

IN THE COURT OF APPEALS OF IOWA

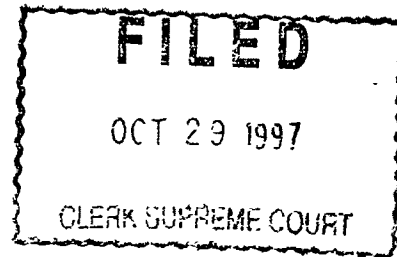
No. 7-432 / 97-82

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**IN RE THE MARRIAGE OF KEVIN ARTHUR GARRETT AND HEATHER
LENA GARRETT**

Upon the Petition of
KEVIN ARTHUR GARRETT,
Appellee,

And Concerning
HEATHER LENA GARRETT,
Appellant.



Appeal from the Iowa District Court for Davis County, James P. Rielly, Judge.

Heather Garrett appeals the primary physical care provision in the decree dissolving her marriage to Kevin Garrett. **AFFIRMED.**

Michael C. Vinyard of Vinyard & Curran, Ottumwa, for appellant.

R.E. Breckenridge of Johnson, Hester, Walter & Harrison, L.L.P., Ottumwa,
for appellee.

Heard by Sackett, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Heather Garrett appeals from the decree dissolving her marriage to Kevin Garrett, contending the district court erred in awarding primary physical care of their children to Kevin.

Background facts. Kevin and Heather Garrett were married on April 1, 1992. They have two children, Cassandra, born November 30, 1992, and Christopher, born November 14, 1994. At the time of the dissolution hearing, Kevin was twenty-eight years old and Heather was twenty-three. Both parties worked at Excel Corporation in Ottumwa.

Kevin filed a petition for dissolution of marriage. After some early skirmishes, Kevin obtained temporary custody of the children and Heather had visitation rights.

The trial court noted both parties displayed negative attitudes about the other in front of the children. The court found both parents have good parenting skills, and the children are happy and well-adjusted. The court concluded it would be in the children's best interests to remain in Kevin's physical care and granted joint legal custody. The court granted Heather visitation and ordered her to pay child support.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when

considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Primary physical custody. Heather argues the district court erred in granting Kevin primary physical care of the children. We do not condone the method in which Kevin obtained temporary custody of the children. He filed the petition for dissolution of marriage containing allegations of physical abuse by Heather towards himself and the children. The petition, along with a temporary writ of injunction, was served upon Heather while she was at work. The effect was that Heather could not see the children for a period of seventeen days until a hearing could be held. Nonetheless, there is no proof in the record that following this seventeen-day period Kevin in any way interfered with Heather's right to see the children.

This case presents us with the frequent and difficult dilemma of whose testimony we should find more credible in a heated custody dispute. Each party hurled damaging accusations of acts of aggressive, violent behavior toward the other. This court does not condone any abusive behaviors, physical or emotional, by either party. However, it is nearly impossible for us to discern from examining the record which party is being more accurate in representing what has transpired during the marriage. The trial court heard and saw the witnesses, observing each as to sincerity and demeanor, and then made its findings, in part, on those observations. We, therefore, absent some glaring omission or legal error, rely heavily on the credibility

assessment of witnesses by the trial judge. *See In re Marriage of Moore*, 526 N.W.2d 335, 337 (Iowa App. 1994).

In reviewing the testimony of all the witnesses, we agree with the trial court that the evidence favors Kevin as the children's primary physical caretaker. One neighbor of Heather attested to several instances of Heather's neglect and lack of supervision of the children.

Another witness, Cheryll Jones, Health Services Coordinator for Child Health Specialty Clinics, University of Iowa Department of Pediatrics, testified Cassie made significant improvements in her speech and language skills while in Kevin's care. Her report of the visitation revealed "[Cassie] appears to be thriving in her father's care."

Jackie Davis, a daycare provider for Cassie and Chris, observed the interaction between Kevin and the children and stated "he was very good with the kids They are well behaved." Ms. Davis noted the children acted differently after they visited with Heather; they slept a lot at day care after these visitations.

Pam Wesch, Social Worker III from the Iowa Department of Human Services, conducted a home study of both parents. Her report was more favorable to Kevin. Heather has a concern that the report was unfairly biased as Ms. Wesch observed Kevin with the children in the family home as opposed to the less favorable setting of observing Heather with the children at Heather's mother's home. We

acknowledge that the different environments could affect the evaluations, but do not find Heather's criticism supported in the record, considering the many factors used in Ms. Wesch's homestudy.

After a careful review of the testimony and exhibits, we accordingly agree with the trial court that the appropriate primary physical placement of the children is with their father, Kevin. We further believe he will foster maximum continuing contacts between the children and Heather. We affirm the decision of the trial court.

AFFIRMED.