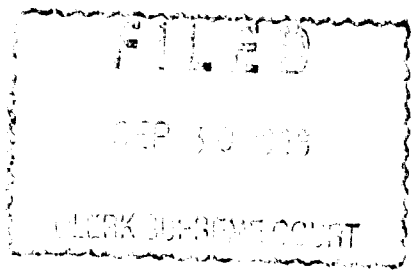
IN THE COURT OF APPEALS OF IOWA

No. 8-496 / 97-2292
Filed September 30, 1998



IN RE THE MARRIAGE OF TRAVIS L. BICKFORD AND JENNIFER A. BICKFORD

Upon the Petition of
TRAVIS L. BICKFORD,
Appellee,

And Concerning
JENNIFER A. BICKFORD,
Appellant.

Appeal from the Iowa District Court for Jackson County, Mark J. Smith, Judge.

On appeal from the entry of a dissolution decree, Jennifer Bickford challenges the award of custody and visitation schedule. **AFFIRMED.**

Mark S. Beckman, of Fitzsimmons, Beckman & Gilloon, Dubuque, for appellant.

Nancy S. Tabor, Maquoketa, for appellee.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Travis and Jennifer Bickford were married on March 25, 1995. They have one child, Britney, age five. Travis and Jennifer separated in March 1997. A temporary custody order was entered in April 1997, providing for shared physical care of Britney.

Following trial in December 1997, the district court awarded Travis primary physical care of Britney. The court found both parties shared Britney's care during the marriage, but Travis was "more in tune with the requirements of parenting" than Jennifer. The court noted Jennifer's prior diagnosis of a major depressive disorder, extramarital affairs, preference for night work, and relinquishment of much of her parenting role to her mother as reasons for denying Jennifer physical care.

Jennifer appeals. She claims the court erred in awarding Britney's primary physical care to Travis and contends the court should have adopted her proposed visitation schedule rather than the schedule provided in the decree.

II. Standard of Review.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. *Id.* Prior cases have little precedential value, and we must

base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

III. Primary Physical Care.

In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3), in *In re Marriage of Weidner*, 338 N.W.2d 351, 355-56 (Iowa 1983), and in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration"—the court's determination of what will be in the long-term best interests of the child. *In re Marriage of Vrban*, 359 N.W.2d 420, 424 (Iowa 1984). 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).

Our review of the record confirms the district court's assessment of the parties' respective custodial potential. Both have substantial primary care experience. Despite her adamant denials, there is credible medical evidence indicating Jennifer suffers from a major depressive disorder which led to an attempted suicide in 1995. Additionally, Jennifer's affinity for night work has made her dependent on her mother for Britney's primary care.

The record substantiates Travis's greater interest in parenting. Unlike Jennifer, he is willing to make work schedule changes necessary to accommodate Britney's primary care needs. Travis is also less distracted by social and romantic interests. He is clearly more emotionally stable and mature than Jennifer.

We have repeatedly noted the value of the district court's trial perspective in making the difficult decisions attending these disputes. *See In re Marriage of Pundt*, 547 N.W.2d 243, 245 (Iowa App. 1996). This case is no exception. An award of Britney's primary physical care to Travis under these circumstances is decidedly in her best interests. We therefore affirm on this issue.

IV. Visitation.

Liberal visitation is presumptively in the child's best interests. *In re Marriage of Sepp,* 485 N.W.2d 846, 848 (Iowa App. 1992). The district court's decree includes comprehensive and detailed "guidelines for custody and visitation." Within its terms, the district court's guidelines provide Jennifer with substantial weekend, mid-week, holiday, special day, and extended summer visitation. We find the district court guidelines for visitation reasonable and not unnecessarily restrictive. The district court is affirmed on this issue.

V. Attorney Fees.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the

request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981).

We find each party is able to pay their own attorney fees and decline to make an award of attorney fees. Jennifer shall pay the costs of this appeal.

AFFIRMED.