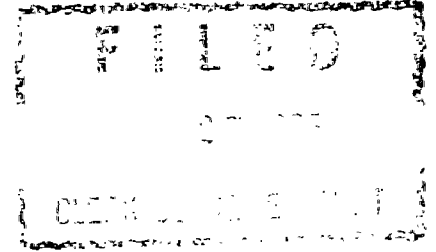


IN THE COURT OF APPEALS OF IOWA

No. 5-302 / 94-1933



**IN RE THE MARRIAGE OF COLLEEN BULLOCK
AND JAMES E. BULLOCK**

Upon the Petition of
COLLEEN BULLOCK,

Appellant,

And Concerning
JAMES E. BULLOCK,

Appellee.

Appeal from the Iowa District Court for Sac County, Gary L. McMinimee,
Judge.

Petitioner appeals the child custody provisions of the parties' dissolution decree.

AFFIRMED.

Randall G. Horstmann, W. Don Brittin, Jr., and Steven H. Lytle of Nyemaster,
Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellant.

Colin McCullough of the McCullough Law Firm, Sac City, and Margaret C.
Callahan of Belin Harris Lamson McCormick, P.C., Des Moines, for appellee.

Heard by Donielson, C.J., and Hayden and Huitink, JJ.

HUTINK, J.

Colleen Bullock appeals the custodial provisions of the decree dissolving her marriage to James E. Bullock. Upon our de novo review, we affirm the district court.

Colleen and James were married on May 27, 1981. James was forty-nine years of age, and Colleen was thirty-nine at the time of trial. Both are in good health, although James has had a history of depression. They are the parents of three children: Nicole, age fifteen; James Jr., age eleven; and Natalie, age nine.

At the time of their marriage in 1981 James owned and operated a veterinary practice in Neuhall, California. Colleen had been his employee for six years prior to the marriage. James devoted most of his time to his practice during the marriage while Colleen divided her time between assisting him and attending to the primary care of the children.

Following a 1991 trip to Iowa, James and Colleen decided to move to Iowa because they found Iowa a more suitable environment for their children. Colleen and the children moved to Iowa in July 1992. James remained in California through May 1993 to **complete** the sale of the family home and his veterinary practice. During this **ten-month separation** the children lived with Colleen. Colleen assumed the responsibility for establishing the family in their new home and the remainder of the details associated with their move to Iowa.

In May 1993 Colleen informed James she wanted a divorce. James immediately left California to join his family in Iowa. Shortly after James' arrival, James and Colleen began marriage counseling. The counselor, based on his initial testing, recommended James seek psychiatric treatment for depression. James was subsequently admitted to a hospital in Fort Dodge for treatment. On admission James' diagnosis was "major depression single type." He was treated with medication and supportive therapy. James was discharged after a four-day stay in the hospital. The counselor, a licensed psychologist, concluded James' depression was "long standing rather than situational." He has recommended James continue to receive treatment, without which James will "experience periodic episodes of depression for the rest of his life." After several postdischarge meetings, both James and Colleen discontinued treatment and counseling with this counselor.

The family continued to reside together in Sac City until February 1994 when Colleen and the children moved to the family farm near Sac City. After a few days at the farm, James Jr. returned to the family home where he continued to reside with James throughout the pendency of these proceedings. During this same period, Colleen and Nicole were involved in an argument following which Nicole was discovered in a closet with a belt around her neck and over a bar. Colleen did not tell James about this incident. She consulted their marriage counselor, and no further action was taken.

Although there have been other physical altercations between Colleen and Nicole, there is no evidence indicating Nicole is a suicide risk.

All of the children have undergone psychological evaluations at Western Iowa Community Health Center. None of the evaluations provide any remarkable indicators about the children. Nicole was not found to be a suicide risk or even particularly distressed at the time she was evaluated. Natalie was found to be a quiet, pleasant child who appeared to be coping well with the dissolution. The evaluator did note, however, James Jr.'s reluctance to live with Colleen and recommended continued counseling if he were placed with Colleen.

The district court found Colleen was more sensitive and affectionate in her relationship with the children than James. The court, however, also found Colleen demeaned James in the presence of the children and on occasion was verbally abusive to the children.

