FILED
MAY 25 1993
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

No. 3-195 / 92-1386

IN RE THE MARRIAGE OF LORAN W. HOPPE AND MELISSA A. HOPPE

Upon the Petition of
LORAN W. HOPPE,
Petitioner-Appellant,

And Concerning
MELISSA A. HOPPE,
Respondent-Appellee.

Appeal from the Iowa District Court for Howard County, John Bauercamper, Judge.

The husband appeals the custodial provision of the district court's decision dissolving the parties' marriage. **AFFIRMED.**

Kevin E. Schoeberl of Anderson, Story & Schoeberl, Cresco, for appellant.

Marion L. Beatty of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

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OXBERGER, C.J.

Loran and Melissa Hoppe were married on July 30, 1988. The parties have one child, Kayla, born October 30, 1989.

Loran was thirty years old at the time of the dissolution hearing. Loran was first married at the age of sixteen and subsequently quit high school. Two children resulted from that marriage. His former wife has physical custody of the children. Loran pays his first wife $160 per month child support. Loran is employed by Hoppe Enterprises, which is owned by his parents. Hoppe Enterprises repairs and rebuilds cars for resale. Loran is the primary employee. Loran's net weekly earnings from the business are approximately $265.

Melissa was born July 26, 1970. Loran and Melissa started dating when Melissa was sixteen and Loran was twenty-five. Following her high school graduation, the parties married. Melissa is currently employed and earns approximately $880 per month. Loran, Melissa, and Loran's parents purchased an acreage consisting of a house, a barn which houses Hoppe Enterprises, and a mobile home. Loran and Melissa occupied the mobile home until Melissa moved out.

Loran filed a petition for dissolution of the parties' marriage. The district court entered a temporary custody order which provided that custody of the child would alternate between the parties every three weeks. Following the dissolution hearing, the district court entered a

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decree dissolving the parties' marriage. The district court stated that it did not have sufficient time to prepare a final decree covering all the issues in the case. The district court did, however, modify the temporary custody order placing the child in Melissa's physical custody.

Subsequently, the district court filed a supplemental decree. The district court found that both parents loved the child and both would be a fit and proper custodian. The district court found that during the marriage Melissa was the parent most responsible for the child's daily needs. The district court also found Melissa was the parent who most effectively met the child's needs and provided appropriate supervision and care. Based upon these findings, the district court concluded it was in the child's best interest to be placed with Melissa. The district court provided for visitation and ordered Loran to pay $228 per month child support. The district court then divided the assets and liabilities of the parties.

Loran has appealed the district court's custodial decision. Melissa requests Loran be required to pay the costs of the appeal and her appellate attorney fees.

I. Child Custody.

Loran contends the district court incorrectly awarded physical care of Kayla to Melissa. He argues he was the primary caretaker of Kayla prior to the dissolution and should be allowed to continue in that capacity.

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Our review in this matter is de novo. Iowa R. App. P. 4. In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3), in In re Marriage of Weidner, 338 N.W.2d 351, 355-56 (Iowa 1983), and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

The district court found that while both parents are fit and proper custodians of Kayla, Melissa was the parent most responsible for Kayla's daily needs. Testimony at trial indicated Melissa remained home for a period following Kayla's birth to care for her. She arranged ongoing child care for Kayla, completed household chores, and prepared Kayla's meals. All witnesses testified Melissa was dependable and a hard worker. Melissa arranged for a wide variety of activities and family events for Kayla. Ample evidence indicated Melissa is a competent,

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indicated Melissa is a competent, capable, loving care giver. Based on our review of the record, we affirm the trial court's award of primary physical care of Kayla to Melissa.

II. Attorney Fees.

Melissa requests Loran be required to pay costs and her appellate attorney fees.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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 trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

We award Melissa $2,000.00 in appellate attorney fees and order Loran be charged with the costs of this appeal.

AFFIRMED.