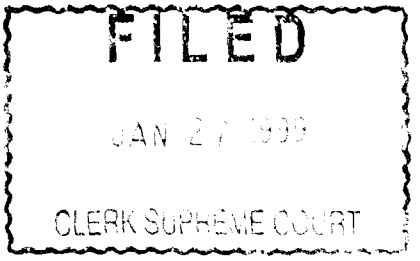
IN THE COURT OF APPEALS OF IOWA

No. 8-671 / 98-0742
Filed January 27, 1999



IN RE THE MARRIAGE OF CARLA PARIS AND MICHAEL RAYMOND PARIS

Upon the Petition of
CARLA PARIS,
Appellant,

And Concerning
MICHAEL RAYMOND PARIS,
Appellee.

Appeal from the Iowa District Court for Boone County, William J. Pattinson, Judge.

Carla Paris appeals the child custody provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED FOR DETERMINATION OF CHILD SUPPORT.**

Jeanne K. Johnson, Des Moines, and Larry J. Handley of Handley, Gocke, Block, Lamberti, Barnes & Moore, P.C., Ankeny, for appellant.

Dorothy L. Dakin of Dakin Law Office, Boone, for appellee.

Heard by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

STREIT, J.

Carla Paris appeals the award of primary physical custody of her daughter, Ella, to Ella's father, Michael Paris. Because Carla has developed a stronger interpersonal relationship with Ella, we modify the custody and visitation provisions of the decree and remand to the district court for determination of Michael's child support obligation.

I. Procedural Background & Facts.

Michael and Carla Paris were married on August 25, 1995. They have one child, Ella, born January 9, 1997. Michael was thirty-six and Carla was twenty-eight years old at the time of trial.

Carla is a high school graduate and has attended several years of college, but did not obtain a degree. In 1995, she acquired her nursing assistant certificate and obtained employment in a nursing home. She is currently employed as an office worker for PDM Distribution, Inc., and earns $8 per hour. Carla's health is good.

Michael obtained a bachelor's degree in physical education and a minor in psychology from Iowa State University in 1993. Michael lost the use of his legs in a motor vehicle accident in 1979 and uses a wheelchair. He has a specially equipped vehicle and is fully mobile. He received a lump-sum payment of approximately $90,000 from the accident, monthly annuity payments of $1000, and $539 per month in social security disability benefits. Michael has attempted full-time work at Ag Leader Technology, but was unable to maintain the full-time position due to his

physical condition. He worked part-time until October 1997. Michael is a talent scout for the Chicago White Sox, earning $2500 per year plus $4000 in travel expenses. His duties include traveling to various parts of Iowa and Nebraska to scout new talent. Michael participates in baseball camps during the summer, earning $500 to $600 as compensation.

The couple permanently separated in June 1997 when Ella was five months old. Carla had primary care of Ella after the separation. Carla claims Michael was disinterested in Ella. Michael contends Carla denied him visitation. The record is replete with rude and hostile behavior by both parties; however, Carla more so than Michael.

Following trial, the district court awarded Michael primary physical care of Ella. Carla was ordered to pay Michael $232.10 per month in child support. Carla appeals these provisions of the decree.

II. Standard of Review.

Review of the custody provisions of a divorce decree is de novo. Iowa R. App. P. 4. *See In re Marriage of Miller,* 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.; In re Marriage of Brown,* 487 N.W.2d 331, 332 (Iowa 1992). The controlling consideration in child custody cases is always what is in the best interests of the children. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). Although

Richard and Lori never wed, the criteria for determining custody is the same as if the parties were married. *Heyer v. Peterson,* 307 N.W.2d 1, 7 (Iowa 1981).

III. Primary Physical Care of Ella.

Both Carla and Michael would be suitable caregivers for Ella. In these circumstances, we look to joint physical custody as an option. If the parents are able to cooperate and respect each other's parenting and lifestyles, a joint care arrangement can work. *In re the Marriage of Swenka,* (Iowa App. January 28, 1998). That is not the case here. Neither party has promoted Ella's respect or affection for the other parent. Carla has denied Michael the court-ordered visitation. She swore at him and his family when she felt Ella had been given inadequate care and they lied about what had been done. She avoided contact with Michael and his family whenever possible. She wished to communicate with Michael in writing only. Michael belittled Carla's parenting ability, has labeled Carla a quitter, and testified he believed she would quit in raising Ella some day.

It is clear the parents would not be able to make a joint physical custodial relationship work. Because we determine it is not in Ella's best interest to be in a joint physical care relationship with her parents, one of the parents must be selected as the primary physical caregiver. The best interest of the child is the first and governing consideration in determining the primary caregiver. *In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa App.1991). The parent who can administer most effectively to the long-term best interests of the child and place them in an

environment that will foster healthy physical and emotional lives is chosen as primary physical caregiver. *In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997). We are not bound by the district court's findings but give them deference because the district court had an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians. *See id.*

We identify numerous factors to help determine which parent should serve as the primary caregiver. *See* Iowa Code § 598.41. Among these are the characteristics of the parents, as well as the capacity and desire of each parent to provide for the needs of the children. *Id.* Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa App. 1997). To the contrary, some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the particular facts of each case. *Id.*

A. Primary Physical Caregiver.

Carla contends she should be awarded the primary physical care of Ella because she has always been Ella's primary caregiver. There is little dispute Carla has been Ella's primary caregiver since Ella's birth.

Ella was born in January 1997. Michael was gone fifty to eighty hours per week with his various employments. Carla has been a devoted mother to Ella. She quit her job to stay home with Ella the first year of Ella's life. Carla cared nearly solely for Ella, feeding, bathing, waking with her in the night, putting considerable

thought into Ella's dietary plan and her medical care. Carla and Ella moved out of Michael's home in July of 1997. Carla continued to be Ella's primary caregiver.

