

IN THE COURT OF APPEALS OF IOWA

No. 0-586 / 10-0242
Filed September 9, 2010

KIEL MACKE,
Plaintiff-Appellant,

vs.

CRYSTAL BUSS,
Defendant-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Richard D. Stochal, Judge.

A father appeals from the district court's order granting physical care to the mother. **AFFIRMED.**

Gary F. McClintock of McClintock Law Office, Independence, for appellant.

Crystal Buss, New Hampton, pro se.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Kiel Macke appeals from the district court's order granting Crystal Buss physical care of their son. He contends he should have been granted physical care. Because the district court considered the appropriate factors and we have no basis for disagreeing with its factual findings, we affirm.

I. Background Facts and Proceedings.

Crystal and Kiel are the parents of Kamron, who was born in April 2008, when Crystal and Kiel were each nineteen years old. Before Kamron's birth, Crystal and Kiel had ended their relationship.

Crystal was initially Kamron's primary caregiver. However, after Kiel filed this petition for custody, visitation, and child support, the court entered a temporary order that called for the parties to alternate physical care of Kamron on a weekly basis. Crystal resides in Nashua, and Kiel resides in Fairbank—about fifty miles away.

Trial was held on September 3, 2009. Both parties and Kiel's mother testified. Kiel made it clear that he was not asking for or willing to continue shared physical care, but wanted to have physical care of Kamron himself.

On January 13, 2010, the district court issued its ruling, finding that both Crystal and Kiel had demonstrated an ability to minister to the needs of Kamron, but had "not been able to communicate on a mature level since their relationship ended [and their] attempts at co-parenting have been abysmal." The district court further found that Crystal had demonstrated a superior ability to minister to the needs of Kamron, stating, "She has demonstrated more of a concern over

Kamron's best interest than has Kiel. He has demonstrated that he is more concerned with gathering negative information [for] use at trial than working with Crystal to co-parent their child." Thus, the district court granted the parties joint legal custody and Crystal physical care of Kamron, with Kiel having visitation. Kiel appeals and asserts that the district court should have awarded him physical care of Kamron.

II. Standard of Review.

We review child custody orders de novo. *In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007); *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). We give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. *Sullins*, 715 N.W.2d at 247. Our overriding consideration is the best interests of the child. *In re Marriage of Bevers*, 326 N.W.2d 896, 898 (Iowa 1982).

III. Physical Care.

Given the parties' difficulty in communicating and co-parenting, Kiel's disclaimer of any interest in joint physical care, and the distance between the parties' homes, joint physical care was not an option. In determining physical care of a child, the courts are guided by the factors enumerated in Iowa Code section 598.41(3) (2009), as well as other nonexclusive factors enumerated in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). See *Hansen*, 733 N.W.2d at 698 (holding that the factors enumerated in section 598.41(3) are relevant in making a physical care determination). The ultimate objective of a

physical care determination is to place the child in the environment most likely to bring him to healthy mental, physical, and social maturity. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). As each family is unique, the decision is primarily based on the particular circumstances of each case. *In re Marriage of Kleist*, 538 N.W.2d 273, 276 (Iowa 1995).

In the present case, the district court considered all the testimony and weighed the appropriate factors in making the physical care determination. As the district court found, Crystal was the primary care provider of Kamron from his birth until the temporary order was entered. It was undisputed the parties had communication problems and were not able to effectively co-parent, but the district court found Kiel more at fault for these difficulties. Although Kiel asserted that Kamron was not receiving proper medical care in Crystal's care, the district court determined otherwise.

The parties' testimony supports these findings. Even to us, reviewing a cold transcript, Crystal comes across as earnest and sincere in her testimony. She honestly admitted some mistakes and expressed she was "thankful" to Kiel for taking Kamron to physical therapy when she was working. Kiel's testimony, by contrast, seems to be focused on disparaging Crystal.

Additionally, the district court found Kiel was concerned about paying child support and was motivated by a desire to avoid a support obligation. We generally defer to the district court to make firsthand credibility findings, which we are unable to make on appellate review. *In re Marriage of Forbes*, 570 N.W.2d 757, 759 (Iowa 1997); *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa

1986); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). We have reviewed the record, and find nothing to suggest the trial court's findings were incorrect. Therefore, we affirm.

AFFIRMED.