FILED
DEC 29 1993
CLERK, SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-625 / 93-891

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MICHAEL LIITTSCHWAGER,

Appellee,

vs.

TRACY OELMANN BRANNICK,

Appellant.

Appeal from the Iowa District Court for Hardin County, Newt Draheim, Judge.

Mother appeals the district court decision awarding physical care of the parties' daughter to the natural father. **AFFIRMED.**

Larry W. Johnson of Walters & Johnson, Iowa Falls, for appellant.

Michael A. Smith of Lundy, Butler & Smith, Eldora, for appellee.

Heard by Oxberger, C.J., and Habhab, J., and Perkins, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

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OXBERGER, C.J.

Tracy and Michael lived together from December 1990 through June 1992. Their daughter, Sadie, was born September 10, 1989, while Tracy was residing with her common law husband, Shawn Brannick. Tracy and Shawn have a daughter, Melanie, who is about fourteen months older than Sadie. Tracy and Shawn divorced in 1991, but remarried in March 1993. The half sisters, Sadie and Melanie, have always lived together.

Michael filed a petition in equity seeking custody of Sadie. The district court awarded the primary care of the child to Michael because he can administer more effectively to the long-term interests of Sadie; he has superior parenting abilities; he has the best interests of Sadie in mind; and the possibility that Shawn will resume abuse of alcoholic beverages exists.

Tracy appeals. She contends that the district court erred in awarding physical care of Sadie to Michael where that award "effectively split half sisters who had lived together all their lives."

Our review in cases such as these 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 bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision

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primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

The sole issue on appeal is whether the district court was correct in awarding physical care of Sadie to Michael.

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 enumerated in Iowa Code section 598.41(3), Weidner, 338 N.W.2d at 355-56, and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration," the court's determination of 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).

At the hearing, Michael presented evidence from the dissolution of Shawn and Tracy's marriage: Tracy testified Shawn raped her in December 1989 and January 1990, Shawn was alcoholic, and his drinking caused her concern for the children. Testimony at this hearing showed Shawn assaulted Tracy on more than one occasion; Tracy had assaulted Shawn

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and Michael; Shawn was violent; Tracy did not provide liberal visitation between Michael and Sadie; and on two occasions, Sadie had received bruises while in Shawn and Tracy's care. Based on the evidence, we conclude Michael is in the better position to administer more effectively to Sadie's long-term interests.

Tracy argues the applicability of In re Marriage of Orte, 389 N.W.2d 373, 375 (Iowa 1986), which gives strong consideration to keeping half siblings of divorced families together. In Orte, the court noted that the parents were "at a virtual standoff in terms of their performance as parents". Id. at 374. The court then used the very close and loving relationship between the children to tip the scales in favor of one parent. Id.

In this case, we do not find Orte applicable. Orte in no way abrogates the "best interests of the child" inquiry nor does it require that an advantage be given to a parent who has a child from a previous relationship. It requires the court to weigh the half sibling relationship in to the "best interests of the child" inquiry and allows the existence of the half sibling relationship to tip the scales when all other factors are equal. Here, all other factors are not equal and the evidence showed Michael to be more capable of meeting Sadie's long-term interests. We affirm the trial court's award of primary physical care of Sadie to Michael.

AFFIRMED.