IN THE COURT OF APPEALS OF IOWA

No. 1-582 / 01-334
Filed September 12, 2001

MICHAEL J. SANDMEYER,
Petitioner-Appellant,

vs.

DEENA J. WEITZEL,
Respondent-Appellee.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

The petitioner appeals from an order regarding child custody and argues the district court erred in awarding physical care of the parties' child to the respondent. **AFFIRMED.**

DeDra Schroeder of Schroeder Law Office, Charles City, for appellant.

Evelyn Ocheltree of Legal Services Corporation of Iowa, Mason City, for appellee.

Considered by Sackett C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Michael Sandmeyer appeals a district court order granting Deena Weitzel physical care of the parties' son. We affirm.

I. Background Facts and Proceedings

Sandmeyer and Weitzel are the parents of five-year old Mikey. During their six-year relationship, both parties used methamphetamine regularly. Their drug use precipitated police raids on their homes, felony drug convictions, probationary status, and a chaotic living environment for young Mikey.

The parties' relationship ended but their drug use did not. Weitzel moved herself and her young son in with her mother and grandmother where she surreptitiously continued using methamphetamine. Sandmeyer moved into the home of a co-worker with whom he had begun a relationship, and likewise kept using drugs.

Shortly after the break up, Sandmeyer filed a petition to establish custody and visitation of Mikey. Following trial, the district court awarded Weitzel physical care, subject to liberal visitation. This appeal followed.

II. Physical Care

Sandmeyer maintains the district court should have awarded him physical care of young Mikey. In deciding this issue, we review the record de novo, considering the statutory criteria applicable to custody determinations in dissolution of marriage cases. *See* Iowa Code §§ 600B.40; 598.41(3) (1999); *Phillips v. Davis-Spelling*, 541 N.W.2d 846, 847 (Iowa 1995).

Sandmeyer contends Weitzel should not have physical care of Mikey because she: (1) has experienced depression, suicidal ideation and periods of

instability; (2) resorts to violence when she cannot control her anger; (3) has stolen from friends and engaged in other unlawful acts; (4) is a drug addict; (5) is lazy, as reflected by her decision to send her child to day care while she stayed at home; (6) violated a court order regarding visitation and contact with him; and (7) has difficulties parenting Mikey. Sandmeyer claims he, in contrast, is a loving and attentive parent who can afford Mikey a comfortable lifestyle.

At trial, Weitzel did not dispute most of Sandmeyer's allegations against her. She admitted she was often out of control while living with Sandmeyer, experienced bouts of depression, and once attempted suicide. She further conceded to certain acts of violence against Sandmeyer. She readily admitted to stealing from friends and family to support her drug habit and acknowledged she was addicted to methamphetamine. She also conceded she did not earn wages for any significant period of time while the parties were together and she did not deny sending Mikey to daycare despite her presence in the home. Given her recognition of these shortcomings, we will examine only the last two factors raised by Sandmeyer: whether Weitzel has impeded Mikey's relationship with his father and whether Weitzel has difficulties parenting Mikey.

As to the first question, the record suggests that, on one occasion, Weitzel denied Sandmeyer visitation without justification. On that occasion, Sandmeyer's birthday, Weitzel initially agreed to let Mikey visit his father, but later called and refused to let him go. While we do not condone violations of visitation orders, we are not convinced this isolated infraction militates against awarding Weitzel physical care of Mikey. *Cf. In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993) (affirming modification of physical care where custodial parent

willfully deprived non-custodial parent of visitation and showed no interest in altering conduct).

Of greater concern is Weitzel's admitted history of poor parenting. Until a few months before trial, Weitzel placed her drug habit above all else, including the welfare of her child. For example, she used drugs even after learning she was pregnant and bought drugs instead of paying her home utility bills, resulting in the disconnection of power to her home.

Nevertheless, at the time of trial, Weitzel appeared to have taken steps to improve her caretaking role. She sought counseling to address anger issues, began attending Narcotics Anonymous meetings, obtained a steady job at a restaurant, and claimed to have stopped using methamphetamine. As she stated, "I have managed to turn my life around."

Other witnesses confirmed that Weitzel had changed for the better. They explained she was less agitated and more stable and appeared caring and trustworthy. Her counselor stated her symptoms of depression had decreased, she appeared goal-oriented, and possessed adequate parenting skills. While not a ringing endorsement, these observations lend credence to the views of Weitzel and her friends and family that she had made efforts to improve as a parent. *Cf. In re Marriage of Zavadil*, 806 S.W.2d 506, 510 (Mo. Ct. App. 1991) (citing clinical psychologist's statement that substance abusing mother was nevertheless competent, caring, attentive and appropriately protective of her child).

In contrast, there was little in the record to suggest Sandmeyer took similar steps. He continued to use drugs after separating from Weitzel and did

not indicate he had made efforts to stop. He physically abused Mikey while living with Sandmeyer but did not indicate he had tried to manage his anger. In sum, he did not explain whether he had confronted and resolved the same parenting inadequacies he justifiably found so troubling in Weitzel.

Ultimately, we believe this case turns on which party will provide a more stable environment for Mikey. On this record, we believe Weitzel will. Weitzel has benefited from the significant assistance of her mother and grandmother. Weitzel's mother in particular has remained a constant in Mikey's life for most of his young life. She opened her home to Weitzel, Sandmeyer and Mikey after the three moved to Mason City from Des Moines and took care of the child while the two went on a drug binge. When the couple moved to an apartment, Weitzel's mother regularly cared for the child. After they separated, she again opened her home to Weitzel and Mikey. We believe this proximity to a caring extended family affords Mikey a sense of security he might not otherwise have, in light of the risks attendant with both parties' histories of drug abuse. *See In re Marriage of Barry*, 588 N.W.2d 711, 714 (Iowa Ct. App. 1998).

In reaching this conclusion, we have not ignored certain troubling variables in Weitzel's life. By Weitzel's own admission, she had only remained off methamphetamine for approximately four months prior to trial and had previously relapsed following a far longer period of abstinence. The record also indicates her brother, who also abused drugs, was often at her mother's home. However, on this record, we can only speculate about the effect of these factors on Weitzel's parenting abilities and Mikey's welfare. We decline to do so.

Based on the evidence presented at trial, we agree with the district court's decision to award Weitzel physical care of Mikey.

We will send a copy of this opinion to the Cerro Gordo County office of the Department of Human Services upon filing.

AFFIRMED.