IN THE COURT OF APPEALS OF IOWA

No. 0-399 / 99-1031
Filed October 13, 2000

IN RE THE MARRIAGE OF DANIEL E.B. SCHEMMEL AND CHRISTINE A. SCHEMMEL

Upon the Petition of
DANIEL E.B. SCHEMMEL,
Petitioner-Appellee,

And Concerning
CHRISTINE A. SCHEMMEL,
Respondent-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Christine Schemmel appeals the child custody, visitation, and alimony provisions of the parties' dissolution decree. **AFFIRMED.**

Craig H. Lane of Craig H. Lane, P.C., Sioux City, for appellant.

Francis L. Goodwin of Baron, Sar, Goodwin, Gill & Lohr, Sioux City, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

Christine Schemmel appeals the provisions of a 1999 dissolution decree granting the parties joint custody of their son and her ex-husband unsupervised visitation. She also claims the district court should have awarded her alimony. We affirm the district court.

I. Background Facts and Proceedings.

Daniel and Christine Schemmel were married in 1990. Their only child, Daniel Ervin ("D.J."), was born in 1993. In 1999, soon after Daniel filed a petition for dissolution of marriage, Christine and D.J. moved to Colorado. Daniel continues to reside in Iowa.

The pertinent provisions of the district court's dissolution decree are as follows: Daniel and Christine have joint custody of D.J. Christine is responsible for D.J.'s primary physical care, and Daniel is entitled to unsupervised visitation with him during one weekend per month, certain specified holidays, and five nonconsecutive weeks of the summer. Daniel must pay $427 of child support per month, but is not required to pay any alimony.

Christine appeals. She claims she should have sole custody of D.J., Daniel should only be allowed to have supervised visitation with D.J. in Colorado, and she should be awarded $400 of alimony per month for five years.

II. The Merits.

We review equity cases de novo. Iowa R. App. P. 4; *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but do give them deference because the court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In*

re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992); *see also* Iowa R. App. P. 14(f)(7).

A. Joint Custody.

Christine claims she should be given sole custody of D.J. She contends joint custody is inappropriate for various reasons, including Daniel's lack of participation in D.J.'s upbringing, D.J.'s psychological and emotional needs, and the parties' inability to communicate with each other.

We favor joint custody over sole custody because it generally advances the important goal of assuring the child the opportunity for maximum continuing physical and emotional contact with both parents following a dissolution. *In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa App. 1994); *see also* Iowa Code § 598.41(1)(a) (1999). In determining whether joint custody or sole custody should be granted, we consider the ten factors listed in section 598.41(3).[1] After considering these factors, we will only grant sole custody if there is clear and convincing evidence that joint custody is unreasonable and not

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[1] These factors include (1) whether each parent would be a suitable custodian for the child; (2) whether the psychological and emotional needs and development of the child will suffer due to a lack of active contact with and attention from both parents; (3) whether the parents can communicate with each other regarding the child's needs; (4) whether both parents have actively cared for the child before and since the separation; (5) whether each parent can support the other's relationship with the child; (6) whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity; (7) whether one or both parents agree or are opposed to joint custody; (8) the geographic proximity of the parents; (9) whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation; and (10) whether a history of domestic abuse exists. Iowa Code § 598.41(3).

in the best interests of the child to the extent the legal custodial relationship between the child and a parent should be severed. Iowa Code § 598.41(2)(b).

In this case, joint custody is reasonable and in D.J.'s best interests. Christine was responsible for much of D.J.'s physical care during the parties' marriage. This fact alone, however, does not show Daniel would be an unsuitable custodian for the child. Daniel testified he and D.J. have a good relationship. They will have a better opportunity to maintain and improve this relationship under a joint custody arrangement than under a sole custody arrangement.

Undoubtedly, Daniel and Christine's dissolution was stressful for all three of the Schemmels. D.J. struggled with his father's absence in the months following his parents' separation. Daniel and Christine had little positive communication with each other about their son's needs during this time. These concerns do not call for a grant of sole custody to Christine. As we noted above, Daniel and D.J. apparently had a good relationship before the dissolution. Likewise, Daniel and Christine apparently were able to communicate effectively about D.J.'s needs while they were married. Hopefully, the Schemmels will soon be able to interact and communicate appropriately with each other again. Because nothing in the record indicates this is impossible or unlikely, we affirm the district court's grant of joint custody.

B. Visitation.

Christine also claims Daniel should only be allowed to visit D.J. in Colorado and such visitation should be supervised. She contends these restrictions are necessary to protect D.J.'s emotional health.

Our governing consideration in establishing a noncustodial parent's visitation rights is the best interests of his or her child. *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa App. 1992). The child's best interests are generally met through liberal visitation that assures the child the opportunity for maximum continuing physical and emotional contact with both parents. *In re Marriage of Riddle*, 500 N.W.2d 718, 720 (Iowa App. 1993); *see also* Iowa Code § 598.41(1)(a). At times, however, the child's best interests may call for a court to place conditions on a parent's visitation rights lest the visitation result in direct physical harm or significant emotional harm to the child. *In re Marriage of Rykhoek*, 525 N.W.2d 1, 5 (Iowa App. 1994).

The record does not show D.J. is likely to suffer physical or emotional harm if Daniel is allowed to have unsupervised visitation with him outside of Colorado. There is no evidence Daniel has ever abused D.J. Nor is there evidence Daniel is incapable of providing satisfactory care for D.J. In fact, Daniel testified he voluntarily attended parenting classes to improve his parenting skills.

According to Christine, D.J.'s "fragile emotional health" will suffer if Daniel's visitation rights are not restricted. D.J. has experienced anger, fear, and sadness since his parents separated. Allowing him to enjoy ample unsupervised visits with Daniel will give Daniel and D.J. the opportunity to solidify their relationship. Most importantly, such visitation will assure D.J. the opportunity for maximum continuing physical and emotional contact with *both* of his parents. We affirm the district court's visitation provisions.

C. Alimony.

Finally, Christine claims she is entitled to $400 of alimony per month for five years.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Kurtt*, 561 N.W.2d 385, 387 (Iowa App. 1997). We make a discretionary award of alimony after considering those factors listed in Iowa Code section 598.21(3). *In re Marriage of Sychra*, 552 N.W.2d 907, 908 (Iowa App. 1996). Among those factors are the length of the parties' marriage, the parties' ages and health, the parties' earning capacities, the parties' levels of education, and the likelihood the party seeking alimony will be self-supporting at a standard of living comparable to the one enjoyed during the marriage. Iowa Code § 598.21(3).

Christine should not be awarded alimony. She is well-educated and quite capable of supporting herself. She has an associate's degree in tourism, a bachelor's degree in business administration with a minor in computer science, and paralegal training. She was unemployed for much of the parties' marriage, but did volunteer extensively so she could, in her words, "keep [her] skills and [her] talents and [her] education current." She found a job as a deputy clerk for the Fourth Judicial District Court in Colorado soon after she left Iowa. We affirm the district court's denial of alimony.

AFFIRMED.