IN THE COURT OF APPEALS OF IOWA

No. 8-595 / 98-0533
Filed December 28, 1998

IN RE THE MARRIAGE OF KIMBERLY DANCSO AND GAVRIL DANCSO

Upon the Petition of
KIMBERLY DANCSO,
Appellee,

And Concerning
GAVRIL DANCSO,
Appellant.

Appeal from the Iowa District Court for Plymouth County, John D. Ackerman, Judge.

Gavril Dancso appeals the child custody provisions of the parties' dissolution decree. **AFFIRMED.**

Dawn E. Mastalir of Berenstein, Moore, Moser, Berenstein & Heffernan, Sioux City, for appellant.

Mayer Kanter of Forker & Kanter, Sioux City, for appellee.

Considered by Sackett, C.J., Huitink, Streit, Vogel, and Mahan, JJ.

HUITINK, J.

Gavril Dancso appeals the physical placement provisions of the parties' dissolution decree. We affirm.

I. Background Facts and Proceedings.

Gavril and Kimberly Dancso were married on July 11, 1994. The parties resided in Olathe, Kansas, with Gavril's mother. They separated in April 1995, and Kimberly moved back to Iowa. Their minor child, Shane, was born on November 2, 1995. Kimberly filed a petition for dissolution of marriage on June 21, 1996.

After Kimberly left the marital home in Kansas in April 1995, she did not maintain contact with Gavril regarding her pregnancy. Although Shane was born in early November 1995, Gavril did not learn of his son's birth for three weeks. The parties disputed at trial whether Kimberly made any attempt to contact Gavril at the time of the birth. Due to the distance between the parties and their inability to maintain contact with each other, Kimberly had actual physical custody of Shane and provided almost one hundred percent of his primary care from his birth until July 1997.

Kimberly currently resides with Shane in Mapleton, Iowa, with her parents. She is employed as a credit card collections representative. Gavril continues to live in Olathe, Kansas with his mother. He works as a janitor in the Olathe public school system.

In its decree, the district court awarded Kimberly physical care of Shane. The court concluded both parties had exhibited immature behavior toward one another. Specifically, the district court found both parents were unsupportive of the other parent's relationship with Shane. In placing Shane's physical care with his mother, the court relied heavily on Shane's tender age, and the fact Kimberly had been the sole caretaker for most of the child's life. In doing so, the court ruled it would be in the child's best interests for his mother to be awarded physical care so as not to unduly disrupt the only environment Shane had ever known.

The sole issue raised on appeal is Shane's physical care. Gavril maintains the district court understated Kimberly's failure to support his relationship with Shane. He contends Kimberly's failure to support his relationship with Shane necessitates placing physical care with him.

II. Standard of Review.

Our review in cases such as these 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. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. *Id.* Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

III. Physical Care.

In child custody cases, our first and governing consideration is the best interests of the children. The critical issue is not which parent possesses the greater right to the child, rather the controlling consideration must be the best interests of the child. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This decision requires selection of a custodial parent who can minister more effectively to the long-range best interests of the child. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The objective should always be to place the child in the environment most likely to bring that child to healthy physical, mental, and social maturity. *See In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). The court should also consider the characteristics and needs of the child, including the child's age, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the child, the relationship of the child with each parent, the nature of each proposed environment and the effect of continuing or changing an existing custodial status. *Id.*

There is no presumption in favor of the mother or the father. *See In re Marriage of Bowen*, 219 N.W.2d 683, 688 (Iowa 1974). Greater primary care experience is one of many factors the court considers but it does not ensure an award of physical care. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). Insofar as is reasonable and in the best interests of the child, the court should make an award of custody which will assure the child the opportunity for the maximum

continuing physical and emotional contact with both parents and which will encourage the parents to share the rights and responsibilities of raising the child. *See* Iowa Code § 598.41(1) (1997). To effectuate that policy the court must consider the willingness of each party to allow the child access to the other party. *In re Marriage of Burham*, 283 N.W.2d 269, 276 (Iowa 1979).

In reaching its decision, the court stated:

> In light of all the relevant factors set forth above, as well as the child's young age and the fact that the petitioner has been the primary caretaker of the child since birth, the Court believes that disrupting the child's environment at this time would not be in the best interests of the child. The Court believes that the petitioner is a loving and caring mother who has done a good job of raising the child to this time. She has also provided a loving and caring environment for the child. In the Court's opinion, it is the petitioner who is able to place the child in an environment most likely to bring the child to a healthy physical, mental and social maturity, as well as a contented, well-adjusted young adult.

After a review of the entire record, we agree with the district court's physical care decision. While Gavril contends the district court failed to consider Kimberly's interference with his relationship between he and Shane, his position is not supported by the record. Our review of the record indicates the district court properly found both parents have demonstrated an inability to support the other's relationship with Shane. Additionally, the district court found that after their dissolution was finalized, the parties would likely be able to effectively communicate regarding the child. This point is supported by Kimberly's testimony that she will cooperate with whatever the court finds to be in Shane's best interests.

Notwithstanding his argument regarding Kimberly's inability to support his relationship with Shane, Gavril has not affirmatively addressed the other concerns listed by the district court in its physical placement analysis. We find Kimberly's primary care experience with Shane as a factor which places her in the best position to minister to Shane's long-term best interests. We therefore affirm the district court's physical placement determination.

IV. Attorney Fees.

Kimberly requests appellate attorney fees. In making such a determination, we are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Garst*, 573 N.W.2d 604, 608 (Iowa App. 1997). After a review of the record, we find no disparity between the parties' financial positions. Each party is therefore responsible for their own attorney fees related to this appeal.

AFFIRMED.