

IN THE COURT OF APPEALS OF IOWA

No. 2-124 / 91-1009

IN RE THE MARRIAGE OF CONNIE LYNN SIECK AND
DAVID ALAN SIECK**FILED**

AUG 27 1992

CLERK SUPREME COURT

Upon the Petition of

CONNIE LYNN SIECK,

Appellee,

And Concerning

DAVID ALAN SIECK,

Appellant.

Appeal from the Iowa District Court for Fayette County,
James L. Beeghly, Judge.

David Sieck appeals from the child placement provision
of the decree dissolving his marriage to Connie Sieck.

AFFIRMED.

Emil Trott, Jr., Des Moines, and Alice T. Koempel of
Traeger & Koempel Law Offices, West Union, for appellant.

Marion L. Beatty of Miller, Pearson, Gloe, Burns,
Beatty & Cowie, P.C., Decorah, for appellee.

Heard by Schlegel, P.J., and Hayden, J., and McCartney,
S.J.*

*Senior Judge from the 2nd Judicial District serving on
this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

The parties, David and Connie Sieck, were married on April 7, 1984. Devin Jean Sieck, born on December 7, 1985, to David and Connie, is the minor child whose welfare is affected by this controversy.

Connie was twenty-nine and David was thirty years old at the time of the dissolution hearing. Connie was employed as a beautician in Fayette, Iowa, at the time of the marriage. During the entire course of the marriage, David has been farming with his brother, Donald Sieck, Jr., in rural Fayette County. After the marriage David encouraged Connie to quit her job and become a full-time farm wife. Connie later had a part-time job delivering Sunday newspapers, but David encouraged her to quit this job as well. During this time Connie was the primary caretaker of Devin.

In the fall of 1987 Connie began attending Upper Iowa University, over David's opposition. She was expected to graduate in May 1991 with a bachelor's degree in social science. Connie had a 3.8 grade point average in college and received numerous awards and honors. She received no financial support from David for college expenses and paid for her education through loans, scholarships and grants.

During the first two years Connie was attending college she only had classes for about six hours a week. She placed Devin in the care of a baby-sitter or her mother,

Jean Nuss, during this time. In the evening, Connie would sometimes leave Devin in David's care while she went to a library to study. In 1989 Connie increased her class hours. She then enrolled Devin in a preschool which was across the street from the college campus. David still took care of Devin some evenings.

The parties separated in August 1990 and Connie filed a petition for dissolution of marriage. Connie moved with Devin to her parents' house. She later moved to Elgin and obtained a part-time job in the post office there. On October 15, 1990, the district court awarded temporary custody of Devin to David based on his affidavits that Connie had a substantial problem with alcohol abuse.

The trial in this case in April 1991, required nine days. The court awarded the parties joint legal custody of Devin, with Connie having primary physical care. David was awarded visitation. He was ordered to pay child support of \$276 per month. David now appeals.

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

In child custody cases, the long-range best interests of the child is the first and governing consideration. In

re Marriage of McElroy, 475 N.W.2d 221, 222 (Iowa App. 1991). The critical issue in determining the best interests of the child is which parent will do better in raising the child. Id. Our primary concern is the best interest of the child with the objective being to place the child in an environment most likely to bring the child to healthy physical, mental and social maturity. In re Marriage of Rodgers, 470 N.W.2d 43, 45 (Iowa App. 1991). The best interests of the child includes the opportunity for a continuous relationship with both parents. In re Marriage of Zabecki, 389 N.W.2d 396, 398 (Iowa 1986).

David asks that Devin be placed in his physical care. He claims Connie has a serious alcohol problem. At the dissolution hearing David testified at length about Connie's use of alcohol.

It is apparent David did not understand the number of hours Connie needed to study to maintain her high academic standing. He believed she was spending her evenings drinking and running around with other men. On one occasion he locked her out of the house when she came home late. He admitted to taking a note out of her purse and looking in the trash for her correspondence. He also admitted to taking her car keys and standing in the doorway of their house at times to prevent her from leaving. David testified he was forced into these actions because of Connie's drinking. Further complicating matters was the

fact that on a few occasions Connie spent the night with friends in a college dormitory or at her parents' house rather than coming home to face her problems with David.

