IN THE COURT OF APPEALS OF IOWA

No. 1999-602 (9-863) / 99-0903
Filed February 23, 2000

FILED
FEB 2 3 2000
CLERK SUPREME COURT

Upon the Petition of
LISA JO MCINERNEY, Concerning
DYLAN MATTHEW MCINERNEY,
A Minor Child,
Petitioner-Appellee,

vs.

WADE BLAINE,
Respondent-Appellant.

Appeal from the Iowa District Court for Wapello County, Richard J. Vogel, Judge.

Wade Blaine appeals from a district court ruling granting primary care of Dylan McInerney to Lisa McInerney. **AFFIRMED.**

Allan C. Orsborn and Bradley M. Grothe of Orsborn, Bauerle & Milani, L.L.P., Ottumwa, for appellant.

J. Terrence Denefe and Paul Zingg of Kiple, Kiple, Denefe, Beaver & Gardner, L.L.P., Ottumwa, for appellee.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

MAHAN, P.J.

Wade Blaine appeals from a district court ruling granting primary care of Dylan McInerney to Lisa McInerney. Wade contends the district court erred in granting primary physical care of Dylan to Lisa. We affirm.

Lisa McInerney and Wade Blaine are the parents of Dylan Matthew McInerney, born on September 22, 1997. Lisa and Wade have never been married.

On November 6, 1997, Lisa filed a petition for primary physical care and child support. That same day, the parties filed a stipulation for temporary custody, agreeing to split physical care. Wade filed his answer on November 12, 1997, requesting primary physical care and child support. The Iowa Child Support Recovery Unit filed a motion to intervene on March 4, 1998.

Lisa lives in a home in Ottumwa. Since Dylan's birth she has given birth to another child, Dalton McInerney. Lisa is employed full time as a nursing assistant. Prior to Dylan's birth Lisa experienced difficulties with mental health and drug abuse. During the first five months of Dylan's life, Lisa lived with her mother, Susan. Shortly after Dylan's birth, Lisa received treatment for marijuana abuse. She also pleaded guilty to aiding and abetting a theft, which occurred on November 6, 1997. Lisa's treating psychiatrist and psychotherapist testified they had no concerns regarding Lisa's ability to care for Dylan.

Wade lives with his parents in Ottumwa. Wade shares a bedroom with his brother, and Dylan when he stays with Wade. Wade is employed full time in a factory. Wade has experienced difficulties with marijuana use. Prior to Dylan's birth he was charged with possession of drug paraphernalia. Wade was placed on probation and completed drug rehabilitation.

Wade and Lisa brought charges against each other for domestic abuse and stalking. The court discounted the charges, finding the "charges as arising out of this highly charged situation."

In April 1998, Julie Mattingly completed a home study for the court. Mattingly's report recommended the split physical care arrangement continue. She requested the parties keep in contact with her following the home study. Lisa maintained contact with Mattingly, but Wade did not.

At trial Mattingly testified if she had to make a choice as to whether Wade or Lisa should receive primary care, she would recommend Lisa. Mattingly opined Lisa had matured over the past year and had met her goals. Lisa's witnesses also testified regarding Lisa's growth and maturity, noting Lisa places Dylan's needs above her own.

The district court awarded Lisa primary physical care of Dylan, finding:

> Lisa and her witnesses seemed much more open and honest in their testimony. They spent little time trying to debase Wade and concentrated their testimony on establishing that Lisa has made great strides and is capable of carrying for Dylan. Wade particularly seemed to want to concentrate his testimony on telling the Court not only how great he is as a caregiver but also trying to inform the Court how bad Lisa is. It should be noted that this trait came out in Julie Mattingly's report.

Wade appeals.

I. Standard of Review. Our review of a custody order is de novo. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). We give weight to the district court's fact findings, particularly with respect to credibility determinations, although we are not bound by them. *Id.*

II. Primary Physical Care. The governing consideration in a custody action is the best interests of the child. *In re Marriage of Barry*, 588 N.W.2d 711, 712 (Iowa App. 1998). Our analysis is the same regardless of whether the parties were married. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988); *In re Purscell*, 544 N.W.2d 466, 468 (Iowa App. 1995). The objective of the court is to place Dylan "in the environment most likely to bring [him] to a healthy physical, mental, and social maturity." *Murphy*, 592 N.W.2d at 683 (quoting *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995)). The court must determine which parent will better raise the child. *Barry*, 588 N.W.2d at 712. Several factors assist a court in deciding the long-term best interests of the child. *See* Iowa Code § 598.41(3) (1997); *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995). The parent's gender is irrelevant and should not be considered. *Murphy*, 592 N.W.2d at 683.

After carefully reviewing the record, we find no reason to upset the findings of the district court. The district court is in a better position to observe the demeanor of the testifying witnesses; therefore we defer to the district court's findings. We note the court found Lisa and her witnesses more credible. We conclude the district court did not err in awarding Lisa primary physical care of Dylan. For these reasons we affirm.

AFFIRMED.