FILED
FEB 2 2 1990
CLERK SUPREME COUR

IN THE COURT OF APPEALS OF IOWA

No. 0-26 / 89-405

LORI ANN QUIRK,

Appellant,

173

vs.

RANDY RAY REYNOLDS,

Appellee.

Appeal from the Iowa District Court for Muscatine County, Margaret S. Briles, Judge.

Lori appeals a district court order establishing paternity, custody, visitation and support regarding her daughter. **AFFIRMED.**

Jeffrey M. Johnson, Muscatine, for appellant.

John Wunder, Muscatine, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

174

Lori Quirk appeals from a district court order establishing paternity, custody, visitation and support regarding her daughter. Lori contends that the district court erred in: (1) awarding joint legal custody of the child to the parties; and (2) awarding excessive visitation to the child's father. Randy Reynolds seeks costs and attorney fees for this appeal. We affirm the decision of the district court.

On January 8, 1988, Lori Quirk filed a petition to establish paternity, custody and support. Lori argued that Randy was the father of her daughter, Breianne Lee Quirk, born on July 8, 1987. Following the results of a blood test, Randy amended his answer to acknowledge paternity and request joint legal custody, visitation rights, and a change in the child's surname. Following trial, the district court entered its findings, conclusions and judgment. The court noted that paternity was not disputed. The court then determined that joint legal custody of the child be awarded with physical care of the child with Lori. Despite the concerns of the social worker, the court awarded Randy overnight visitation as well as a vacation period during the summer. Lori then filed this appeal, challenging the award of joint legal custody and of visitation.

In child custody cases our concern above all else is the best interests of the child. Iowa R. App. P. 14(f)(15). "The legal analysis employed in resolving a question concerning the custody of a child born of [unmarried parents] . . . is the same as that which would have been utilized if the child's parents had been married and a dissolution of their marriage had resulted." Lambert v. Everist, 418 N.W.2d 40, 42 (Iowa 1988). Our review is de novo. Iowa R. App. P. 4. Consequently, we are not bound by the trial court's findings of fact, but we give them weight. Iowa R. App. P. 14(f)(7).

Lori argues the trial court erred in awarding joint legal custody to the parties. In order to assure a child maximum continuing physical and emotional contact with both parents, joint custody is favored whenever reasonable and in the child's best interests. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985). Section 598.41(3) of the Iowa Code sets forth nine factors to be considered when making joint custody determinations. No single one of the factors listed in section 598.41(3) is a condition precedent to allowing joint custody, nor is there a certain number of factors which, when satisfied, will either mandate or prohibit a joint custody award. In re Marriage of Short, 373 N.W.2d 158, 160 (Iowa App. 1985).

Lori suggests that the parties' inability to communicate justifies denial of joint custody. We

disagree. The parents' ability to communicate effectively regarding the child's needs is an important factor in deciding a joint custody question. Iowa Code Section 598.41(3)(c) (1989). "To be significant enough to justify denial of joint custody, a lack of ability to communicate must be something more than the usual acrimony which accompanies a divorce." In re Marriage of Ertmann, 376 N.W.2d 918, 920 (Iowa App. 1985). The district court noted:

> The parties are beginning to learn how to communicate in the best interests of the child, and the Court believes that they can each develop sufficient maturity to continue to do that in the future. The relaxation on the part of [Lori] . . . of her desire that the visits be supervised by [Randy's] . . . mother is a demonstration of that progress. [Randy] . . . has now given up his futile pursuit of the child's mother, and shows that he is trying to meet the demands of [Lori] . . . with respect to the standards of care she expects to be exercised when he has the child.

We agree with the analysis of the district court.

Upon our de novo review of the record, we do not believe the communication difficulties Lori and Randy suffered are sufficient enough to deny the joint custody arrangement. We conclude that Breianne's best interests will be served by allowing both of her parents to retain their legal rights and responsibilities as parents. We see no reason to disturb the custody award by the district court.

Lori also contends the district court erred in awarding excessive visitation to Randy. Generally, liberal visitation rights are considered to be in the best interests of the child. In re Marriage of Muell, 408 N.W.2d 774, 777 (Iowa App. 1987). Upon our review of the record we find no error by the district court in awarding Randy visitation rights. The district court stated:

> The Court understands the position of the social worker concerning the disruption to the child of granting overnight visitation at this young age, but notes that the contact the social worker had with the parties was only a month or so after [Randy] . . . was awarded visitation by this court. The parties had separated for the last time in December of 1987, and [Randy] . . . had had no visitation with the child until this court order of May 6, 1988. Six months have now elapsed, and the Court finds from the evidence that the child is comfortable and accepting while in the home of [Randy] . . . and his mother and that overnight visitation should be commenced. [Lori] . . . is full of all kinds of fears and apprehensions, which the Court finds not justified by the evidence received.

We agree with the district court's analysis of Randy's visitation rights. Accordingly, we affirm the visitation award made by the district court.

Randy requests attorney fees on appeal. Attorney fees are not recoverable as a matter of right but rest within the discretion of the court and depend upon the financial needs of the requesting party and the other party's ability to pay. See In re Marriage of Orgren, 375 N.W.2d 710, 714 (Iowa App. 1985). Each party shall be responsible for his or her own attorney fees. We order Lori to pay the cost of this appeal.

We affirm the decision of the district court in all respects.

AFFIRMED.