IN THE COURT OF APPEALS OF IOWA

No. 1999-145 (9-361) / 98-1835
Filed September 29, 1999

EDWARD EARL BOLES,

Appellant,

vs.

SABRINA SHADLE,

Appellee.

FILED
SEP 29 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County, J. Hobart Darbyshire, Judge.

Edward Boles appeals from a district court ruling on his petition for custody.

AFFIRMED.

James L. Pillers of Pillers, Pillers & Zimmerman, P.C., Clinton, for appellant.

William Vilmont, Clinton, for appellee, until withdrawal, and then Sabrina Shadle, Clinton, pro se.

Considered by Huitink, P.J., and Streit and Habhab*, JJ.

* Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

HABHAB, S.J.

Edward Boles appeals the decision of the district court which granted primary physical care of the parties' child to Sabrina Shadle. He asks to have the child placed in his care. We affirm the decision of the district court.

Edward and Sabrina are the parents of Robert Shadle-Boles, who was born in December 1994. The parents are not married, but lived together for a period of time. During this time they were both responsible for the care of the child. Edward admitted he had a temper and sometimes punched the walls of their home.

The parties separated in June 1996. Robert stayed with Edward for about three weeks while Sabrina found a place to live. Sabrina moved into a home with Travis Willet. Once Sabrina settled in this new home, she kept Robert in her care. Edward visited Robert at least once every two weeks. After the separation Edward moved in with his parents.

Sabrina lived with Travis until December 1996. After she separated from Travis, Sabrina did not have any income or a place to live. Robert went to stay with Edward. Edward's mother, Karen, and his sister, Sally, assisted in the care of Robert. In April 1997, Edward filed a petition seeking to establish Robert's paternity and asking for primary physical care of the child. A temporary order placed Robert in Edward's care. Genetic testing has shown Edward is Robert's father.

In July 1997, Sabrina started living with William Ainsworth. In about August 1997, Sabrina and Edward started a split custody arrangement, with each parent

having primary physical care of Robert for a week at a time. Sabrina has had several different jobs. She and William recently started a catalog sales business in their home.

Edward is employed by Phillips Service Corporation. The company is involved in cleaning utility and manufacturing plants. Edward is a field supervisor. He is generally required to travel about one to one and one-half weeks out of every two weeks. There are occasions when he is out of town for as long as five weeks. Edward now lives in a home he purchased.

On September 10, 1998, the district court entered a ruling awarding the parties joint legal custody of Robert, with Sabrina having primary physical care. The court was concerned about Robert's work schedule which takes him out of town for long periods of time. The court noted that if Edward were the primary care giver, Robert would often be in the care of someone other than his parents. The court concluded this was not in Robert's long-range best interests. The court found Robert should have liberal visitation when he was in town. The court ordered the parties to prepare a decree incorporating its decision.

Edward appealed on October 9, 1998. On December 10, 1998, the district court entered a final order establishing paternity, custody, and visitation. Edward was ordered to pay child support.

Edward's appeal is actually an appeal from an interlocutory order. The supreme court has granted interlocutory appeal in this case, pursuant to Iowa Rule of Appellate Procedure 2.

Appellate review of this equitable proceeding is de novo. Iowa R. App. P. 4. The court has a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Weinberger,* 507 N.W.2d 733, 735 (Iowa App. 1993). The appellate court gives weight to the fact findings of the district court, especially in determining the credibility of witnesses, but is not bound by them. Iowa R. App. P. 14(f)(7).

Edward asks to be awarded primary physical care of Robert. He asserts he is the more stable parent. He points out he has kept the same job for a period of time, he owns his own home, and he is able to provide for Robert's needs. Edward's mother, who runs a day care in her home, would be available to care for Robert when Edward is out of town. Edward claims Sabrina has not demonstrated the stability and maturity necessary to be a successful parent. He points out she has had various residences, has not had stable employment, and has had several relationships with men.

The criteria for determining custody are the same whether the parents are dissolving their marriage or are unwed. *Langer 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 children 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).

In our de novo review, we conclude the district court decision should be affirmed. While Edward has shown stability in employment, this employment takes him away from home much of the time. He will be required to rely on others to take care of Robert during the times he is away from home. Sabrina did have some problems with stability for a period of time, primarily because she did not have sufficient financial resources to establish a stable home for herself and Robert. She is now in a stable relationship with William. Edward and his mother both admitted Sabrina has been a good mother for Robert. We agree with the trial court that Robert should be placed in the primary physical care of Sabrina.

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

AFFIRMED.