IN THE COURT OF APPEALS OF IOWA

No. 9-152 / 97-2173
Filed April 30, 1999

IN RE THE MARRIAGE OF ELIZABETH J. MILLER AND BRUCE C. MILLER

Upon the Petition of ELIZABETH J. MILLER,

Petitioner-Appellant,

And Concerning BRUCE C. MILLER,

Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Elizabeth Miller appeals from the custody provision of the decree dissolving her marriage to Bruce Miller. **AFFIRMED.**

Donna Lesyshen, Waterloo, until her withdrawal, and then Timothy J. Luce, Waterloo, for appellant.

Curtis J. Klatt of Dunakey & Klatt, P.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Streit and Zimmer, JJ.

SACKETT, C.J.

Petitioner-appellant Elizabeth Jean Miller appeals contending she, not respondent-appellant Bruce Clair Miller, should be awarded primary physical care of their daughter, Emily, born in 1993. We affirm.

Elizabeth and Bruce married in 1991 and separated in December of 1996, when Elizabeth moved with Emily from the family home in Jesup to Waterloo.

The primary issue in the dissolution trial and the only issue on appeal concerns the placement of Emily.

We review de novo. Iowa R. App. P. 4; *In re Marriage of Harris,* 499 N.W.2d 329, 330 (Iowa App. 1993). The question is which parent will do the better job of raising the child. *In re Marriage of Rodgers,* 470 N.W.2d 43, 44 (Iowa App. 1991). We look to the factors set forth in *In re Marriage of Winter,* 223 N.W.2d 165, 166-67 (Iowa 1974).

The district court, after making substantial factual findings, determined Bruce to be the physical custodian. Elizabeth contends she, not Bruce, will do the better job of raising Emily. Unfortunately, both parties have seemed to focus on the other's alleged shortcomings.

A guardian ad litem was appointed for Emily. The guardian ad litem made a limited investigation and did not attend the trial. The guardian ad litem filed a written report before trial indicating, while both parties were good parents, she was of the opinion Elizabeth was the better custodian.

Hillcrest Services was ordered by the court to do a custody evaluation. The agency made an extensive investigation that included testing the parents, talking to a large number of witnesses, and observing the parties both separately and jointly with the child. Hillcrest Services found both parents to be good parents and found Emily would be adequately cared for in either home.

We, too, find both Elizabeth and Bruce to be excellent parents. They both have physical disabilities, but the trial court found, and we agree, the disabilities are not such to render either unable to care for Emily.

In its ruling, the district court found support for its decision in, among other things, the fact Hillcrest Services reported Emily had (1) an unusually close relationship with her father; (2) Bruce and Emily had a close relationship with Bruce's extended family, who live in Jesup; and (3) Elizabeth had taken Emily at the time of separation and was not cooperative with Bruce in arranging visitation. We agree with the trial court's findings.

Elizabeth's failure to cooperate with visitation weighs against her. Courts have long recognized the need for a child to maintain meaningful relations with both parents. *See In re Marriage of Bolin,* 336 N.W.2d 441, 445 (Iowa 1983) (father's conduct in trying to alienate child from his mother found to "reflect adversely on his custodial ability"); *In re Marriage of Burham,* 283 N.W.2d 269, 276 (Iowa 1979) (fixing custody in the past, courts have considered the willingness of each party to allow the children access to the other party); *In re Ferguson,* 244 N.W.2d 817, 819

(Iowa 1976) ("balance tips toward [father]" because with him child would have a better chance of substantial contact with both parents); *see also In re Marriage of Leyda*, 355 N.W.2d 862, 866 (Iowa 1984).

This is a close case, but we find no valid reason to depart from the decision of the district court and affirm.

Elizabeth has requested appellate attorney fees. Her financial position is similar to Bruce's. She was not successful in this appeal. We deny her request.

AFFIRMED.

No. 97-2173. [9-152] IN RE MARRIAGE OF MILLER

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge. **AFFIRMED.** Considered by Sackett, C.J., and Streit and Zimmer, JJ. Opinion by Sackett, C.J. (4 pages $1.60)

Elizabeth Miller appeals contending she should be awarded primary physical care of their daughter, Emily, born in 1993. We affirm. The primary issue in the dissolution trial and the only issue on appeal concerns the placement of Emily. We review de novo. The district court, after making substantial factual findings, determined Bruce to be the physical custodian. Elizabeth contends she, not Bruce, will do the better job of raising Emily. Unfortunately, both parties have seemed to focus on the other's alleged shortcomings. A guardian ad litem was appointed for Emily. The guardian ad litem made a limited investigation and did not attend the trial. The guardian ad litem filed a written report before trial indicating, while both parties were good parents, she was of the opinion Elizabeth was the better custodian. Hillcrest Services was ordered by the court to do a custody evaluation. Hillcrest found Emily would be adequately cared for in either home. We, too, find both Elizabeth and Bruce to be excellent parents. In its ruling, the district court found support for its decision in, among other things, the fact Hillcrest Services reported Emily had (1) an unusually close relationship with her father; (2) Bruce and Emily had a close relationship with Bruce's extended family, who live in Jesup; and (3) Elizabeth had taken Emily at the time of separation and was not cooperative with Bruce in arranging visitation. We agree with the trial court's findings. Elizabeth's failure to cooperate with visitation weighs against her. This is a close case, but we find no valid reason to depart from the decision of the district court and affirm. Elizabeth has requested appellate attorney fees. Her financial position is similar to Bruce's. She was not successful in this appeal. We deny her request.