental rights and duties. *See* Iowa Code § 598.41(5). We trust that any initial disappointment with

our decision will not discourage Stanton in the exercise of those rights or the discharge of parental duties.

IV. Visitation Rights.

As noted earlier, Stanton also contends that the trial court failed to grant adequate visitation. Because of Stanton's usual schedule as a police officer,[1] the court set forth the following visitation schedule:

> [Stanton shall have] visitation at reasonable times and places as the parties may from time to time agree with the petitioner receiving a minimum of six days and nights of visitation per month in addition to the holiday visitation, special day visitation and extended summer visitation as set forth herein. As permitted by the petitioner's work schedule, the parties shall evenly divide the following holidays: New Years Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. Furthermore the court assumes the petitioner will have some vacation time from his employment and in addition to the ordinary visitation granted above, he shall have an additional twenty days of visitation to be used either during the summer time or school breaks for holidays, etc. Additionally the petitioner shall be entitled to visitation with the minor children on Father's Day and for at least two hours on their birthdays. The petitioner shall provide transportation for the exercise of such visitation.

Instead, Stanton requests visitation, over his eighteen-day work cycle, as follows:

(1) The six days he is not working;
(2) The afternoons when he is working the nightshift;
(3) Three additional overnight visits that correspond with his three dayshifts; and
(4) The holiday and vacation visitation set out by the district court.

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[1] Stanton works two nine-day rotating periods: (1) he works three-day shifts (approx. 7 a.m. to 4 p.m.), then three night shifts (approx. 6 p.m. to 3 a.m.), followed by three days off work; (2) then he works six night shifts, followed by three days off work. This amounts to eighteen nightshifts in a thirty-day period.

Liberal visitation rights are in the best interests of the child. *In re Marriage of Muell*, 408 N.W.2d 774, 777 (Iowa Ct. App. 1987). The court shall order liberal visitation rights, where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents. Iowa Code § 598.41(1). Although liberal visitation is the benchmark, our governing consideration in defining visitation rights is the best interests of the children, not those of the parent seeking visitation. *See In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa Ct. App. 1992). It is important not to impose a shared-type of physical care arrangement under the disguise of expansive visitation because it deprives children of the needed stability in their lives. *In re Marriage of Coulter*, 502 N.W.2d 168, 171 (Iowa Ct. App. 1993).

Applying these principles, we find that the goal of stability gives rise to a conclusion that the visitation awarded is in the children's best interest. The visitation schedule requested by Stanton would be equivalent to an award of joint physical care. We accordingly affirm on this issue.

V. Summary.

We have carefully considered all issued raised on appeal and find they have no merit or are effectively resolved by the foregoing. The judgment of the district court is affirmed in its entirety.

AFFIRMED.