IN THE COURT OF APPEALS OF IOWA

No. 7-232 / 96-1072

IN RE THE MARRIAGE OF SCOTT A. HENDERSON AND KAREN K. HENDERSON

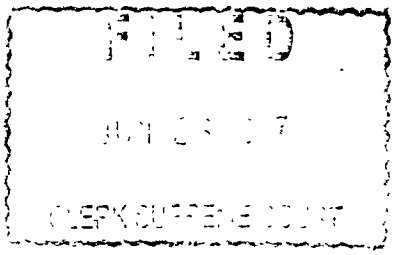
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Upon the Petition of SCOTT A. HENDERSON,

Petitioner-Appellee,

And Concerning KAREN K. HENDERSON,

Respondent-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

Karen Henderson appeals from a decree dissolving her marriage to Scott Henderson. **AFFIRMED.**

John G. Sorensen of Stanton & Sorensen, Clear Lake, for appellant.

Kristy B. Arzberger of Arzberger Law Office, Mason City, for appellee.

Heard by Sackett, P.J., and Vogel, J., and Schlegel, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

SACKETT, P.J.

Respondent-appellant Karen Henderson appeals the provision of the decree dissolving her marriage to petitioner-appellee Scott A. Henderson which establishes primary care of the parties' three children born in 1986, 1989, and 1991 with Scott. She contends she should have been awarded primary care. We affirm.

The controlling consideration in determining custody is the interest of the children. Iowa R. App. P. 14(f)(15). In deciding this question, we review the record de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. *See In re Marriage of Novak*, 220 N.W.2d 592, 597 (Iowa 1974). There is no inference favoring one party as opposed to the other in deciding which one should have custody. *See In re Marriage of Bowen*, 219 N.W.2d 683, 688 (Iowa 1974). We determine each case on its own facts to decide which parent can administer more effectively to the long-range interest of the children. *In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974). The critical issue is determining which parent will do better in raising the children; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in an original custody proceeding. *See In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985).

Prior to the parties' separation, Karen was the primary caretaker. The trial court found and we agree this changed when the parties separated. Karen left the family home in February 1995 taking only the youngest child. She immediately

moved in with another man. Scott retrieved the youngest child without an adverse reaction from Karen. The children lived with Scott from the time of separation until the trial in November 1995.

In July 1995, the parties agreed to a temporary visitation schedule. Initially, Karen failed to appear for visitation, but by the time of trial, in large part because of the intervention of Scott's mother as a facilitator, visitation was going well.

This was a turbulent marriage and the trial court found both parties had used illegal drugs and engaged in unacceptable behavior. The trial court recognized this, but more importantly focused on the question of which parent shows the better potential to meet the children's future needs.

Karen contends Scott was violent and controlling. Yet, she was willing to move in with another man and leave the children in Scott's care.

We agree with the trial court's assessment of unacceptable behavior by both parties prior to separation. There is no evidence Scott's behavior has been detrimental to the children. Karen, in deciding to leave the children, put her needs above the children's needs

The trial court found Scott, with the help of supportive parents, has very adequately assumed his new role and is attentive to the children's needs. The trial court found in the nine months between separation and trial he has very adequately assumed the responsibilities of a custodial parent and, with his mother's help as a facilitator, he has assured that Karen has visitation. Scott has the assistance of his

parents. We give this fact weight. *See In re Marriage of Welbes*, 327 N.W.2d 756, 758 (Iowa 1982). The trial court further found that Scott offered the children the stability of remaining in the family home and the same school district.

Karen has established a relationship with another man and is pregnant by him. They do not live in a home adequate for the children. Their future plans as to possible marriage, location, and jobs are far from definite. We give weight to the stability of a parent's life in assessing an award of physical care. *Purscell v. McClure*, 544 N.W.2d 466, 469 (Iowa App. 1995). Karen has little assistance from her extended family. Karen was ordered to pay temporary child support but failed to do so.

Karen relies most heavily on her former role as primary care giver. We do not award custody based on hours of service for past care. We attempt to look to determine which parent will in the future provide an environment where the children are most likely to thrive. *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa App. 1993).

The trial court had the parties before it and was able to observe their demeanor and was in a better position than we are to evaluate them as custodians. *See In re Marriage of Forest*, 201 N.W.2d 728, 730 (Iowa 1972). We find no reason to disagree with its findings.

AFFIRMED.