In our review of the record, we believe many of the problems between the parties were due to a difference in perception. For instance, David testified that Connie had four drinks at her high school reunion and he claimed she was then intoxicated. He also testified, however, that he had four drinks at the same party. He seems completely unaware that he was chastising Connie for conduct similar to his own. In like fashion, David faults Connie for smoking cigarettes although he admits he also smoked cigarettes during the marriage and only recently quit.

We find the evidence shows Connie may have inappropriately used alcohol at times in the past. However, two counselors, Marilyn Southard and Richard Brown, who had seen her over a period of time, testified that her use of alcohol was only a symptom of her dissatisfaction with her marriage. Furthermore, upon entering college Connie created a more responsible life-style. No one testified to any recent incidents involving alcohol, and her academic and work records militate against such substance abuse at the present time.

We agree with the district court that David may not be flexible enough to allow Devin to fully develop her own interests and independence. When asked what his plans for

Devin were, David replied "I would like to lead Devin and steer Devin and direct her, guide her in whichever -- whichever way needed." David also testified that he felt responsible to "train" Connie to be a good farm wife. We find this evidence tends to show David may be unreceptive to the plans and goals of others.

We conclude Connie is the parent better able to meet Devin's physical, mental and social needs. We affirm the district court's grant of physical care of Devin to Connie. Costs of this appeal are assessed to David.

AFFIRMED.

Schlegel, P.J., concurs; Hayden, J., dissents.

HAYDEN, J. (dissenting)

I respectfully dissent.

I would grant both parties joint custody as the majority has done. However, I would leave primary physical custody of Devin, age seven, with David. David has had temporary physical custody of Devin since October 15, 1990, by court order.

Connie has a history of drinking alcoholic beverages, becoming intoxicated, and driving with Devin in the car while intoxicated. She hit a telephone pole while driving with Devin in the car. She had been drinking before the accident. The record is replete with accounts of Connie's use of alcohol and escapades. At the trial Connie denied she has a drinking problem. She also smokes one and one-half packages of cigarettes daily.

David has also consumed alcohol and started smoking after marriage. His use of alcohol is moderate compared to Connie's. He stopped smoking since he was granted temporary custody of Devin.

Some of the basic principles and rules I find applicable to this appeal are set out below.

The primary and governing consideration in child custody cases is the best interest of the child. Iowa R. App. P. 14(f)(15).

The status of children should be quickly fixed and, thereafter, little disturbed. In re Marriage of Bales, 439 N.W.2d 228, 229 (Iowa App. 1989).

When a child appears happy, well-adjusted, and adequately disciplined, and receives proper care in an appropriate home, she should not be removed from that home except for the most persuasive reasons. In re Marriage of Short, 373 N.W.2d 158, 160 (Iowa App. 1985).

Stability is important in the life of a young child. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982); In re Marriage of Green, 417 N.W.2d 252, 253 (Iowa App. 1987).

There is no strict rule governing which parent should have custody of the child. Bales, 439 N.W.2d at 229. Gender is irrelevant. In re Marriage of Lacaeyse, 461 N.W.2d 475, 477 (Iowa App. 1990)

With the above guides, I am convinced the present circumstances Connie presents are not persuasive enough to change Devin's primary physical custody to her. David has cared well for Devin while in his temporary custody since October 15, 1990. Devin has thrived while in his care.

The issue is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the children. In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 638, 687-88 (Iowa 1974); Bales, 439 N.W.2d at 229.

Connie has not shown she can do better at parenting Devin than David. Quite to the contrary, under this record I determine David can provide a more healthy, safe, and

stable environment for Devin. Also, he can appropriately guide and care for her. I would leave primary physical custody of Devin with David. I would reverse.