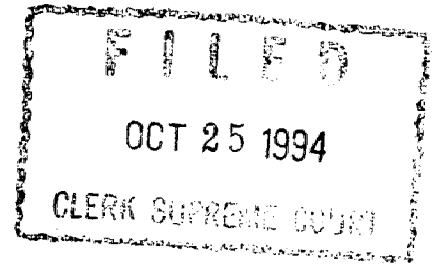


IN THE COURT OF APPEALS OF IOWA

No. 4-314 / 93-1808



IN RE THE MARRIAGE OF KIMBERLY J. BROWN AND
RICHARD M. BROWN

Upon the Petition of
KIMBERLY J. BROWN,

Petitioner-Appellee,

And Concerning
RICHARD M. BROWN,

Respondent-Appellant.

Appeal from the Iowa District Court for Grundy County,
William G. Klotzbach, Judge.

Richard Brown appeals from the provisions of the
parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Eric Borseth of Borseth & Genest Law Office,
Pleasant Hill, for appellant.

Richard K. Betterton of Johnston, Potterfield &
Nathanson, P.C., Waterloo, for appellee.

Heard by Sackett, P.J., and Habhab and Cady, JJ.

HABHAB, J.

Richard and Kimberly (Kim) Brown were married in October 1991 after it was discovered Kim was pregnant with their child, Shayla. Shayla was born in March 1992. In June 1992 the parties separated. The marriage was dissolved in October 1993. The couple was given joint custody of Shayla, with primary physical care going to Kim. Richard was awarded visitation on the first and third Wednesday of each month from 4:30 p.m. to the following Sunday at 6 p.m. until Shayla begins attending public school. After that, Richard will have visitation on alternating weekends. No special provisions were made for the summer months once Shayla attends public school. The district court provided for visitation on holidays. Richard was also ordered to pay sixty-one dollars per week in child support.

Richard appeals from the custody and visitation provisions of the dissolution decree. He contends Kim suffers from emotional problems and has poor educational and employment records. He claims he is good with children and has lots of family and friends around for help and support. Richard also argues the district court erred in failing to give him summer visitation.

Kim contends the record does not support many of Richard's contentions. She also requests appellate attorney fees.

I. Scope of review. Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

II. Custody. Richard argues the district court erred in awarding primary physical care to Kim. We disagree. Among its many findings, the district court placed a great deal of reliance on the findings of the home study which concluded Kim was a caring and loving parent. The home study found Kim had met and could continue to meet the needs of Shayla. The home study also found there to be a genuine bond between Kim and Shayla. We find the district court's reliance on this home study to be appropriate in this case, particularly in light of substantial anecdotal evidence regarding the conduct of both parties during their time together.

While the social worker conducting the home study was unaware of Kim's alleged emotional problems, we find these problems are not a hindrance to Kim as a parent. James Waring, the psychiatric social worker treating Kim, testified that she voluntarily sought treatment following the separation from Richard. He stated her condition was

temporary and was most likely caused by the turmoil in her marital relationship. Waring testified Kim was later discharged from his care since it was his opinion she was functioning adequately and did not require further treatment. Waring also stated Kim was not suicidal, but was deeply upset by her marital situation. He did not feel Kim was in a deep depression or had a serious wish to die.

After a de novo review of the record, we agree with the district court. We find it is in Shayla's best interests for Kim to have primary physical care. We affirm the district court regarding the issues of custody and physical care.

III. Visitation. Richard contends the district court erred in failing to provide special visitation privileges during the summer months once Shayla attends public school. We agree and modify the district court's ruling accordingly. Beginning in the summer following Shayla's first year in school, we find Richard should be given a minimum of four weeks visitation to be exercised in two-week blocks during the period of time in the summer in which Shayla is not attending school. This summer visitation shall be in addition to the regular alternating weekend visitation.

IV. Attorney fees. Kim requests attorney fees for this appeal. 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 Hunt, 476

N.W.2d 99 (Iowa App. 1991). We determine each party shall pay his or her own attorney fees for this appeal.

We affirm the ruling of the district court with the modification for summer visitation once Shayla attends public school.

AFFIRMED AS MODIFIED.