James was found to be a good teacher and a better disciplinarian than Colleen. The district court also found James needed to control his anger and follow recommended treatment for his depression. Based on these findings, the district court concluded James should be awarded physical care of the children.

On appeal Colleen contends her greater experience as primary caretaker of the children and the dangerous complications for the children resulting from James' depression distinguish her as the better primary caretaker and it was error for the

district court to conclude otherwise. She also cites Nicole's express preference to reside with her and a number of other circumstances revealing James' custodial deficiencies.

We review this equitable proceeding de novo. Iowa R. App. P. 4. We consider the facts and the law and determine rights anew from all of the credible evidence on issues properly presented and preserved. *In re Marriage of Lattig*, 318 N.W.2d 811, 812 (Iowa App. 1982). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them.

In determining physical care, the guiding concern is the best interest of the children affected by the dissolution. The court is required to consider the characteristics and needs of the children, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the children, the relationships of the children with each parent, the nature of the proposed environment, and the effect of continuing or changing an existing custodial status. *In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974).

There is no presumption in favor of either the mother or the father. *In re Marriage of Bower*, 219 N.W.2d 684, 687 (Iowa 1974). Preferences of the children are not ignored but are not controlling. *In re Marriage of Burham*, 283 N.W.2d 269, 276 (Iowa 1979). The issue is not which parent possesses the greater right to the children, but which parent can minister more effectively to the long-term best interest of the children. The children should be placed in the environment that is most likely

to bring them to healthy physical, mental, and social maturity. *Winter*, 223 N.W.2d at 166.

In this case both parents have the capacity and desire to provide for the physical care of the children. Each possesses, to some degree, those parental attributes essential to achieving the objectives earlier described. These children, however, have faced a variety of difficult adjustments since moving to Iowa. Under these circumstances, the children are best served by placing them with the parent who can supply a much needed sense of security while preserving each child's relationship with the other parent.

Colleen's claim to greater primary care experience is not seriously disputed. A history of greater primary care experience, however, is no assurance of a physical care award. *In re Marriage of Wilhelm*, 491 N.W.2d 171, 172 (Iowa App. 1992); *In re Marriage of Toedler*, 473 N.W.2d 233, 234 (Iowa App. 1991). We do not wish to minimize the significance of her contributions to the children's primary care, but we find nothing in her experience that distinguishes her as the preferred caretaker. There is abundant evidence that James has both the necessary motivation and capacity to attend to **the daily details** associated with parenting these children.

We also disagree with Colleen's assertion that James' depression compromises his custodial ability. There is no per se disqualification due to mental illness as long as the safety and welfare of the children are not jeopardized. *Willey v. Willey*, 253 Iowa 1294, 1300, 115 N.W.2d 833, 837 (1962). James' depression is treatable, and it has not

discouraged Colleen and the children from looking to him for advice and assistance when they faced problems prior to the divorce. The district court has made adequate provisions to insure James continues to obtain treatment as needed, and we are confident he will comply.

We, like the district court, note a significant distinction between James' and Colleen's respective temperaments and judgment. Although Colleen has been able to cope with the routine details of parenting, her verbal abuse of the children and physical altercations with Nicole indicate she is unable to deal with more complex behavior problems. James, on the other hand, seems to be more calm and consistent in his approach to disciplinary matters.

Furthermore, we are not convinced that Colleen should be awarded primary care of Nicole on the basis of Nicole's expressed preference. We will consider a child's preferences if the record demonstrates the child is of sufficient maturity and discretion. *In re Marriage of Blume*, 473 N.W.2d 629, 631 (Iowa App. 1991). Unfortunately, the evidence indicates that Nicole is immature and her stated preferences are therefore entitled to little weight.

We have often noted that the trial court is aided in its evaluation of the parties by virtue of its trial perspective. This is particularly so in this case, and we choose not to interfere with the district court's decision to award physical care of the children to James. The judgment of the district court is affirmed. Costs of this appeal are assessed to Colleen, and each party shall pay his or her own attorney's fees.

AFFIRMED.