

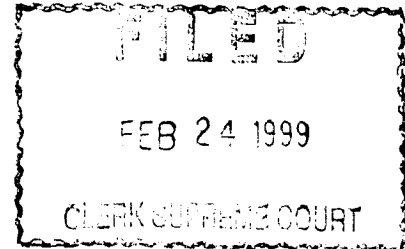
IN THE COURT OF APPEALS OF IOWA

No. 8-734 / 98-0727
Filed February 24, 1999

ROBERT DORR,
Appellee,

vs.

JOANN WISEMAN,
Appellant.



Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul,
Judge.

Joann Wiseman appeals the trial court's award of primary physical custody of
her two children to the children's father, Robert Dorr, and the court's child support
order. **AFFIRMED.**

Craig Lane, Sioux City, for appellant.

Theresa A. O'Brien of Forker & Kanter, Sioux City, for appellee.

Kendra M. Zirbel Olson, Sioux City, guardian ad litem for minor children.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

STREIT, J.

Joann Wiseman appeals the trial court's award of primary physical custody of her two children to the children's father, Robert Dorr, and the court's child support order. Because we find it in the children's best interests to have primary physical care with their father, and the court's child support order is in accordance with the child support guidelines, we affirm.

I. Background Facts & Proceedings.

Robert Dorr and Joann Wiseman are the unmarried parents of Abbee, born in 1989, and Bobby, born in 1984. Since birth, the children have lived with Wiseman, with Dorr regularly visiting Wiseman's home for extended periods of time.

Dorr filed for primary physical custody of Bobby and Abbee in July 1996. Following trial, the court granted the parties joint legal custody with primary physical care to Dorr. Wiseman was granted liberal visitation and ordered to pay Dorr child support. She appeals.

II. Primary Physical Custody of Bobby & Abbee.

We review child custody determinations de novo. Iowa R. App. P. 4. *See In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.*; *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). The controlling consideration in child custody cases is always what is in the best interests

of the children. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). Although Dorr and Wiseman never wed, the criteria for determining custody is the same as if the parties were married. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981).

The parent who can administer most effectively to the long-term best interests of the child and place them in an environment that will foster healthy physical and emotional lives is chosen as primary physical caregiver. *In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997). We are not bound by the district court's findings but give them deference because the district court had an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians. *See id.*

We identify numerous factors to help determine which parent should serve as the primary caregiver. *See* Iowa Code § 598.41. Among these are the characteristics of the parents, as well as the capacity and desire of each parent to provide for the needs of the children. *Id.* Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa App. 1997). To the contrary, some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the particular facts of each case. *Id.*

After de novo review of the record, we determine it is in the children's best interests for Dorr to be awarded primary physical care of them. Several factors have entered into our decision, including the home environment provided by each of the parents; the instability of the children's lifestyle while living with Wiseman; the

stability Dorr can provide in the children's lives; and that Wiseman will best meet the children's physical needs.

We recognize Wiseman has been the primary caregiver of the children prior to these proceedings. The parent who has been the primary caregiver of the children during the marriage will not necessarily be designated by the court to be primary caregiver at the time of the divorce. *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa App. 1992). However, the role the primary caregiver has played in the life of a child is given consideration in custody disputes, and allowing a parent to continue as primary caregiver gives continuity to the lives of children. *In re Marriage of Burkle*, 525 N.W.2d 439, 441 (Iowa App. 1994).

Wiseman's role as primary caretaker has not added stability and continuity to the lives of these children. The home environment Wiseman has provided has done the opposite. Wiseman's house is crowded and chaotic. She has two daughters from a previous marriage, Francee, age twenty, and Stacey, age sixteen. Francee and her husband have recently moved in with Wiseman, resulting in Bobby and Abbee frequently sleeping on the couch. In addition to Francee and her husband, Francee's ex-boyfriend spends much time at Wiseman's house. It is not clear whether he is the paramour of Wiseman or Francee. The ex-boyfriend sleeps in Wiseman's bedroom and this confuses the children. During the day while Francee's husband is at work, and Francee is babysitting Bobby and Abbee, her ex-boyfriend brings the child he babysits to Wiseman's to spend time with Francee. In addition, there is a constant

stream of visitors to Wiseman's house. Wiseman does not know many of these people.

There is evidence in the record the children's physical needs have not been adequately met with Wiseman as their primary care provider. Often, the children do not go to bed until 11:30 p.m. or later on school nights. They do not always eat supper or supper is delayed until bedtime. They do not bathe regularly, sometimes going up to a full week without a bath. Both children contracted head lice at Wiseman's house. Wiseman delayed treating the head lice for weeks. Rather than treating the condition, she cut Abbee's hair very short, which resulted in embarrassment to Abbee in her appearance. The children are not supervised. For example, Bobby left his mother's home for about two weeks and lived with a friend. Wiseman did not contact Bobby or the parents of the friend during this time.

Comparatively, Dorr can provide the children with a stable lifestyle, as well as provide for their physical care and needs. When the children visit Dorr they are fed regularly. They have a consistent and reasonable bedtime. They bathe daily. Each child has their own bedroom. When Dorr is at work, Dorr's mother will provide day care for the children.

Wiseman has raised negative allegations about Dorr. She claims he forced her on occasion to have sex with him and physically and mentally abused her. These allegations are not supported by evidence on the record. Of most concern is the fact that in 1987 Dorr faced criminal charges for sexual abuse of Francee. He was

acquitted of the charges. There is no indication in the record Dorr has acted in an abusive manner toward Abbee or Bobby during his extensive visitations with them. Rather, he has demonstrated a genuine concern for their well-being and an ability to provide them with a stable living environment. For these reasons, we determine it is in Bobby and Abbee's best interests that primary physical care be granted to Dorr.

We find, after making the appropriate adjustments, Wiseman's net monthly income is \$1,072.89 and Dorr's is \$1,258.46. Our calculation, under the child support guidelines, obligates Wiseman to pay Dorr \$322.00 per month in child support. The trial court ordered Wiseman to pay \$327.00 per month. The deviation is not significant enough to modify the trial court's order on appeal. We affirm the trial court's order regarding child support.

AFFIRMED.