IN THE COURT OF APPEALS OF IOWA

No. 6-184 / 95-0903

FILED
MAY 31 1996
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DAIYNNA MICHELLE CAMP AND WESLEY WARREN CAMP

Upon the Petition of
DAIYNNA MICHELLE CAMP,

Appellant,

And Concerning
WESLEY WARREN CAMP,

Appellee.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Daiynna Camp appeals the child custody provision of the parties' dissolution decree. **AFFIRMED.**

Jerry R. Foxhoven, Des Moines, for appellant.

Leslie Babich of Babich, McConnell & Renzo, P.C., Des Moines, for appellee.

Heard by Sackett, P.J., and Habhab and Streit, JJ. Vogel, J., takes no part.

STREIT, J.

This is an appeal from the custody award in a dissolution action. In this equity action our review is de novo. *In re Marriage of Brauer*, 511 N.W.2d 645, 646 (Iowa App. 1993). We have a duty to examine the entire record and adjudicate anew the issues properly presented. *Id.* We affirm.

Daiynna and Wesley Camp were married on May 11, 1991. Their only child, Jacob, was born September 28, 1991. The parties separated in September 1994, and a decree of dissolution was filed April 28, 1995. The decree awarded the parties joint legal custody, and Wesley was awarded the permanent physical care of Jacob. Daiynna appeals the award of physical care, and Wesley seeks an award of appellate attorney fees.

I. Custody.

In child custody cases the best interests of the child are the first and governing consideration. *Brauer*, 511 N.W.2d at 647. The factors a court is to consider in awarding custody are enumerated in section 598.41 of the Iowa Code and in our case law. All the factors bear on what will be in the long-term best interests of the child. *Id.*

It is apparent both parties love Jacob and could provide for his needs. The only issue in this appeal is which parent could better provide for his long-term best interests.

The trial court appointed a psychologist to prepare a custody evaluation. It was the recommendation of the psychologist that Jacob be placed in the primary care of his father. Home studies are a consideration in custody decisions but are not controlling. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995).

In reviewing the record, we find we are in agreement with several of the concerns raised by the psychologist in her custody evaluation. While not a major consideration, it is troubling that Daiynna did not obtain medical advice or treatment for several blackout spells she had. While there have been no recent incidents, one spell did occur when Jacob was an infant in her care. Daiynna's refusal to obtain a medical evaluation is indicative of poor judgment and an unwillingness to recognize the serious consequences the blackouts could have had on her ability to care for her son.

The custody evaluation and the record also generate a concern as to whether Daiynna would foster Jacob's relationship with his father. Courts are directed to order a custody award which will assure a child the opportunity for maximum continuing physical and emotional contact with both parents. Iowa Code § 598.41(1) (1995). Daiynna's refusal to allow Jacob to stay with his father during her weekly pool league outings frustrated Wesley's attempts to maximize visitation with his son. Likewise, Daiynna's statements to the custody investigator indicated her willingness to grant additional visitation would depend on the basis of her level of conflict with Wesley, rather than on Jacob's needs. Given these circumstances, we find Wesley is more likely

than Daiynna to foster Jacob's relationship with his noncustodial parent, and the trial court properly awarded him physical care.

In affirming the trial court we do not minimize or disregard Daiynna's allegations of physical abuse. Abusive behavior is a factor in custody determinations. *See In re Marriage of Wilson,* 532 N.W.2d 493, 495 (Iowa App. 1995); Iowa Code § 598.41(1)(b), (2)(c), (3)(j) (Iowa Code Supp. 1995). However, a review of the record indicates there was a dispute as to the existence and extent of the abuse allegations raised by Daiynna. The only shoving incident to which Wesley admits involvement occurred over three years before trial. Daiynna's testimony indicates she too resorted to physical responses when confronted with a heated situation. We do not condone either party's behavior in this regard, but find the remote time and the nature of the incidents insufficient to change the award of physical care.

In closing, we note custody decisions of this kind are not easy, and we are keenly aware of the superior vantage point of the trial court due to its ability to consider firsthand the demeanor and appearance of the parties. *See In re Marriage of Vrban,* 359 N.W.2d 420, 423 (Iowa 1984). In this case, the trial court failed to make any findings concerning the allegations of physical abuse. Litigants should not have to speculate on the court's reasons for its decision. It would be a preferable practice for the trial court to make findings as required by Iowa Rule of Civil Procedure 179.

> RULE 179. FINDINGS BY COURT
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> (a) The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; and direct an appropriate judgment. No request for findings is necessary for purposes of review.

From our de novo review of the record, we agree with the trial court's award of physical care to Wesley.

II. Appellate Attorney Fees.

Wesley requests appellate attorney fees. An award of appellate attorney fees is not a matter of right but rests within our discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa App. 1994). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal *Id.* Given the circumstances of the parties in this action, we do not award appellate attorney fees.

AFFIRMED.