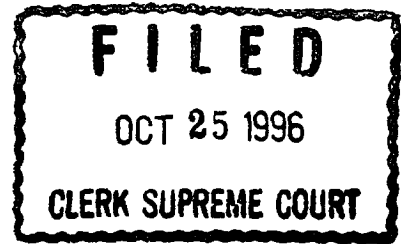


IN THE COURT OF APPEALS OF IOWA

No. 6-547 / 96-0129



**IN RE THE MARRIAGE OF JERRY D. PRICHARD
AND KARLA ANN PRICHARD**

**Upon the Petition of
JERRY D. PRICHARD,**

Petitioner-Appellant,

**And Concerning
KARLA ANN PRICHARD,**

Respondent-Appellee.

Appeal from the Iowa District Court for Carroll County, Dale E. Ruigh, Judge.

Jerry Prichard appeals from the decree dissolving his marriage to Karla Prichard.

AFFIRMED.

Duane E. Hoffmeyer of Vakulskas and Hoffmeyer, P.C., Sioux City, for
appellant.

Anders L. Johnson, Marengo, for appellee.

Considered by Cady, P. J., and Huitink and Streit, JJ.

STREIT, J.

Jerry Dana Prichard appeals the award of primary physical care of three children to their mother, Karla Prichard. The Prichards were married in 1991. They have three children together: Andrew, age 5 years, born December 26, 1990; Stacey, age 3 years, born June 2, 1993; and Suzanne, age 7 years, born February 14, 1989 (Karla's child from a previous relationship and adopted by Jerry). Karla has two other children from a previous marriage who are not in her primary care. Jerry has care of two children from his first marriage.

Jerry, age 45 years, has a high school education, is a livestock feed grinder, and enjoys good health. He works long hours and is occasionally away overnight. He works up to 18 hours a day at times. He has been available for the children only sporadically. Jerry has physically and mentally abused Karla for years. On three separate occasions Jerry has used too much force in corporal punishment of the children. He failed to file income tax returns for 10 years and owes the IRS more than \$190,000.

Karla, age 32 years, has a high school education. She has good physical health but has had some mental health problems. At the time of trial these difficulties were being adequately addressed by Karla. Karla has been the primary care giver for the children. At many times, she was the only care giver. She has been supportive of Jerry.

Our review in this case is de novo. Iowa R. App. P. 4. 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). We give weight to the trial courts findings of fact, but we are not bound by them. Iowa R. App. P. 17(f)(7).

The critical issue is not which parent possesses the greater right to the child, rather the controlling consideration must be the best interest of the child. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This decision requires selection of a custodial parent who can minister more effectively to the long range best interest of the child. The objective should always be to place the child in the environment most likely to bring that child to healthy physical, mental and social maturity. *In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). The court should also consider the characteristics and needs of the child, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the child, the relationship of the child with each parent, the nature of each proposed environment and the affect of continuing or changing an existing custodial status. *Id.*

There is no presumption in favor of the mother or the father. *In re Marriage of Bowen*, 219 N.W.2d 683, 688 (Iowa 1974). Greater primary care experience is one of many factors the court considers but does ensure an award of physical care.

Violent tendencies of a parent adversely impact on the fitness of the parent to be the primary caretaker of a child. *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa App. 1994) (citing *In re Marriage of Snyder*, 241 N.W.2d 733, 734 (Iowa 1976)). Evidence of domestic abuse adversely reflects upon a parent's ability to participate as the custodian of the child. *Brainard*, 523 N.W.2d at 615; *see also In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995) (evidence of domestic abuse is a factor to consider in custody decisions); *In re Marriage of Hornung*, 480 N.W.2d 91, 93 (Iowa App. 1991) (husband's violent behavior weighs against him in the custody decision). The effect of an abusive home on a child can be very severe. "Children raised in homes touched by domestic abuse are often left with deep scars, revealed in the form of increased anxiety, insecurity and a greater likelihood for later problems in interpersonal relationships [C]hildren who stand as observers to domestic abuse may develop a low self-esteem and achieve less academic success." *Brainard*, 523 N.W.2d at 615.

Jerry has used violence against Karla and the children. The trial court did not accept his explanation of the repeated episodes of violence. It is not in the children's best interests to place the children in his primary physical care.

We conclude from our de novo review of the record the district court correctly awarded physical care of the children to Karla. It is in the children's best interests for physical care be given to Karla. Karla is a caring parent who has been the primary care

giver of the children since their birth. The children prospered with her as their primary care giver. She has a closer interpersonal relationship with the children. She has done the appropriate things as a parent and has adequately provided food, clothing, and shelter for the children. She has more adequately met the psychological, emotional, social, intellectual, and educational needs of the children. She has provided adequate nurturing and care for the children. Karla has the greater ability to minister effectively to the children's well-being. Despite her mental instability before 1993, she is now stable. She has better parenting skills. In the long term, she will be the better primary care giver.

Karla claims attorney fees on appeal. We found no merit to Jerry's claim that the trial court erred in granting primary physical care of the children to Karla. We have reviewed the attorney's statement with regard to fees on appeal. An award of attorney fees on appeal may be granted based on the parties' respective abilities to pay. *In re Marriage of Stanley*, 411 N.W.2d 698, 703 (Iowa App. 1987). We have reviewed the record to determine the parties' respective abilities to pay these fees on appeal, including wages, possibilities of second jobs, child support, day care costs, and general expenses. Respondent-Appellee shall be allowed the sum of \$1,500 in attorney fees in connection with this appeal. Costs of this appeal are assessed to Petitioner-Appellant. Judgment shall be entered in the trial court for the amount allowed in this court.

AFFIRMED.