FILED
MAR 3 0 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-118 / 94-1339

IN RE THE MARRIAGE OF KALVIN COX AND JULIE COX

Upon the Petition of
KALVIN COX,

Petitioner-Appellant,

And Concerning
JULIE HOVEY-COX,

Respondent-Appellee.

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

Kalvin Cox appeals from the decree dissolving his marriage to Julie Hovey-Cox.

AFFIRMED.

Barry S. Kaplan of Fairall, Fairall & Kaplan, Marshalltown, for appellant.

Gary S. Noble of Murray, Jankins & Stennes, Des Moines, for appellee.

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

HABHAB, J.

Kalvin Cox and Julie Hovey-Cox were married on March 27, 1992. They had cohabitated for several years prior to their marriage On December 3, 1993, Kalvin filed a petition for dissolution of marriage. The main dispute at the dissolution trial concerned the custody of the parties' son, David, born January 7, 1992.

At the time of trial, Kalvin was twenty-three years old and had gained full-time employment with a construction firm He was living with Pam Willer and her two teen-age daughters in an apartment near Marshalltown. Pam also works construction and would be absent from the house about the same hours as Kalvin Kalvin testified he would return to the family's homestead in Marshalltown if given custody of David. Care would be provided by Pam's mother Pam's mother lives in Reinbeck and would travel sixty miles round trip each day to watch the children, arriving by 5 a.m. and leaving around 7:30 p.m.

Julie was thirty-three, had completed the eleventh grade, and was unemployed. She has custody of three children from prior relationships with three different men. These children were ages ten, seven and five at the time of trial. Two of them have attention deficit disorder and the third has a congenital heart defect. David apparently has a normal sibling relationship with them

Much of the focus at trial centered on the untidiness of the marital home. Kalvin introduced numerous pictures of messes in various rooms of the house. Julie acknowledged she was not a great housekeeper, and suggested that some of the photographs may have been staged. She also noted she was suffering from a back injury at the time they were taken. She blamed the injury in part on Kalvin assaulting her.

On July 29, 1994, the district court entered its findings of fact, conclusions of law, and decree The court found that until Kalvin obtained his current job, neither party had stable employment. The court also noted neither party has had much success in their personal relationships The court found the marital household was not well kept and was sometimes

in a condition that was contrary to the children's best interests. The court further concluded, however, that Kalvin did little to remedy the situation other than complain The court noted both parties had parenting deficiencies, but they also cared deeply for David.

Ultimately, the court concluded Julie is better equipped to provide the requisite supervision and care for David. The court, therefore, awarded joint legal custody but gave Julie primary physical care of David. The court ordered Kalvin to pay child support and maintain health insurance for David. The court gave Kalvin the marital home, along with the mortgage on it, and divided the parties' personal property.

Kalvin now appeals from the award of primary physical care to Julie. Julie asks for an award of appellate attorney fees.

I. Scope of review. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Primary physical care. Kalvin contends the district court erred in awarding Julie primary physical care of David. He argues Julie's prior personal relationships with men along with her poor housekeeping skills require a finding that David's best interests will be met by awarding Kalvin primary physical care. We disagree.

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 found in our statutes, as well as prior cases. See Iowa Code § 598.41(3); In re Marriage of Weidner, 338 N.W 2d 351, 355-56 (Iowa 1983). These factors essentially bear on 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)

We do not deny the evidence suggests Julie is not a particularly strong housekeeper. We do not believe, however, this fact along with her past personal relationships should keep her from obtaining primary physical care. While Julie has shown some instability regarding her personal relationships in the past, Kalvin's record in personal relationships is also poor. We believe the issue of personal relationships causing instability is equalling troubling for both parties and, as a result, does not provide Kalvin with any sort of advantage in terms of providing David with a more stable environment

The record reveals, and Kalvin does not seem to dispute, that Julie has been the primary caregiver of David during the marriage. Julie also has past experience in raising children which Kalvin does not have. Also, it does not appear that Kalvin made any meaningful contribution to the housekeeping during the marriage. Kalvin's contributions to childrearing have also been limited, due, in part, to Kalvin's employment.

We find the long term best interests of David would best be served by giving Julie primary physical care. While neither party is perfect, we believe Julie's parenting abilities are more well developed than Kalvin's. We conclude Julie can best provide for the long-term best interests of David.

III. Attorney fees. Julie requests attorney fees for this appeal. 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 Gilliam, 525 N.W.2d 436, 439 (Iowa App. 1994). 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 Miller, 524 N.W.2d 442, 445 (Iowa App. 1994). We order Kalvin to pay $500 toward Julie's appellate attorney fees.

AFFIRMED.