FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MARK ALVA HOWAR AND DEBRA ANN HOWAR

Upon the Petition of)

MARK ALVA HOWAR,)

Petitioner-Appellee,)

And Concerning)

DEBRA ANN HOWAR,)

Respondent-Appellant.)

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8-721
88-1126

Appeal from the Iowa District Court for Jasper County (No. DD9-274), Peter A. Keller, Judge.

Respondent appeals from certain provisions of the dissolution decree. **AFFIRMED.**

Douglas F. Staskal of Brick, Seckington, Bowers, Swartz & Gentry, P.C., Des Moines, for respondent-appellant.

Lee M. Walker and Eugene Knopf of Walker, Knopf & Billingsley, Newton, for petitioner-appellee.

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

DONIELSON, J.

Respondent appeals from certain provisions of the dissolution decree. She claims 1) the district court's order granting primary physical care of the parties' minor children to petitioner is not supported by sufficient evidence in the record, nor in the long-range best interests of the children; and 2) the amount of the child support is inequitable.

Mark Alva Howar and Debra Ann Howar were married on June 20, 1981. They had two children: Alison Whitney Howar, born February 15, 1984; and Taylor Alva Howar, born July 2, 1987. Debra was twenty-six years old at the time of trial. She has a degree in therapeutic recreation from the University of Northern Iowa. Debra works at the Jasper County Care Facility and has a net income of $7,224. Mark was twenty-eight years old at the time of trial. He had three years of college at the University of Northern Iowa. He is employed as a manager at his father's shoe company, Howar Shoe Company. Mark's net income is about $12,500 per year.

The district court granted the parties joint legal custody of the two minor children. Mark was awarded primary physical care of the children. The court noted that Debra moved out of the family home while the children stayed with Mark. Debra was given liberal visitation rights, including eight weeks of visitation in the summer.

Debra was ordered to pay $100 per month in child support. Debra appeals the decision of the district court.

Review of dissolution cases is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially where the credibility of witnesses is involved, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Debra claims the trial court's order granting primary physical care of the parties' minor children to Mark is not supported by sufficient evidence in the record and is not in the long-range best interests of the children. We disagree.

The factors relevant to a determination of child custody are listed in Iowa Code section 598.41(3) and in the case of In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). "The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding." In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

The trial court found that both Debra and Mark are good and loving parents and should have joint legal custody of the children. The court weighed the evidence as a whole, assessing the credibility of the parties, and determined

that the long-term best interests of the children require that Mark be given primary physical care.

Giving weight to the trial court's findings, we find sufficient evidence for granting Mark primary physical care. Our review of the evidence reveals that Debra voluntarily agreed to move out of the family home. The children remained with their father although both parents spent time with the children. Mark took the children to church. His job with his father's company allows him flexibility which he needs to accommodate the children's schedules. Both parents are able to feed and clothe the children. Both have some college.

Debra has a boyfriend who was moving in after the dissolution. Prior to the separation, Debra came home with a boyfriend and allegedly the daughter and Mark observed them "making out" in the car in the Howar's driveway. During the separation, Debra was with a boyfriend at a softball game when she saw her children, but never spoke to them. She said this was in accordance with their separation agreement.

Debra asserts that she would better serve the children's long-term best interests. She was the primary caretaker prior to the separation. She continued to care for the children after the separation, and she cooperated with the terms of their separation agreement.

Reviewing the evidence and considering the relevant factors, we find insufficient reason for changing the decision of the trial court. Therefore, we affirm the children's physical care placement with Mark.

II. The trial court ordered Debra to pay Mark $100 per month in child support. She contends this amount is unreasonable, unnecessary, and greater than Debra's ability to pay. She is asking that the monthly amount be reduced and that her obligation be foregone when she has the children for eight weeks in the summer.

It is well established that parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). The factors to consider are: the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had there not been a dissolution; the cost of day care; the physical and emotional health needs of the child; and the child's educational needs. Iowa Code § 598.21(4).

Debra has a college education. She is employed and had a net income at the time of trial of approximately $602 per month. Requiring her to pay $100 per month in child support for the full year is reasonable and necessary for

the children. Therefore, the decision of the district court is affirmed.

AFFIRMED.

Sackett, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I respectfully dissent. I would award physical custody of the two children to Debra. She has been the primary parent of these two children during their lifetime. I see no reason to disturb this relationship.