

IN THE COURT OF APPEALS OF IOWA

No. 6-210 / 95-1622

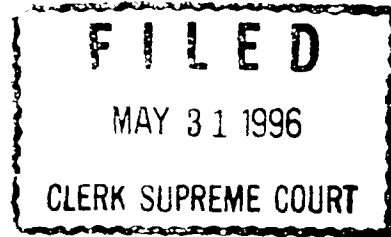
IN RE THE MARRIAGE OF MARY ELLEN
HARTMAN AND RONALD JAMES HARTMAN

Upon the Petition of
MARY ELLEN HARTMAN,

Petitioner-Appellant,

And Concerning
RONALD JAMES HARTMAN,

Respondent-Appellee.



Appeal from the Iowa District Court for Chickasaw County, K. D. Briner,
Judge.

Mary Ellen Hartman appeals from the decree dissolving her marriage to
Ronald Hartman. **AFFIRMED.**

Carter Stevens of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C.,
Waterloo, for appellant.

David M. Englebrecht of Engelbrecht, Ackerman & Hassman, Waverly, for
appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ. Vogel, J., takes no part.

HABHAB, J.

Mary Ellen and Ronald Hartman were married on June 12, 1981. The Hartmans have three children, William, born October 6, 1982; Jane, born July 15, 1985; and Camille, born February 13, 1987. Mary is employed full time as a dental assistant in Oelwein. Ronald has taught elementary school and performed coaching duties in Sumner for over fifteen years. At the time of trial, Mary was thirty-six years old and Ronald was thirty-seven years old.

The parties separated in December 1994, and Mary moved in with her mother in Sumner. Mary filed a dissolution petition on February 9, 1995. The district court effectively awarded shared temporary physical care of the children.

The district court entered its findings, conclusions and decree on September 18, 1995. The court found both parents were fit custodians. The court found Ronald had been the primary care giver in recent years. The court noted Ronald's family was extensively involved with the children but Mary's relatives had had somewhat limited contact with them. The court acknowledged Ronald had engaged in excessive consumption of alcohol in the past but concluded his recent behavior showed no dependency problem. Similarly, the court found Mary had suffered from depression which occasionally required medication, but her depression did not interfere with her parenting ability.

The court concluded Ronald was better able to minister to the children's emotional needs. The court ruled the parties should have joint legal custody but awarded Ronald primary physical care. The court ordered Mary to pay \$844 per month in child support. The court also divided the marital property and provided Mary with liberal visitation.

Mary appeals.

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.* Mary contends the district court erred in placing primary physical care of the children with Ronald. Mary argues a more appropriate ruling would be to give her primary physical care for nine months during the school year, and give Ronald primary physical care for three months during the summer.

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 in prior cases. *See* Iowa Code § 598.41(3) (1993); *In re Marriage of Weidner*, 338 N.W.2d 351, 355-56 (Iowa 1983). These factors 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).

Shared physical care is generally disfavored in Iowa and only is awarded in the most unusual circumstances. *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa App. 1994); *In re Marriage of Coulter*, 502 N.W.2d 168, 171 (Iowa App. 1993); *In re Marriage of McElroy*, 475 N.W.2d 221, 223 (Iowa App. 1991). Shared physical care is discouraged because it often causes problems in parenting and does not promote the stability children need in their lives. *Brainard*, 523 N.W.2d at 615; *Coulter*, 502 N.W.2d at 171. “It is important not to impose a shared physical care arrangement under the guise of expansive visitation.” *Brainard*, 523 N.W.2d at 615.

Like the district court, we find Ronald and Mary have both made important contributions to the children’s development. Both parents appear to be capable parents; however, we conclude Ronald can most effectively minister to the children’s needs. We find the most unusual circumstances have not been presented in this case.

Consequently, shared physical care of the children is not an appropriate award.¹ We affirm the ruling of the district court.

AFFIRMED.

¹ Mary confirms in her brief the parents have an excellent relationship and have both worked together during the pendency of this divorce toward the best interest of the children. The parents are indeed to be commended. We know of no reason why the scheduled visitation rights cannot be expanded through mutual consent of the parents.