

IN THE COURT OF APPEALS OF IOWA

No. 6-678 / 96-715

FILED
JUL 17 1997
IOWA SUPREME COURT

IN RE THE MARRIAGE OF DAVID M. HOLGORSEN AND JENNIFER R. HOLGORSEN

Upon the Petition of
DAVID M. HOLGORSEN,
Appellant,

And Concerning
JENNIFER R. HOLGORSEN n/k/a JENNIFER R. BOLTE,
Appellee.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

Petitioner appeals the decree dissolving his marriage to respondent.

AFFIRMED.

Dennis D. Jasper, Bettendorf, for appellant.

Jennifer R. Bolte, Davenport, pro se, appellee.

Heard by Streit, P.J., Vogel, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

VOGEL, J.

David and Jennifer Holgorsen were married on June 16, 1990. They have one child, Kyle, born November 29, 1990.

On January 31, 1995, David filed a petition for dissolution of marriage. At the time of the dissolution hearing, David was twenty-nine years old and Jennifer was twenty-four. David lived in the basement of his parents' home in Davenport. Although his work history is sporadic, at the time of trial he was working full time as an electrician at ALCOA earning a gross income of \$568.40 per week. Jennifer resided with her mother, her two sisters, and Kyle in an apartment in Davenport. She worked part-time as a waitress at Hooters and had formerly worked at the Lady Luck Casino. During the marriage, Jennifer had worked as an exotic dancer. At the time of trial, she had a yearly gross income of \$8370. Both parties are high school graduates.

Following a hearing, the district court entered its findings, conclusions and decree. The court characterized the case as presenting "the all-too-frequently observed situation of two rather immature parents arguing about custody of their child, because that is all they have left to argue about." The district court noted their personal battle "has clouded their ability to recognize or promote their son's long-term best interests." The court found that, even though David claims he did not agree with Jennifer's decision to become an exotic dancer, he accepted the financial

benefits she received which helped support the family. The district court found both parties to be of dubious credibility.

The court also found a history of domestic abuse existed between the parties, and David had committed domestic abuse against Jennifer. The court noted the parties' inability to discuss Kyle's best interests. The court awarded joint legal custody but gave primary physical care of Kyle to Jennifer. The court ordered David to pay \$435.45 per month in child support, established a visitation schedule, and ruled each party should pay his or her own attorney fees. The court also entered a permanent injunction to prevent David from assaulting, molesting, or harassing Jennifer.

David appeals.

The sole issue on appeal is whether the district court was correct in placing the primary physical care on Kyle with Jennifer. 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 witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

In examining the district court's comments during trial, the court's comments in the dissolution decree, and the conflicting testimony given at trial by the parties, we must conclude credibility was a significant issue in this case. We give due weight

to the district court's credibility findings. *See* Iowa R. App. P. 14(f)(7). We also note this case is a close case factually and both parties are concerned about their child's well being. David was found to have committed domestic abuse, although he minimized this, and there were allegations of domestic abuse committed by Jennifer as well. It appears the domestic abuse committed by David was the deciding factor in the district court's mind in determining the primary physical care issue. *See* Iowa Code § 598.41(3)(j). As we find no support in the record to modify the ruling of the district court, we affirm.

AFFIRMED.