FILED
OCT 29 1990
CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 0-467 / 90-73

**IN RE THE MARRIAGE OF CYNTHIA SUSAN MURPHY AND DENNIS DUANE QUICK**

Upon the Petition of
**CYNTHIA SUSAN MURPHY,**

Appellant,

And Concerning
**DENNIS DUANE QUICK,**

Appellee.

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Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

The wife appeals from a dissolution decree. She challenges a provision placing the parties' two children in the husband's primary physical care. In the alternative, she asks that her visitation be increased. **AFFIRMED AS MODIFIED.**

Thomas P. Schlapkohl, Des Moines, for appellant.

James S. Blackburn and James Carney of Carney, Hudson, Williams, Blackburn & Grask, Des Moines, for appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

**DONIELSON, J.**

Cynthia Murphy and Dennis Quick were married in 1984. They are the parents of two children, girls born in February 1984, and October 1987.

Cynthia petitioned for divorce. Trial commenced on December 12, 1989, and concluded on December 20, 1989. The district court placed the children in joint legal custody and in Dennis's primary physical care.

Cynthia appeals from the dissolution decree. She challenges the decree's provision placing the children in Dennis's primary physical care. She asserts that she has been the children's primary caretaker during most of their lives. She also asserts that since the parties' separation Dennis has physically assaulted her several times, sometimes in the presence of the children. In the alternative, if she is not awarded primary physical care of the children, she asks that her visitation be increased. Neither party challenges the dissolution decree's economic provisions.

Our review in this matter is de novo. Iowa R. App. P. 4. In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3) and in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983), and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing

consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). Our objective is to place the children in the environment most likely to bring the children to healthy, physical, mental and social maturity. Lambert v. Everist, 418 N.W.2d 40, 42 (Iowa 1988).

Determining what custodial arrangement will best serve the long-range interest of a child frequently becomes a matter of choosing the least detrimental available alternative for safeguarding the child's growth and development. Winter, 223 N.W.2d at 167. The present situation is an example.

Cynthia contends the district court erred in placing the children in the primary physical care of Dennis. She contends Dennis should not be awarded care of the two girls because he has assaulted her on several occasions, has called her names in the children's presence, has smoked marijuana, and has been minimally involved in the physical care of the children.

If Cynthia's portrayal of the record was complete and accurate we would be inclined to agree. However, our de novo review of the record leads us to the conclusion Cynthia has not presented a complete and accurate portrayal. The record indicates both parties have admittedly engaged in physical assaults upon the other; Cynthia claims Dennis initiated the assaults, Dennis claims

Cynthia initiated the assaults. By the parties' own admissions, they have both engaged in name-calling in the children's presence. Dennis has admitted to the past use of marijuana. Cynthia has failed to inform Dennis of major (and minor) events in the children's lives. For example, Cynthia did not inform Dennis of the children's participation in counseling and she did not tell Dennis she had enrolled their eldest daughter in a different school. The money management abilities of both parties is subject to question. In sum, neither parent's conduct in these respects has been conducive to the children's best interests.

Both parties love their children and want custody of them. The parties have both been employed during the marriage. Various witnesses testified Cynthia is a good mother. Others testified Dennis is a good father. We believe both parties have shared in the child care responsibilities and have been aided by other child care providers and Dennis's parents.

The trial court issued its decree only after a lengthy trial on the matter. Several witnesses testified during the six days of trial. Throughout the trial, the court was able to observe the witnesses and assess their demeanor and credibility. The court specifically found Dennis to be the more credible of the parties.

In making the custody award, the trial court concluded both parties could provide for the physical needs of the

children. However, it concluded Dennis would best provide for their emotional needs on a long-range basis:

> [T]he Respondent, in the long run, would be able to provide a more stable, consistent, and family-oriented lifestyle for these children. His values appear more positively oriented. He appears to have the children's best interests at heart. He seems less concerned about materials [sic] things and more concerned about the children's educational and emotional needs. He has strong local family support, and his family (paternal grandparents) have been actively involved with the children and have developed positive relationships with them. It also appears to this Court, as indicated in its findings, that the Respondent appears more able to support a continuing relationship between the children and their mother than the converse.

Here, we adhere to the principle enunciated in Maisel v. Gelhaus:

> Our courts have repeatedly recognized that while in cases of equity the reviewing court is not bound by the fact findings of the trial court, factual disputes which depend heavily on the credibility of witnesses are best resolved by the trial court which has a better opportunity to evaluate credibility than we do.

416 N.W.2d 81, 86 (Iowa App. 1987). We find it appropriate to accept the trial court's findings and concur in its conclusions. We affirm the grant of primary physical care to Dennis.

We modify the decree as it relates to visitation. On those Mondays following nonvisitation weekends, Cynthia shall have all day visitation, beginning at 8:30 a.m. and concluding at 8:30 p.m. Cynthia shall be responsible for transportation. When the children are attending school, visitation will begin immediately upon the child(ren)'s

dismissal from school, but the time of return will remain 8:30 p.m.

Costs of this appeal are assessed to appellant.

**AFFIRMED AS MODIFIED.**