IN THE COURT OF APPEALS OF IOWA

No. 5-412 / 95-105

IN RE THE MARRIAGE OF DANIEL McNERNEY AND KRISTINE McNERNEY

Upon the Petition of

DANIEL McNERNEY,

Petitioner-Appellee,

And Concerning

KRISTINE McNERNEY,

Respondent-Appellant.

FILED
SEP 22 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Boone County, M. D. Seiser, Judge.

Kristine McNerney appeals from the child custody provisions of the decree dissolving her marriage to Daniel McNerney. **AFFIRMED.**

Robert H. Laden and Ann Calhoun of Hyland, Laden & Pearson, P.C., Des Moines, for appellant.

Julie A. Elder, Urbandale, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

Respondent-appellant Kristine McNerney appeals from the provisions of her dissolution decree awarding physical care of the children, Derek and Colin, to their father, petitioner-appellee Daniel McNerney. Kristine contends she is the better custodian and the trial court impermissibly separated Derek and Colin from their older half-sister in awarding their physical care to their father.

This was a second marriage for both Kristine and Daniel. Kristine has a daughter, Ashley, from her first marriage who has been in her physical care. Daniel has a child from his first marriage who is in the physical care of his mother.

Kristine and Daniel both love their children and either would provide adequate physical care. Our review 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, however, bound by these determinations. *Id.; see also In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

The primary focus of Kristine's argument is that the physical care award made by the trial court will result in Derek and Colin living apart from their half-sister in her physical care. The pivotal question is whether split custody is justified under this record. Split custody deprives children of the benefit of constant association with siblings. *See In re Marriage of Grandinetti*, 342 N.W.2d 876, 879 (Iowa App. 1983). In attempting to foster children's best interests, the court ordinarily attempts to keep children of broken homes together. *In re Marriage of Jones*, 309 N.W.2d 457, 461

(Iowa 1981); *Grandinetti*, 342 N.W.2d at 878. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *Weidner*, 338 N.W.2d at 356.

We recognize the presumption children generally should be placed together also extends to half-siblings. *See In re Marriage of Orte*, 389 N.W.2d 373, 374 (Iowa 1986); *In re Marriage of Fogle*, 497 N.W.2d 487, 489 (Iowa App. 1993).

We agree with the trial court the presumption should not be controlling in this case. The trial court found Daniel the primary caregiver. Kristine has immediate plans to remarry and soon move into a home with her husband-to-be and his two young children. The confusion this immediate move will create in Derek and Colin's lives when balanced against their separation from a half-sibling five years older than Derek and seven years older than Colin causes us to agree with the trial court's assessment. We note, too, Daniel has a close relationship with Ashley and assumed a substantial portion of her care when the parties were together. Additionally, the evidence is he will see the relationship between Ashley and her brothers will be fostered.

We affirm. We award no attorney fees.

AFFIRMED.