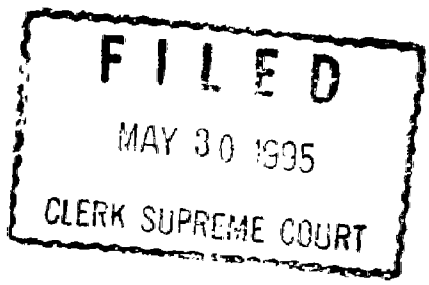
IN THE COURT OF APPEALS OF IOWA



No. 5-244 / 94-1690

TERRY DEAN PHILLIPS, and
TERRY DEAN PHILLIPS, As Next Friend of
DALLAS RAE SPURLING,

Appellants,

vs.

CORY DAVIS-SPURLING,

Appellee.

Appeal from the Iowa District Court for Webster County, Ronald H. Schechtman, Judge.

Phillips appeals the district court's ruling on his petition to establish custody of his minor child. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for appellants.

Jerry L. Schnurr, III, Fort Dodge, for appellee.

Heard by Donielson, C.J., and Habhab and Huitink, JJ.

HUITINK, J.

Terry Phillips appeals the district court order awarding primary physical care of his daughter, Dallas, to the child's mother, Cory Davis-Spurling. We affirm.

The parties met in 1989 and had a brief relationship. Cory gave birth to Dallas in June 1990. Cory informed Terry he was Dallas's father in December 1990.

Around the same time, Terry was activated for Desert Storm and sent to Kansas. He came home on weekends occasionally and saw Dallas. In March 1992 the district court entered a default order naming Terry as Dallas's father and requiring him to pay $371 per month in child support. This amount was reduced to $251 in August 1992 pursuant to a stipulated modification order.

Terry returned in June 1991 and had regular visitation with Dallas until March 1994. Dallas spent every other weekend with Terry's mother, Shirley, who usually arranged the visitation, and visits took place in her home in Fort Dodge.

In March 1994 Shirley related to Cory that Dallas had described some inappropriate touching or abuse which had allegedly occurred between Cory's husband, Harold, and Dallas. Cory reported the possible sexual abuse to the police. Following the suggestion of police, Cory voluntarily placed Dallas in Shirley's care so the charges could be investigated. The department of human services concluded the abuse report was undetermined.

On March 25, 1994, Terry filed a petition to establish custody and visitation. The court entered an ex parte order granting Terry physical custody of Dallas pending further order of the court.

At trial Terry testified he is a mechanic and works from 8 a.m. until 5 p.m. Shirley cares for Dallas during the day and takes her to day care in the late afternoon. Terry picks Dallas up from day care after work. Although he currently lives with Shirley, Terry stated he will be living in his three-bedroom trailer house in Otho. At the time of trial Terry was approximately $11,000 in arrears on child support.

Cory and Harold live in a home in Fort Dodge. Cory baby-sits in her home, and Harold is a custodian. Both receive social security benefits.

The court awarded Terry and Cory joint custody with primary physical care awarded to Cory. The court commended Cory's willingness to put Dallas's best interests ahead of her own so that the abuse charges could be investigated properly. The court noted her difficult decision to voluntarily place Dallas in Shirley's care. However, the court found Terry and Shirley had made a concerted effort to alienate Dallas from Cory by failing to cooperate with Cory's attempts to visit Dallas.

In addition, the court found Dallas's attitude toward Harold had been exacerbated by Terry and Shirley. The court recommended Cory should refrain from leaving Dallas in Harold's sole care due to Dallas's discomfort around Harold.

Our review in equity actions is de novo. Iowa R. App. P. 4. We are not bound by the fact findings of the trial court, but we do give them deference because it had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa App. 1992). We recognize 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 Behn*, 385 N.W.2d 540, 543 (Iowa 1986) (quoting *In re Marriage of Callahan*, 214 N.W.2d 133, 136 (Iowa 1974)).

Terry contends the court erred in awarding primary physical care to Cory. He claims the court considered his employment a detriment and held his child support arrearage against him in determining primary physical care. We strongly disagree.

In determining custody issues, our primary consideration is the best interest of the child. Iowa R. App. P. 14(f)(15). Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. *In re Marriage of Bartlett*, 427 N.W.2d 867, 877 (Iowa App. 1988) (citation omitted). The denial by one parent of continuing contact with the other, without just cause, is a significant factor in determining custody. *Id.* at 878.

The record shows Cory was very cooperative in allowing Terry visitation with Dallas. Cory had no problem with Dallas spending every other weekend with Shirley. Clearly Cory encouraged Dallas's relationship with her father from the beginning.

However, the record indicates Terry and his mother have not encouraged Dallas's relationship with Cory since Dallas has been in his physical custody.

Terry's conduct is a serious reflection of his fitness to serve as the custodial parent. *See id.* We are also concerned about the implications of Terry's failure to pay support. His failure to appreciate the consequences of nonpayment reflect badly on his parental judgment and priorities.

Cory is a caring and nurturing parent who has continually placed Dallas's interests ahead of her own. We are convinced she will ensure Dallas has maximum continuing contact with Terry because she knows this is in Dallas's best interests.

For these reasons, and not simply because Cory was the primary caretaker, we believe it is in Dallas's long-term best interests to award primary physical care to Cory.

The district court is accordingly affirmed. Costs of this appeal are assessed to Terry.

AFFIRMED.