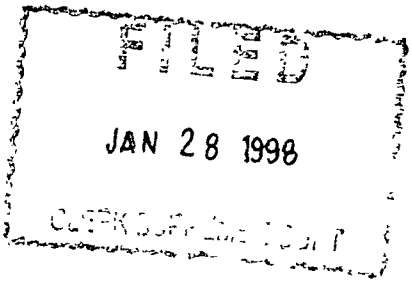
IN THE COURT OF APPEALS OF IOWA

No. 7-616 / 97-18 000185

IN RE THE MARRIAGE OF MICHELLE M. GOEKEN AND BILL J. GOEKEN

Upon the Petition of
MICHELLE M. GOEKEN,
Appellant/Cross-Appellee,

And Concerning
BILL J. GOEKEN,
Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, John Stuart Scoles, Judge.

Petitioner appeals the custodial provisions of the dissolution decree.

AFFIRMED.

Robert H. Laden and James McCreight of Laden & Pearson, P.C., Des Moines, for appellant.

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

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

VOGEL, J.

Michelle Goeken, appeals the custodial provisions of the dissolution decree. She complains the court erred in granting primary physical care of the minor children to Bill Goeken. On cross-appeal, Bill challenges the court's findings regarding child support, alimony, property settlement, and attorney's fees.

Background facts. Michelle and Bill Goeken were married on May 31, 1986. They have two children, Chase, born in 1989, and Paige, born in February 1991. Michelle filed a dissolution petition in September 1995. Bill was granted temporary custody of the children in October 1996. The court entered the dissolution decree on November 12, 1996, granting Bill primary physical care.

Michelle appeals and Bill cross-appeals.

Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984).

I. Primary physical custody. The controlling consideration regarding placement of the children is their best interests. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The court determines placement according to

which parent can minister more effectively to the children's long range best interests. *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995) (citing *In re Marriage of Vrban*, 359 N.W.2d 420, 424 (Iowa 1984)). The court's objective is to place the children in the environment most likely to bring them to a healthy physical, mental, and social maturity. *Kunkel*, 555 N.W.2d at 253.

Michelle argues she was the primary caregiver throughout the marriage and should be given primary physical care of the children. Bill notes he has been the primary caregiver since he was granted temporary custody in December 1995. While we carefully consider in custody disputes allowing the children to remain with the parent who has been the primary caregiver,[1] the fact a parent was the primary caretaker before separation does not secure that parent's role as such. *See In re Marriage of Toedter*, 473 N.W.2d 233, 234 (Iowa App. 1991).

We are aware the children stated they wanted to live with their mother, but also stated they wanted to live with their father when they were older. At the time of trial Chase was seven and Paige was five. Our courts have recognized that "deciding custody is far more complicated than asking children what parent they want to live with." *See In re Marriage of Jones*, 309 N.W.2d 457, 461 (Iowa 1981). We agree with the trial court when it stated the children "lack the maturity necessary to reach a judgment regarding what is in their own best interest."

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[1] *See In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995).

Evidence was presented of the numerous disputes and lack of communication between the parties during the separation. It is clear that both parents love their children but are not willing to readily share information regarding the children with the other parent. This does not promote the children's best interests. There was also considerable testimony regarding both parties' alleged sexual relationships since the separation. Both parents' private lives appears to have had some affect on the children.

In addition to which parent can more effectively minister the children's needs, a polestar consideration in this case becomes the stability of the children and their environment. At one point, Michelle took the children, removing Chase from school, and moved in with a man she had met only two months earlier. Although Michelle asserts she is being punished for initial separation decisions, we agree with the court in the temporary custody order that this shows a lack of judgment on Michelle's part, without regard to the possible effects such a move would have on her children. Michelle has changed jobs and has changed her living arrangements several times since the initial separation. While she may be making the best of a difficult period, the children's needs must still be foremost.

The evidence in the record reflects that Bill has a stable job and provides a routine schedule for the children. School officials testified the children made a

positive adjustment in Bill's care. The children's teachers testified that the children were well-cared for by Bill.

The court heard from many witnesses and made extensive findings. We rely heavily on the trial court's ability to discern the more appropriate placement of the children based in part on the stability of the parents. Apart from the various accusations lodged by one party against the other, the trial court was able to judge stability based on the credibility of the witnesses. Upon review of the testimony, we affirm the trial court's granting of primary physical care of the children with Bill.

II. Cross-appeal. On cross-appeal, Bill simply refers to his 179(b) motion for his relief sought. In that motion, he argued the court erred in (1) calculating Michelle's child support obligation, (2) failing to set termination conditions on the alimony award, including cohabitation and remarriage, (3) awarding attorney fees, and (4) failing to consider a $390 reimbursement check as marital property.

Bill never states, argues, nor cites any authority as a basis for his cross-appeal of the above enumerated issues. Failure to state, argue, or cite authority as to an issue may be deemed waiver of such issue under Iowa Rule of Appellate Procedure 14(b). Accordingly, this court deems the issues on cross-appeal waived.

Even if we were to reach the merits on these issues, we find after reviewing the trial court's ruling on 179(b) motions that the trial court properly considered and denied Bill's claims.

Having carefully considered all issues before us on appeal, we affirm the trial court's primary physical placement of Chase and Paige with Bill. We dismiss Bill's cross-appeal claims.

AFFIRMED.