IN THE COURT OF APPEALS OF IOWA

No. 3-568 / 93-878

FILED
MAY 26 1994
CLERK SUPREME COURT

IN RE MARRIAGE OF MELISSA K. NICHOLS AND DAVID M. NICHOLS

Upon the Petition of
MELISSA K. NICHOLS n/k/a
MELISSA K. LANGE,

Appellee,

And Concerning
DAVID M. NICHOLS,

Appellant.

Appeal from the Iowa District Court for Clinton County, C. H. Pelton, Judge.

Respondent husband appeals the child custody provisions of the dissolution decree. **AFFIRMED.**

J. David Zimmerman, of Pillers, Pillers & Zimmerman, P.C., Clinton, for appellant.

Mary L. Steger, Clinton, for appellee.

Considered by Sackett, P.J., and Cady and Huitink, JJ.

HUITINK, J.

David appeals the child custody provisions of the dissolution decree. We affirm.

Melissa and David Nichols have three children, ages four, three, and one month at the time of the dissolution hearing. Although David has denied paternity of the youngest child, he offered no evidence showing he is not the father. The trial court determined David was the father of this child. David only sought custody of the two older children and acquiesced in Melissa receiving custody of the youngest child.

A social worker performed a custody evaluation in February 1993 and concluded Melissa was more credible, better able to manage the children's behavior, and more supportive of David's relationship with the children than David was with hers. The social worker recommended the children be placed in Melissa's primary care.

In its April 1993 order, the court noted the parties' conflicting testimony could not be reconciled. The court found Melissa more credible than David, both parties were "less stable than normal," and the "least detrimental environment" for the children would be with Melissa. The decree ordered joint custody of the children, and Melissa was awarded primary care.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are

not bound by them. Iowa R. App. P. 14(f)(7). The district court "'is greatly helped in making a wise decision about the parties by listening to them and watching them in person.'" In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984) (quoting In re Marriage of Callahan, 214 N.W.2d 133, 136 (Iowa 1974)).

David contends the district court erred in determining the credibility of the parties. We disagree. Our review of the record indicates the court considered the credibility of each party and made several specific findings on credibility. The court found Melissa admitted her character weaknesses while David denied having any. Melissa's testimony about her employment was consistent while David's testimony about his was inconsistent with other evidence. David staged photos to depict Melissa as a poor housekeeper. He also used deception to take physical possession of the children. We therefore agree with the district court's assessment of the parties' respective credibility.

In custody cases, the best interests of the children are the first and governing consideration. The factors considered in awarding custody are set out in Iowa Code section 598.41(3) and in In re Marriage of Weidner, 338 N.W.2d 351, 355-56 (Iowa 1983). All factors bear on what will be in the long-term best interests of the children. Vrban, 359 N.W.2d at 424. In attempting to foster the best interests of the children, we try to keep children of a

broken home together. In re Marriage of Ellerbroek, 377 N.W.2d 257, 260 (Iowa App. 1985).

The record indicates David has been physically abusive towards Melissa. He also denied her visitation with the older children during the period of separation. In addition David questions the paternity of the youngest child and does not request physical custody of him. However, David offered no evidence he is not his father.

We believe Melissa is better able to provide for the children's emotional and material needs. She has a history of steady employment and has the ability to balance her work schedule with her family responsibilities. Melissa is likely to encourage the children's relationship with David. All three children can remain together if physical custody is awarded to Melissa. Long-term interests of the children are best served by an award of primary physical care to Melissa.

Although the testimony of David and Melissa conflicted on several issues, the district court clearly expressed its reasons for awarding physical custody to Melissa. We conclude the district court did not err in awarding physical custody of the children to Melissa.

Costs are assessed to David. Each party shall be responsible for his or her own attorney fees.

AFFIRMED.