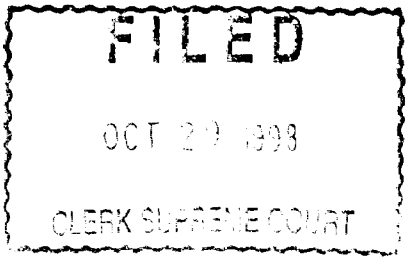
IN THE COURT OF APPEALS OF IOWA

No. 8-482 / 97-1868
Filed October 29, 1998

IN RE THE MARRIAGE OF RONALD RAYMOND GREINER AND ROBYN ANN GREINER



Upon the Petition of
RONALD RAYMOND GREINER,
Appellant,

And Concerning
ROBYN ANN GREINER,
Appellee.

Appeal from the Iowa District Court for Grundy County, James C. Bauch, Judge.

Ronald Greiner appeals the child custody provisions of a dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED FOR FURTHER PROCEEDINGS.**

Karla J. Shea of Yagla, McCoy & Riley, Waterloo, for appellant.

Kellyann M. Lekar and Jay P. Roberts of Roberts & Stevens Law Firm, Waterloo, for appellee.

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

HUITINK, J.

Ronald Greiner appeals from the district court's placement of physical care. We affirm as modified and place physical care with Ronald.

I. Background Facts and Proceedings.

Ronald and Robyn Greiner were married on September 1, 1990. They have on child, Jasenn, age seven. Robyn has two children from an earlier marriage, Josh, age twenty-one, and Jim, age seventeen.

Ron is forty-five years old. He works at Doerfer Engineering as a machine operator. In 1996, Ron earned $31,200. He is also provided medical and dental insurance by his employer.

Robyn is thirty-eight years of age. She has a college degree. Robyn worked as dental hygienist earning twenty six thousand dollars annually until her health forced her to quit in March 1996. She currently operates a medical billing service from her home. Because Robyn's employment transition is recent, her earnings prospects are uncertain.

The parties separated in July 1996 when Robyn left with Jasenn and moved in with her friend, Dean Hanson. Ron was not informed of Robyn's intentions or Jasenn's whereabouts after Robyn left.

These proceedings were initiated by Ron's petition filed in mid-July 1996. A temporary custody order entered September 11, 1996, provided for joint custody of Jasenn. Robyn was awarded temporary physical care.

Ron and Robyn agreed to joint custody of Jasenn, but were unable to agree on his physical care. Ron's physical care demands were based greater stability and Robyn's poor disciplinary record with Jim and Josh. Robyn cited her greater primary care experience, in-home employment, and Ron's "controlling behavior" in support of her custodial claims.

The district court granted Robyn primary physical care of Jasenn. It noted that both parents were genuinely interested in Jasenn's best interests, but it believed Robyn would best provide for his long-range best interests. It noted Robyn and Dean were purchasing a home, intended to get married, and Robyn was planning to run her business from the home and could provide for Jasenn's daily care.

Ron appeals. He contends he should be awarded primary physical care.

II. Standard 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).

III. Physical Care.

In child custody cases, our first and governing consideration is the best interests of the children. The critical issue is not which parent possesses the greater

right to the child, rather the controlling consideration must be the best interests of the child. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This decision requires selection of a custodial parent who can minister more effectively to the long-range best interests of the child. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The objective should always be to place the child in the environment most likely to bring that child to healthy physical, mental, and social maturity. *See In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). The court should also consider the characteristics and needs of the child, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the child, the relationship of the child with each parent, the nature of each proposed environment and the effect of continuing or changing an existing custodial status. *Id.*

There is no presumption in favor of the mother or the father. *See In re Marriage of Bowen*, 219 N.W.2d 683, 688 (Iowa 1974). Greater primary care experience is one of many factors the court considers but it does not ensure an award of physical care. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). Insofar as is reasonable and in the best interests of the child, the court should make an award of custody which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents and which will encourage the parents to share the rights and responsibilities of raising the child. *See* Iowa Code § 598.41(1) (1997). To effectuate that policy the court must consider the

willingness of each party to allow the child access to the other party. *In re Marriage of Burham*, 283 N.W.2d 269, 276 (Iowa 1979).

We, like the district court, find both parents are capable of providing competent primary care for Jasenn. There is abundant evidence that each had substantial primary care experience during their marriage. We are, however, unable to reconcile the district court's physical care award with the litany of discouraging evidence of Robyn's dismal custodial experience with Jim and Josh. The following excerpt from the district court's decree is illustrative:

> When the parties were first married Robyn's oldest son, Josh, did not live with them because he was placed in Tanager Place in Cedar Rapids through Court order. He came to live with them in January, 1992, and stayed until June, 1992, when he was placed at Bremwood. He stayed at Bremwood until he was eighteen years old. Josh ran with a bad crowd and dropped out of school and encountered lots of difficulties with law enforcement. During the marriage Josh did as he pleased and frequently would run off and did not obey Ron. Her youngest son, Jim, was also living with the parties; but he also encountered lots of difficulties including being truant from school and having dozens of absenteeisms or tardies. In the 1995/96 school year his grades consisted of Ds and Fs. When his mother moved out of the family residence at U Lane, Robyn gave him the option of going with her or staying at the house. He did not wish to go with his mother because he did not like her new boyfriend, and he was essentially on his own for two weeks. Ron subsequently allowed him to move back into the family residence and established a guardianship for him. Robyn had cosigned on a loan for a car for Jim, but after she moved out she discontinued making payments on the loan, and Ron subsequently took over those payments to protect Jim's credit rating. During the marriage, Robyn did not want Ron to discipline the boys; and she was not supportive of his efforts to have the boys adhere to a schedule and meet their responsibilities. Jim is now adhering to Ron's rules and is holding down two part-time jobs and is attending school regularly. His grades for the 1996/97 school year were mostly As and Bs, and he does

> not have an attendance problem. Jim now intends to graduate from high school and attend business school.

Robyn's lack of discipline was also verified by school officials unhappy with Josh and Jim's performance.

The record also displays a remarkable disparity in the parties' personal, employment, and financial stability. Ron has held the same job for twenty years. He has maintained the same residence for thirteen years and is financially responsible. Ron also prefers to spend his free time at home with his family.

Robyn is less stable in every respect. She has a history of failed relationships and little regard for the resulting consequences to her children. Robyn has also consistently placed her social and business interests ahead of her children's needs.

We conclude Ron, rather than Robyn, offers the environment most suitable for Jasenn's physical, emotion, and social maturity. The district court's decree is accordingly modified to provide for placement of Jasenn's physical care with Ron.

The record is not sufficiently developed to resolve the resulting child support and visitation issues implicated by our decision. We accordingly remand these issues to the district court for disposition in accordance with this decision. We do not retain jurisdiction.

AFFIRMED AS MODIFIED AND REMANDED FOR FURTHER PROCEEDINGS.