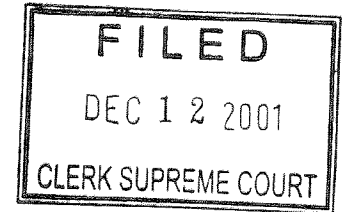


IN THE COURT OF APPEALS OF IOWA

No. 1-921 / 01-0856
Filed December 12, 2001



IN RE THE MARRIAGE OF PAULINE MARIE OVERMAN
AND MICHAEL WAYNE OVERMAN

Upon the Petition of
PAULINE MARIE OVERMAN,
Petitioner-Appellee,

And Concerning
MICHAEL WAYNE OVERMAN,
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

Respondent appeals from the custodial and visitation provisions of the
dissolution decree dissolving his marriage to Petitioner-Appellee. **AFFIRMED.**

William T. Talbot, Nevada, for appellant.

Barry S. Kaplan, Marshalltown, for appellee.

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

SACKETT, C.J.

Respondent-appellant Michael Wayne Overman appeals from the custodial and visitation provisions of the dissolution decree dissolving his marriage to petitioner-appellee Pauline Marie Overman. We affirm.

Michael and Pauline were married in 1991. They have three sons, born in 1991, 1994 and 1995. The district court found Michael and Pauline both to be good parents and determined either of them would do a good job of raising their sons. The court awarded the couple joint custody. The court found Pauline had been the primary care parent and awarded her primary physical care. Michael was awarded visitation. Michael contends he should have been awarded primary physical care, and if he is not named the primary care parent, he should have substantially more visitation than the district court provided.

In addressing Michael's challenges we review de novo. Iowa R. App. P. 4; *In re Marriage of Harris*, 499 N.W.2d 329, 330 (Iowa Ct. App. 1993). 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 witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Jahnel*, 506 N.W.2d 473, 474 (Iowa Ct. App. 1993).

The focal question in a dispute over primary care is which parent will do the better job of raising the children. *In re Marriage of Riggert*, 537 N.W.2d 789, 791 (Iowa Ct. App. 1995); *In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa Ct. App. 1991). 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). 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 Ct. App. 1985). We look to the factors set forth in *Winter*, 223 N.W.2d at 166-67.

Pauline and Michael, both thirty-one years old at the time of trial, met when they were working in an area restaurant. Both are high school graduates and Pauline has some college hours. At the time of trial Michael was working for Lenox in Marshalltown, a job he has held since 1993. Pauline was working as a waitress. She had worked in a daycare and provided child daycare in her home for a period and worked at a preschool. She took courses in daycare. The parties separated once in 1993 because Pauline was upset that Michael's parents, who lived across the street from the couple, were too involved in their lives. Pauline and Michael later reconciled.

Michael's parents have made substantial contributions to this family both monetarily and by helping with the children. It is apparent that both Pauline and Michael have been recipients of Michael's parents' generosity.

Pauline and Michael took bankruptcy in 1995. Michael has a ten-year-old daughter from a prior relationship. He has visitation with the child and pays child support for her.

The marriage broke up the second and last time after Pauline began an affair with Michael's second cousin's husband, Norman Buck. Buck is now divorced and at the time of the dissolution hearing he and Pauline continued to have a relationship. Michael also had a girlfriend at the time of the hearing.

They first met on the Internet after Pauline and Michael decided to dissolve their marriage. Neither Pauline nor Michael was clear as to his or her future plans with these individuals, but the trial court found, and we agree, that their partners are both decent people.

The district court carefully analyzed the testimony of the respective witnesses. The court found the children healthy and fairly well adjusted. We agree they are healthy. We note, as would be anticipated, some problems with the children are appearing as a result of this dissolution. Naturally, one can easily predict that the children will suffer emotionally both because of their parents' dissolution and because both parents have brought other partners into their children's home and into their lives. Pauline did this not only to the detriment of the marriage, but also to the detriment of the children, and Michael followed suit, also to the detriment of the children, soon after the parties decided to divorce. Pauline and Michael continued to live in the same home after they decided to divorce, and neither used good judgment in bringing new friends of the opposite sex to the home. They both criticize the other for conduct in this regard. We agree with them both that this conduct weighs heavily against each of them in evaluating their fitness as a parent.

Michael contends the district court put too much weight, in making the primary care decision, on its finding Pauline was the primary care parent and he was the primary wage earner. Michael advances that he has been substantially involved in his children's lives and that he is the more stable parent: he has childcare assistance available from his parents; the boys have an excellent relationship with their half sister that will be jeopardized by granting Pauline

physical care; and Pauline has no childcare plan. He further advances that the child custody investigator recommended he be named the primary care parent.

We recognize that with the help of family Michael has a childcare plan. While Pauline tends to be critical of Michael's parents, we note that she willingly accepted financial and other help from them. They continue to be willing to assist, a factor which the district court found in Michael's favor, as do we. When parents need assistance with childcare, as each parent will have, grandparents are preferred over the ministrations of strangers. See *In re Marriage of Welbes*, 327 N.W.2d 756, 758 (Iowa 1982); *In re Petition of Purscell*, 544 N.W.2d 466, 469 (Iowa Ct. App. 1995).

We, as the district court, give consideration to a parent's role in child raising prior to a separation when determining physical care. See *In re Marriage of Volding*, 544 N.W.2d 457, 459 (Iowa Ct App. 1995); see also *In re Marriage of Love*, 511 N.W.2d 648, 650 (Iowa Ct. App. 1993); *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa Ct. App. 1992). But this factor alone does not determine primary care. Rather we attempt to look to determine which parent will in the future provide an environment where the child is most likely to thrive. See *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993). We are convinced these children will be taken care of by either parent and the question of who should have primary care is not easily decided. 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 the parents as custodians. See *In re Forest's Marriage*, 201 N.W.2d 728, 730 (Iowa 1972). We defer to the trial court's judgment on the custody issue and affirm on that issue.

Michael next contends that he should have been given substantially more visitation. The district court provided that Michael have visitation every other weekend from 6 p.m. on Friday until 6 p.m. the following Sunday. He was given four weeks in the summer, one-half of the boys' school Christmas vacation and their spring break. He was given visitation on Father's Day and on alternate specified major holidays from 9 a.m. until 8 p.m. We find no valid reason to disturb the district court's visitation schedule.

Pauline requests appellate attorney fees. We award her \$500. Costs on appeal are taxed to Michael.

AFFIRMED.