IN THE COURT OF APPEALS OF IOWA

No. 1-541 / 00-1539
Filed November 28, 2001

KEVIN PETTIT,
Plaintiff-Appellant,

vs.

LAURA CHAMPLIN,
Defendant-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge.

Kevin Pettit appeals from the district court's order on his custody petition.

AFFIRMED.

Bradford Kollars, Sioux City, for appellant.

Mayer Kanter, Sioux City, for appellee.

Heard by Sackett, C.J., and Huitink and Hecht, JJ.

SACKETT, C.J.

Petitioner appellant Kevin Pettit and respondent appellee Laura Champlin are the parents of Matthew who was born December 30, 1995. In January of 1999 Kevin petitioned for custody of Matthew. The district court denied Kevin's request for custody. On appeal Kevin contends that he, not Laura, should have been named the primary care parent and that Laura should be required to pay child support. We affirm.

Kevin was born in 1964 and Laura in 1970. They both lived in the Sioux City area most of their lives. Laura is employed as a sales associate at Gateway. Kevin is employed by the post office and has a tree and lawn service.

Kevin and Laura met in July of 1993 and established a relationship. They moved in together, and Laura became pregnant. Kevin was pleased with Laura's pregnancy. Laura was not pleased, and she made the decision to give the child up for adoption. She refused Kevin's request to have the child adopted by his brother or though an adoption agency. She chose prospective parents from Massachusetts through a newspaper ad. Kevin's desire to keep the child and his unhappiness with the parents Laura selected resulted in his refusal to sign the adoption papers. The couple ultimately decided to seek counseling and work on their relationship. They decided to keep Matthew. The relationship, which had prior problems, did not improve with the addition of a child. Though Kevin and Laura bonded with Matthew and were both involved with his care they ultimately separated. Kevin later filed his petition for custody.

While the action was pending, the parties arrived at a temporary joint physical care arrangement through mediation, which the district court approved

as an acceptable care arrangement until trial. The agreement provided that Matthew spend alternating weeks in the custody of each parent. In February of 2000 Laura apparently became unhappy with the agreement, ceased to follow it, and it became necessary for Kevin to seek court intervention to have it enforced. After he did, Laura cooperated. In August of 2000 the decree from which appeal was taken was entered.

We review de novo. Iowa R. App. P. 4; *In re Marriage of Riggert*, 537 N.W.2d 789, 791 (Iowa Ct. App. 1995); *In re Marriage of Harris*, 499 N.W.2d 329, 330 (Iowa Ct. App. 1993).

The issue in this initial custody case is which parent has shown the ability to be the better parent. The question is which parent will do the better job of raising Matthew. *In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa Ct. App. 1991). We look to the factors set forth in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). 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). Yet we are not bound by these determinations. *Id.* We base our decision primarily on the particular circumstances of the parties before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). The interests of Matthew are our primary consideration. *See In re Marriage of Vrban*, 359 N.W.2d 420, 424 (Iowa 1984); *Neubauer v. Newcomb*, 423 N.W.2d 26, 27 (Iowa Ct. App. 1988). We give consideration to each parent's role in child raising prior to a separation. *See In re Marriage of Love*, 511 N.W.2d 648, 650 (Iowa Ct. App. 1993); *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa Ct. App. 1992). Though we do not award custody based on hours of service for past care, we attempt to

determine which parent will in the future provide an environment where the child is most likely to thrive. *In re Marriage of Crotty*, 584 N.W.2d 714, 717 (Iowa Ct. App. 1998); *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993).

The district court found both parents were firmly committed to provide for Matthew and each was capable of supplying Matthew's physical, emotional and educational needs. We note that the facts demonstrate Kevin's love for the outdoors and an active lifestyle have given him remarkable initiative in ministering to and developing Matthew's physical and educational needs. The district court also found that both Kevin and Laura understood they must support the other's relationship with Matthew. Without being specific, the district court found Kevin to be a fairly credible witness but determined parts of his testimony were difficult to believe. The court said to the extent the parties' evidence was in dispute it tended to believe Laura, whose appearance, demeanor and candor led the district court to conclude she was one of the more credible witnesses the court had seen.

