FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF DEBORAH ANN HERMANN AND YOSHIHISA IWAI

Upon the Petition of	)	
DEBORAH ANN HERMANN,	)	Filed March 9, 1988
Petitioner-Appellee-Cross-Appellant,	)	183
And Concerning	)	
YOSHIHISA IWAI,	)	7-490 87-174
Respondent-Appellant Cross-Appellee.	)	

Appeal from the Iowa District Court for Johnson County (EQ 6701), Larry J Conmey, Judge.

Respondent appeals the district court decision awarding primary physical care of the parties' minor child to the petitioner. **AFFIRMED.**

Thomas Gillaspie of Hall & Irvine, Cedar Rapids, for respondent-appellant-cross-appellee.

Thomas D. Hobart of Meardon, Sueppel, Downer & Hayes, Iowa City, for petitioner-appellee-cross-appellant.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

The respondent appeals the district court decision awarding primary physical care of the parties' minor child to the petitioner. The respondent claims that he should be awarded physical care of the child and reasonable visitation should be set for the petitioner. The petitioner has cross-appealed, alleging that (1) the child support provisions should be increased, (2) the trial court erred by failing to award her attorney fees for the trial of this case, and (3) she should receive attorney fees for this appeal.

The respondent, Yoshihisa Iwai (Yoshi), and the petitioner, Deborah Ann Hermann, were married on January 28, 1985. Their child, Benjamin Tatsunori Iwai, was born on March 14, 1985. Yoshi is a post-doctoral fellow at the University of Iowa College of Pharmacy. He received a Ph.D. in medicinal chemistry in Japan. Deborah is a student at the University of Iowa College of Medicine.

Deborah became pregnant with Yoshi's baby while still single. Initially, Deborah did not want to have a child and considered having an abortion or putting the child up for adoption. She went to Japan with Yoshi, was married to him, and later gave birth to the child. On June 6, 1985, Deborah left Yoshi and Benjamin in Japan and came back to Iowa City.

Later that summer, Yoshi and Debbie attempted a reconciliation and Yoshi and Benjamin came to Iowa City. Late in 1985 Deborah became depressed and was treated for her illness. In December 1985 she filed a petition for dissolution of the marriage. In May 1986 Deborah took Benjamin and moved out of the household to a new apartment. Following the dissolution trial, the court granted Deborah and Yoshi joint legal custody of Benjamin, with Deborah receiving primary physical care with reasonable visitation set up for Yoshi. This appeal followed. Our scope of review is de novo. Iowa R. App. P. 4. We affirm.

The issue of custody is decided by determining "which parent can minister more effectively to the long-range best interests of the children." In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974). The factors to consider in this determination include the following:

> 1. The characteristics of each child, including age, maturity, mental and physical health.
> 2. The emotional, social, moral, material, and educational needs of the child.
> 3. The characteristics of each parent, including age, character, stability, mental and physical health.
> 4. The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the child.
> 5. The interpersonal relationship between the child and each parent.
> 6. The effect on the child of continuing or disrupting an existing custodial status.
> 7. The nature of each proposed environment, including its stability and wholesomeness.

Id.

Having reviewed the record, we believe that it would be in Benjamin's best interests to grant custody to Deborah. There was testimony at trial that until May 1986, Yoshi was the primary caretaker of Benjamin. We conclude that this is true, but must also note that while Yoshi was primary caretaker of the child, he did not always perform well in that role. For instance, Yoshi would often leave Benjamin alone and unsupervised in the apartment while he picked Deborah up from the medical school across town. On one occasion, Deborah found Yoshi asleep (allegedly from excessive drinking) while Benjamin crawled around unsupervised. Such examples of irresponsibility are not in Benjamin's best interests since failure to supervise a baby can result in serious harm.

In contrast, during the period that Deborah was primary caretaker of the child, Benjamin was well cared for and supervised. We find nothing in the record to indicate that Benjamin received less than excellent care. Yoshi himself admitted that Deborah has done a good job of caring for Benjamin.

Another factor of importance in this case is the desire to assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the dissolution. See Iowa Code § 598.41(1). Yoshi has stated that in the future he would be seeking employment outside of Iowa City and in all probability, outside Iowa and maybe outside the United States. He testified that if an attractive position arose in Japan, he would strongly consider taking it. Should custody be granted to Yoshi and he moved to Japan, we believe that the goal of maximum contact with the noncustodial parent would be defeated.

At trial, much discussion was given the fact that Deborah experienced a serious depression in the fall of 1985. Yoshi argues that should Deborah again lapse into such a depression, it could have a negative effect on Benjamin. Deborah's physician, however, testified that Deborah has completely recovered from the depression and would be able to recognize the symptoms if it were to occur again and could seek the necessary help. We therefore do not place great significance on Deborah's past problems with depression.

There is also evidence that on one occasion, Yoshi took Benjamin from Deborah without her consent and Deborah required the assistance of the police to retrieve Benjamin. Such actions are not in Benjamin's best interests. Although apparently an isolated instance, it does weigh against an award of custody to Yoshi.

Finally, much testimony at trial surrounded Deborah's initial attitude toward her pregnancy and impending birth of the baby. Yoshi argues that such an attitude raises doubts about Deborah's commitment and devotion to accepting the primary care and responsibility of Benjamin. Despite Deborah's initial negative reaction toward the pregnancy and impending birth, she has clearly demonstrated a positive change in attitude. We are convinced that she strongly desires

to have custody of Benjamin and would provide him with the necessary love and support. Based on these conclusions, we find it to be in Benjamin's best interest that custody be granted to Deborah.

Deborah claims that the seventy-five dollars per week child support awarded by the trial court is not sufficient. She requests $150 per week in child support. Section 598.21(4) of the Iowa Code provides for an award of reasonable and necessary child support upon a dissolution. In Deborah's brief, she states that she has been able to meet Benjamin's needs since the separation in May 1985. Given this statement, we are not inclined to modify the amount of child support determined by the trial court as reasonable.

Deborah also contends that the trial court erred in failing to award attorney fees to Deborah. The trial court is vested with considerable discretion in allowing attorney fees to be awarded in dissolution cases. In re Marriage of Lochmiller, 229 N.W.2d 228, 229 (Iowa 1975). Given the assets and financing available to Deborah, we find no reason to disturb the trial court's denial of attorney fees.

Deborah requests that we award her attorney fees and costs on appeal. Such an award may be granted depending on the parties' respective abilities to pay. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). As noted before, it appears that Deborah's ability to pay is sufficient and we therefore deny appellate attorney fees. Costs are assessed half to each party.

AFFIRMED.