IN THE COURT OF APPEALS OF IOWA

No. 1-352 / 00-1136
Filed July 18, 2001

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CLERK SUPREME COURT

Upon the Petition of
JEREMIAH GROSVENOR,
Petitioner-Appellee,

And Concerning
SHEILA L. DICKES,
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell, Judge.

The respondent appeals from a district court order awarding split physical care of the parties' two children. **AFFIRMED.**

Francis L. Goodwin of Baron, Sar, Goodwin, Gill & Lohr, Sioux City, for appellant.

Craig H. Lane, Sioux City, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

The respondent, Sheila Dickes, appeals from a district court order awarding split physical care of the parties' two children. She maintains she should have been given physical care of both children. We affirm.

Background Facts and Proceedings. Sheila Dickes and Jeremiah Grosvenor are the parents of two children, Kailee, born in October 1995, and Desrai, born in September 1997. Sheila and Jeremiah met in the summer of 1994, when she was twenty-one and he was fourteen. The two started dating shortly thereafter. Jeremiah, age sixteen, quit school and was living with Sheila in low-income subsidized housing when Kailee was born in October 1995. At that time, and at the time of trial, Sheila's eldest child, David, lived with his legal guardians, Sheila's parents.

In March 1996, Sheila moved to Denver, and Jeremiah and Kailee moved in with Jeremiah's mother. A few months later, Jeremiah and Kaliee moved to Denver, where they lived with Sheila until February 1997. Jeremiah and Kailee returned to live in South Sioux City, Nebraska. Sheila followed shortly thereafter. Sheila and Jeremiah saw each other off and on, but were no longer in a romantic relationship. Kailee continued to live with Jeremiah.

In September 1997, Sheila gave birth to the parties' second child, Desrai. Jeremiah first learned of Desrai's birth by reading about it in the newspaper. He did not see Desrai until January or February of 1998. Sheila did not see Kailee during this period of time.

In 1998 and 1999, Sheila alleged incidents of domestic abuse by Jeremiah. In February 1998, Sheila obtained a protective order by default after Jeremiah failed to appear at the hearing. The order granted her custody of Kailee and Desrai. She allowed Jeremiah visitation with Kailee, but not with Desrai. On several occasions, Jeremiah could not find Sheila at the end of his visitation period. He cared for Kailee for months at a time until Sheila would appear and demand he return Kailee to her. In January 1999, police took Jeremiah to jail and returned Kailee to Sheila's custody after Sheila reported he had violated the protective order. Both parties had violated the protective order on previous occasions. In August 1999, the parties consented to the entry of a second protective order.

In January 1999, Jeremiah filed a petition seeking custody of both children. In May 1999, the parties entered into a stipulation and settlement agreement that provided Jeremiah have physical care of Kailee and Sheila have physical care of Desrai. Sheila signed the stipulation, however, while pro se and in the hospital giving birth to her fifth child.[1] The court vacated its previous order approving the stipulation in February 2000. The parties signed a temporary stipulation in March 2000, in which the parties agreed to continue the custody arrangement provided for in the vacated stipulation pending hearing. After a May 2000 hearing, the court entered its judgment and order, placing Kailee in the

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[1] Sheila's fourth child died at birth. She gave up the fifth child for adoption.

physical care of Jeremiah, and Desrai in the physical care of Sheila. Sheila appeals the custody provisions of the district court's order.[2]

Scope of review. Our review of a custody order is de novo. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). We give weight to the district court's fact findings, particularly with respect to credibility determinations, although we are not bound by them. *Id.*

Split Physical Care. The governing consideration in a custody action is the best interests of the child. *In re Marriage of Barry*, 588 N.W.2d 711, 712 (Iowa Ct. App. 1998). Our analysis is the same regardless of whether the parties were married. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988); *In re Purscell*, 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). The objective of the court is to place the children "in the environment most likely to bring [them] to a healthy physical, mental, and social maturity." *Murphy*, 592 N.W.2d at 683 (quoting *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995)). The court must determine which parent will better raise the child. *Barry*, 588 N.W.2d at 712. Several factors assist a court in deciding the long-term best interests of the child. *See* Iowa Code § 598.41(3) (1997); *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa Ct. App. 1995). The parent's gender is irrelevant and should not be considered. *Murphy*, 592 N.W.2d at 683.

Split physical care, the separation of children between parents, should only be allowed in rare cases. *In re Marriage of Fynaardt*, 545 N.W.2d 890, 893 (Iowa Ct. App. 1996). Siblings should not be separated from one another without

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[2] The district court also addressed visitation, child support, health insurance, and dependency exemptions. Sheila raises only the issue of split physical care on appeal.

good and compelling reasons. *In re Marriage of Smiley*, 518 N.W.2d 376, 380 (Iowa 1994).

Neither party presents the court with an ideal picture of parenthood. Both parties admitted to past problems with drugs and alcohol. Jeremiah has an unstable relationship with the mother of his third child. At the time of trial, he was seeing a therapist and enrolled in Batterer Education Program classes. He drives without a valid driver's license. Monica White, a program coordinator at Lutheran Social Services, described Sheila as self-absorbed and a "master manipulator" who wanted to know where she could obtain free baby clothes and supplies for her child. She described an incident during which Sheila allegedly committed a theft at a local store, and another during which Sheila made derogatory comments to Desrai.

Good and compelling reasons exist in this case to separate Desrai and Kailee. We agree with the district court's conclusion, and adopt it as our own:

> [T]hese girls have never lived together for more than a few days at a time so no relationships are being severed but, on the contrary, the status quo custodial status is not being disrupted but stabilized and finalized. The parties have agreed twice to this proposal. Desrai has only spent three days with [Jeremiah] since birth, however, Kailee has been with him for three and a half of the last five years. Kailee has spent very little time with [Sheila], however, Desrai has been with her for nearly all of the time. Each party has made mistakes and neither party has distinguished themselves in a parental manner. Both parties are described as having matured in the last couple of years to the point of taking their parental responsibilities seriously. The best interest of these children is promoted by the stability brought to the parties by the finality of this order. The visitation schedule provided will allow these sisters maximum contact with each other and with each parent.

In addition, we disagree with Sheila's contention the trial court incorrectly found a history of domestic abuse did not exist between the parties. The district court concluded: "Based upon the credibility of the parties and their conduct subsequent to each incident, this court does not find any history of domestic abuse herein." The record supports the district court's conclusion.

AFFIRMED.