The court saw Kevin as self-centered and lacking respect for Laura. The court reasoned Laura's decision to place Matthew for adoption was not selfish. The district court found Laura has a strong belief in traditional family values but provided us with no guidance as to what it considered traditional family values. The court awarded Laura primary physical care.

The court went on to find that Kevin had an annual income of $39,900 and Laura of $24,120. The court fixed Kevin's child support obligation at $395 a month and gave Kevin weekend, midweek and holiday visitation.

Kevin contends he is the better and more stable parent. While Kevin admits he is an alcoholic, he states he has been sober for ten years. He advances that he has an excellent relationship with his extended family, in contrast to Laura, who comes from a dysfunctional family setting in which she suffered abuse. He questions the district court's conclusion that he fails to communicate with Laura, saying that she talks incessantly, and he is following a counselor's recommendation that he limit the minutes he speaks with Laura to minimize conflict. Kevin contends hospital records indicate that Laura has suffered from alcoholism and expressed suicidal intentions and has failed to follow up on recommended aftercare. Kevin expresses concern that Laura's emotional problems will have an adverse effect on Matthew. He argues that Laura failed to notify him of the child's birth.

Kevin further claims Laura removed Matthew for invalid reasons from a child care center the couple had chosen. He notes the center offered Matthew excellent care and that at the time Laura chose to take him out she had made no other arrangements for his care. Kevin contends the change in child care providers was intended to make it more difficult for him to see Matthew.

Laura argues that Kevin suffers recurring depression and needed outpatient counseling for that condition in 1996. She criticizes Kevin for not being present when Matthew was born and contends she has at all times been the primary care parent.

We agree with the district court that both Kevin and Laura are good parents and that they both have been involved with Matthew's care. Each gives the other credit for being a good parent, but unfortunately both parties focus a

large portion of their briefs on their opinions of the alleged shortcomings of the other. Our major concern is what child care, educational and other living arrangements each party will make for his or her child should he or she be granted primary physical care.

It is clear that Kevin has extended family living close to him who have been and will be supportive in caring for Matthew. Laura has a family described as dysfunctional and her relationship with them is not strong. While it is the parent, not the extended family, who receives custody, we would be remiss if we did not give some consideration to the benefits to Matthew of being in a situation which maximizes his exposure to Kevin's loving and supportive extended family.

Both parties have suffered substance abuse problems. Kevin obtained treatment and has been sober for ten years. He also returned for treatment when he felt he was suffering from depression. He appears to follow prescribed recommendations for these problems. He has also sought counseling in an effort to better communicate with Laura.

Laura suffered from alcohol addiction. To her credit she also sought treatment for this addiction. She has not followed up on aftercare and, by her own admission, drinks to excess on occasion.

While each of the parties for the most part has been willing to assure the other access to Matthew when he is in his or her care, we are bothered by the fact that Laura, of her own accord, failed to follow the mediated custody agreement. She also unilaterally moved Matthew out of a child care facility where he was well cared for and where Kevin had access to him.

The fact that a parent fails to recognize and respect the place in a child's life of his or her other parent is a factor that weighs heavily against the uncooperative parent in a custody dispute. *See In re Marriage of Udelhofen*, 444 N.W.2d 473, 474-76 (Iowa 1989); *In re Marriage of Leyda*, 355 N.W.2d 862, 865-67 (Iowa 1984); *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 215 (Iowa Ct. App. 1994); *In re Marriage of Wedemeyer*, 475 N.W.2d 657, 659-60 (Iowa Ct. App. 1991); *In re Marriage of Gratias*, 406 N.W.2d 815, 817-18 (Iowa Ct. App. 1987).

There is no clear answer to this custody dispute. Giving the required deference to the credibility findings of the district court, we affirm. In doing so Laura should understand that any future failures to cooperate with the joint custody dictates and Kevin's visitation could result in a change of primary care. *See In re Marriage of Whalen*, 569 N.W.2d 626, 628-29 (Iowa Ct. App. 1997). We award no attorney fees. Costs on appeal are taxed to Kevin.

AFFIRMED.