FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES A. LAMBERT,)

Petitioner-Appellant,)

vs.)

SARAH EVERIST,)

Respondent-Appellee.)

Filed August 26, 1987

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7-193
86-1854

Appeal from the Iowa District Court for Woodbury County (Eq. No. 92988-C), Edwin L. Mitchell, Judge.

Petitioner-father appeals from the adverse ruling which he received in an action to establish custody of his daughter. **AFFIRMED.**

Bradford F. Kollars of Sioux City for petitioner-appellant.

LeRoy J. Sturgeon of Sioux City for respondent-appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

In this appeal, petitioner James Lambert challenges the adverse ruling which he received in the underlying action to establish custody of his daughter, Laural Onawa Everist-Lambert.[1] James has raised two issues for appellate consideration. Initially, he argues that the trial court erred in naming Laural's mother, respondent Sarah Everist, physical custodian of Laural. In addition, James contends that the trial court erroneously reduced his visitation with Laural. For the reasons that follow, we affirm.

Before proceeding to a discussion of the merits, we find it necessary to briefly set forth the principles controlling our review. At the outset, it is significant to note that although the parties in this action were unwed, the legal analysis employed in resolving a question concerning the custody of a child borne of such a union is the same as that which would have been utilized if the child's parents had been married and a dissolution of their marriage had resulted. See Heyer v Peterson, 307 N.W.2d 1, 7 (Iowa 1981). Thus, as noted in Heyer, "we do not believe the critical issue to be which parent possesses the greater right to the child. Rather, ... the controlling consideration must be the interests of the child." 307 N.W.2d at 7.

When competing claims concerning the physical custody of a child arise, it is incumbent upon us to determine which parent is capable of administering more effectively to the long-range best interests of the child. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982). A number of factors aiding this decision are enumerated in section 598.41(3) of the Iowa Code and in In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974). It is the responsibility of an appellate court reviewing such an issue to examine the record de novo, Iowa R. App. P. 4.

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[1]This action was commenced pursuant to Iowa Code section 675.40 (1985).

Accordingly, we are not bound by the findings of fact made by the trial court, but we do give them weight, particularly where the credibility of witnesses is implicated. Iowa R. App. P. 14(f)(7).

James first contends that the trial court erroneously required him to establish that Laural's best interests necessitated a change of custody. In this connection, James argues that the court improperly imposed the burden of proof upon him. Although we agree with James that neither parent may be required to bear the burden of proof in an initial custody determination, see Heyer v. Peterson, 307 N.W.2d at 7; compare e.g., In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983) (in an action for modification, the movant bears the burden of establishing that a change in circumstances necessitates the requested modification), our review of the trial court's ruling persuades us that the court committed no error in this respect. James argues that the following statement contained in the trial court's ruling illustrates that the court imposed the burden of proof upon him:

> While expanded communication between Laural and her father . . . will benefit both of them, James has not demonstrated, and this record does not show, a need to change, or a benefit arising from a change of the current custody with Sarah exercising the responsibility for primary care [of] Laural.

A reading of this language in the context of the entire ruling, however, demonstrates that the court did not place an improper burden of proof upon James, but rather examined the parental attributes of both parties and then concluded that there was no reason to change Laural's physical custody. However since we determine this matter de novo, we follow the holding of Heyer, supra, and hold that James does not need to show a superior claim to Laural; we treat this as an original action and our sole interest is to determine the best interest of Laurel.

The trial court found that Sarah was the primary caretaker over Laurel's five and one-half years of development and had been the main nurturing parent prior to and after the parents separated. After discovering Sarah was pregnant, she and James started living together. Laural was born April 6, 1981. They separated after Laurel was one year old with James leaving home and Laurel remaining with Sarah, where she remains to this day. Sarah and Laurel still live in the home they moved to in May 1982.

The parties separated in May 1982. In January 1983, James acknowledged paternity and stipulated to a child support judgment in the amount of $125.00 per month.

The trial court made the following findings of fact:

> 12. James offers Laural the stability, security, direction and affection every child should have. Sarah offers Laural the inquisitiveness, freedom, fantasy, sensitivity and affection every child should experience, though many do not. Sarah's indecisiveness is contrasted to James' assuredness. James' acceptance of the "American dream" and claim of realistic perspective are contrasted to Sarah's personal visions and searching for a peaceful, personal objective, not one defined by convention or dictated by others.
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> 13. Laural's birth parents James and Sarah have many semantic differences over concepts such as intimacy, responsibility, freedom, and learning, but each is dedicated to Laural.
>
> 14. Sarah's health has been at issue in its phycial and emotional components. The Court finds Sarah's health, physical and emotional, is not a present bar to her ability to minister effectively to the needs of Laural, and James is in excellent physical and emotional health and equally able and willing to minister to Laural's needs.
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> 15. While expanded communication between Laural and her father James will benefit both of them, James has not demonstrated, and this record does not show, a need to change, or a benefit arising from a change of the current custody with Sarah exercising the responsibility for primary care over Laural.
>
> 16. The Court finds it would be harmful to Laural to undergo any drastic change in the relationship with her mother Sarah at this time.

We see no reason to change the ruling of the trial court who had the opportunity to observe the parties firsthand. We also affirm the visitation decision of the trial court.

AFFIRMED.

Schlegel, J. concurs; Sackett, J. specially concurs.