FILED
DEC 14 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-467 / 94-0413

IN RE THE MARRIAGE OF JULIE ANN HAGEMAN AND THOMAS J. HAGEMAN AND

Upon the Petition of
JULIE ANN HAGEMAN,

Petitioner-Appellee,

And Concerning
THOMAS J. HAGEMAN,

Respondent-Appellant.

Appeal from the Iowa District Court for Franklin County, John S. Mackey, Judge.

The husband appeals from the child custody provisions of the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Raymond P. Drew, Hampton, for appellant.

James E. Coonley II and Brent J. Symens of Coonley & Coonley, Hampton, for appellee.

Heard by Sackett, P.J., Habhab, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

HABHAB, J.

Julie and Thomas Hageman were married on July 5, 1991. They have one child, Nicole, born on April 18, 1993.

Julie is unemployed and lives with her parents. She receives unemployment as a result of being laid off from her father's place of business, the Liquor Barn. She claims she is seeking employment.

Thomas is also unemployed. He was expected to graduate from Northern Iowa Community College in May 1994 and move on to the University of Iowa to study criminology and sociology.

On June 11, 1993, Julie filed a petition for dissolution of marriage. The parties consented to a temporary order on July 1, 1993, giving joint custody to the parties, placing the child in Julie's physical custody, and granting Thomas visitation rights. Thomas' parents were to supervise his visitation. Thomas received nine hours per week visitation. The visitation schedule was later modified in October 1993 to accommodate Thomas' school schedule, however, his visitations remained supervised. The modification allowed for twelve hours of visitation every two weeks.

In its decree, the court cited extensively to the opinion of Dr. Ralph Scott, a psychologist that examined and evaluated both Julie and Thomas. Scott found Thomas to be "emotionally labile, unpredictable, irritable, impulsive, and at times explosive." He found Julie to be a

reactive person with easily triggered emotions. He believed it was in Nicole's best interests to have contact with both parents. He recommended the current custody arrangement continue including Thomas' supervised visits.

The court awarded Julie sole custody of Nicole. It found "Nicole's safety would be jeopardized by the awarding of joint legal custody given the impulsive nature of both parents." It granted Thomas supervised visits every Thursday from 4 p.m. to 7 p.m., and every other Sunday from 1 p.m. to 7 p.m. Thomas appeals.

I. Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Custody. Thomas contends the district court erred in awarding Julie sole custody. Thomas argues the court should have awarded joint custody. We agree.

In awarding custody of minor children, the district court is to be reasonable and act in the best interests of the child. Iowa Code § 598.41(1) (1993). The district court is to:

> order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum

> continuing physical and emotional contact with both parents after the parents have separated . . . unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result . . . and which will encourage parents to share the rights and responsibilities of raising the child.

Id. If joint custody is not ordered, the district court is required to cite clear and convincing evidence that joint custody is unreasonable and not in the best interests of the child. Iowa Code § 598.41(2) (1993). We do not believe such evidence has been presented.

In determining whether joint custody is in the best interests of the child in situations where one of the parents do not agree to joint custody, the district court is to consider nine factors. Iowa Code § 598.41(4) (1993). They are:

a. Whether each parent would be a suitable custodian for the child.
b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.
c. Whether the parents can communicate with each other regarding the child's needs.
d. Whether both parents have actively cared for the child before and since the separation.
e. Whether each parent can support the other parent's relationship with the child.
f. 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.
g. Whether one or both [of] the parents agree or are opposed to joint custody.
h. The geographic proximity of the parents.
i. 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.

000973

Iowa Code § 598.41(3) (1993). This statute has been interpreted to express a preference for joint custody. In re Marriage of Weidner, 338 N.W.2d 351 N.W.2d 351, 356 (Iowa 1983); In re Marriage of Fish, 350 N.W.2d 226, 229 (Iowa App. 1984). The overriding concern is the best interests of the child. Iowa R. App. P. 14(f)(15).

We acknowledge that, as in many dissolved marriages, Thomas and Julie frequently disagree. We acknowledge it may be true that Thomas has a quick temper. We also acknowledge Thomas has had little experience with children in light of the fact that the couple separated only one month after Nicole was born. These appear to be Julie's strongest arguments, yet we do not believe these factors should result in the drastic measure of Thomas being denied joint custody of Nicole. In order to be denied joint custody, there must be clear and convincing evidence that joint custody is both unreasonable and not in the best interests of Nicole. We do not believe sufficient evidence exists in the record to support a finding denying Thomas joint custody of Nicole. The statutory preference is for joint custody. As a result, we modify the district court's ruling by granting Thomas and Julie joint custody of their child Nicole.

III. Visitation. Thomas contends the district court erred in denying him sufficient visitation. We agree.

We find no good reason in the record to support the district court's denial of supervised holiday visitation. As a result, we modify the district court's ruling by

granting Thomas the following supervised holiday visitation. Nicole should spend the following holidays with Thomas in even-numbered years, and with Julie in odd-numbered years: Christmas Day; Easter; Labor Day; and Thanksgiving Day. Nicole should spend the following holidays with Thomas in odd-numbered years and with Julie in even-numbered years: Christmas Eve; Independence Day; Memorial Day; and Nicole's birthday. These supervised holiday visitations shall be from 9:00 a.m. to 8:00 p.m. Father's Day and Mother's Day shall be spent with that parent from 10:00 a.m. to 6:00 p.m. All of Thomas' holiday visitations shall be supervised.

IV. Supervision. Thomas contends the district court erred in requiring supervision during his visitation. We disagree.

We believe Thomas' past behavior warrants a finding that supervision be required during all of his regular and holiday visitation with Nicole. We affirm the district court's ruling on this issue.

We affirm the ruling of the district as modified in this opinion.

AFFIRMED AS MODIFIED.