Carla's role as primary caregiver weighs heavily upon our decision to award her custody. The parent who has been the primary caregiver of the children during the marriage will not necessarily be designated by the court to be primary caregiver at the time of the divorce. *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa App. 1992). However, the role the primary caregiver has played in the life of a child is given consideration in custody disputes. *In re Marriage of Burkle*, 525 N.W.2d 439, 441 (Iowa App. 1994). Allowing a parent to continue as the primary caregiver after the divorce gives continuity to the lives of children. *Id.* As a result of her role, Carla has developed stronger interpersonal relationship with the Ella.

B. Ability to Nuture Relationship with Noncustodial Parent.

Despite Carla's primary care giver status and excellent care of Ella, Carla has displayed inexcusable behavior in dealing with Michael. She has denied him court-ordered visitation. She has chose to communicate with him in writing only. Whenever possible, she avoided face-to-face contact with him. While Ella was in Carla's care, she took Ella on a two-week vacation without informing Michael of Ella's whereabouts. Carla often displayed anger toward Michael's family with swear words and enraged conduct.

There is no way this behavior can be construed as demonstrating an ability by Carla to facilitate a relationship between Michael and Carla. Her behavior is not

acceptable and some instances could serve as grounds for a contempt action if it interfered with visitation. However, to Carla's credit, some of the instances referred to by Michael as offensive are not. It is completely appropriate for Carla to give written instructions to Michael as to Ella's care. It is also appropriate for Carla to expect accurate information from Michael and his parents concerning Ella, such as what she has eaten, sleeping patterns, intake of medicine while in Michael's care.

While the record is replete with specific instances of Carla's poor conduct, it must be pointed out the hostility which exists between these parents is not unilateral on Carla's part. Many communication problems came about when Michael would not always properly feed Ella and would avoid admitting it. It is optimistic speculation on the part of the trial court that Michael would better foster a relationship between Carla and Ella than Carla had done between Michael and Ella.

The hard question is whether Carla's interpersonal relationship with Ella as her primary caregiver, and Carla's other attributes as a parent, are overshadowed by her unreasonable conduct in dealing with Michael. The trial court made Carla's conduct the impetus of its decision. The court foresaw Michael being excluded from Ella's life and further litigation regarding visitation imminent if Carla were awarded primary physical care of Ella. Although we agree with the court that denial by one parent of the child's opportunity for maximum contact with the other parent is a significant factor in determining the proper custody arrangement, *see In re Marriage of Daniels*, 568 N.W.2d 51, 56 (Iowa App. 1997), we emphasize the overriding

consideration in a custody award in the child's best interests. *In re Marriage of Rodgers*, 470 N.W.2d at 44. We find it is Ella's best interests to remain with Carla, her primary caregiver since birth.

C. Other Factors Considered Pursuant to Iowa Code Section 598.41.

Another factor noted by the trial court in determining Michael should be awarded primary physical care of Ella is that Michael would spend more time with Ella than Carla because he does not have a full-time job. It is preferable for a parent to care for a child rather than a third party or relative. Carla, who is employed full-time at a forty-hour per week job, utilizes day care for Ella.

The finding Michael would spend more time caring for Ella than would others if Ella were in his custody is doubtful. Michael is gone for weeks at a time during the baseball season while scouting for the White Sox. If Ella were not being cared for by Carla during this time, she would be in the care of third parties or relatives. This is also true for the time when Michael participates in baseball camps. Michael's every day care of Ella would likewise be aided by third parties and family members. Michael's physical disability requires he recline for extended periods of time to prevent edema and pressure sores. It is not practical for Michael to be in a reclining position while caring for Ella. During these times, on a daily basis, Michael will need to employ third parties or depend on family members for aid with Ella's care. Although Michael is able to care for Ella, the question is who would be the better caretaker.

For all these reasons, we find it in Ella's best interests to remain in the primary physical care of Carla, her primary caregiver prior to the divorce.

IV. Child Support and Custody.

Our decision requires a determination of Michael's child support obligation. Because we do not have the current income information of the parties before us, or a statement of what child support Carla has paid to Michael, we are unable to calculate Michael's child support obligation on this record. For this reason, we remand to the district court for a calculation of Michael's child support obligation.

Michael shall have liberal visitation. If the parties do not agree, Michael shall have visitation with Ella every other weekend from Friday 6:00 p.m. until Sunday 6:00 p.m. and every Wednesday evening from 5:30 p.m. to 8:30 p.m. Michael shall have a total of six weeks visitation during the summer. No more than three weeks will be consecutive, and there will be a minimum of two weeks between the visitation segments. The parties shall share the transportation responsibility.

For even-numbered years, Michael will have the holidays of New Year's Day, Memorial Day, Labor Day, and Christmas Day. In odd-numbered years, he will have the holidays of Easter, Independence Day, Thanksgiving, and Christmas Eve Day. Unless otherwise provided herein, holiday visitation will commence at 8:00 a.m. on the day of the holiday and terminate at 8:00 p.m. the same day. The holiday of Easter is considered to include the prior Friday at 6:00 p.m. until Sunday at 6:00 p.m. The Thanksgiving holiday is considered to include the preceding Wednesday at 6:00 p.m.

until Sunday at 6:00 p.m. The Memorial Day and Labor Day holidays are to include the preceding Friday at 6:00 p.m. until Monday at 6:00 p.m. Michael will have visitation with Ella on every Father's Day. Carla will have visitation with Ella on every Mother's Day. The same is true for the parties' birthdays. The parties will alternate Ella's birthday.

AFFIRMED AS MODIFIED AND REMANDED FOR DETERMINATION OF CHILD SUPPORT.