

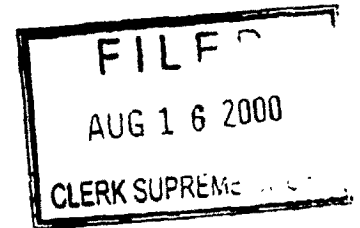
IN THE COURT OF APPEALS OF IOWA

No. 0-439 / 00-0131
Filed August 16, 2000

JOSEPH D. BOETTGER,
Petitioner-Appellant,

vs.

TERI-LYN CAMEROTA,
Respondent-Appellee.



Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

The petitioner appeals a district court order awarding physical care of the
parties' minor child to respondent. **AFFIRMED.**

Michael J. Moon of Moon Law Office, Marshalltown, for appellant.

James R. Cook of Parrish, Kruidenier, Moss, Dunn & Montgomery, L.L.P.,
for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

HECHT, J.

Joseph Boettger appeals a district court order awarding physical care of the parties' minor child to Teri-Lyn Camerota. He contends it would be in the child's best interests if he were awarded physical care. We affirm.

I. Factual Background and Proceedings. Joseph and Teri-Lyn are the parents of Christina Camerota, born August 5, 1996. Joseph and Teri-Lyn were never married and never lived together. They met in Puerto Rico while they were attending a United States Armed Forces school for aviation technicians. Joseph was in the Marine Corps and Teri-Lyn was in the Navy. At the time of Christina's birth, Teri-Lyn was still stationed in Puerto Rico and Joseph was at a Marine Naval Air Station in California. He was not granted leave to attend her birth but visited her when she was eight weeks old. Because of their respective commitments to the military, neither party has spent a significant amount of time as Christina's primary caregiver. Christina has never lived with Joseph and has only lived for a total of four months with Teri-Lyn.

In March of 1997, the parties decided neither one of them could care for Christina because of their military assignments and agreed Joseph's parents, Dean and Sharon Boettger, would take care of Christina. A guardianship was established and Christina went to live with Sharon and Dean in Marshalltown, Iowa. Both Joseph and Teri-Lyn came to Iowa to visit their daughter when they were granted leave.

In May of 1999, Teri-Lyn was honorably discharged from the Navy and moved to Marshalltown to be closer to her daughter. Initially, she lived with

Sharon and Dean but moved out when Joseph came to visit. She plans to move to Florida where her extended family resides. Teri-Lyn was twenty-seven years old at the time of trial. She does not intend to make the Navy a career and is employed full-time making \$9 per hour, plus health benefits. She secured an apartment near St. Petersburg, Florida, for herself and Christina with nearby day care. Her mother lives less than a mile away from the apartment.

Joseph testified at trial he intends to make the Marines a career. He is currently stationed in Beauford County, South Carolina. He married his wife, Melissa, in June of 1998. They have one child, Elijah, who was ten months old at the time of trial. They reside in a three-bedroom home on the base. He is a sergeant in the Marines and earns \$1514 plus \$225 in rations per month. Joseph testified he may be deployed overseas for six out of every twenty-four months and he is also subject to emergency deployment if necessary.

Joseph filed a petition for child custody on May 19, 1999. The district court held trial in this matter on November 5, 1999. On November 23, 1999, the district court entered an order establishing joint legal custody in both parents and primary physical care with Teresa. Joseph appeals.

II. Standard of Review. This case was tried in equity and therefore our review is *de novo*. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). The controlling

consideration in child custody cases is always what is in the best interests of the child. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981).

III. Primary Physical Care. The criteria governing custody decisions are the same regardless of whether the parties are dissolving their marriage or are unwed. *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa App. 1994). The court's objective is to place the child "in the environment most likely to bring her to healthy physical, mental, and social maturity." *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999); *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995). The court determines placement according to which parent can minister more effectively to the children's long-range best interests. *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995) (citing *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 should. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa App. 1996).

Numerous factors help determine which parent should serve as the primary caretaker of the children. Iowa Code § 598.41 (1997); *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa App. 1997). Some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the particular facts of each case. *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa App. 1998).

Joseph contends it would be in Christina's best interests for primary physical care to be placed with him. He argues he has maintained a meaningful

relationship with Christina, while Teri-Lyn has not; he has consistently given his parents money to assist in Christina's care and Teri-Lyn has not; and he has a stable home with his wife and son. This is a particularly difficult case as neither parent has spent much time with Christina in the role of a primary caregiver. At the age of three, Christina had been in the care of her grandparents for two and one-half years. However, of the two parents, Teri-Lyn has spent more time caring for Christina and, since she left the military, has demonstrated she is devoted to becoming Christina's primary caregiver. She moved to Marshalltown and into Sharon and Dean's home in order to reestablish a relationship with her daughter with the least amount of disruption to the child's routine. She has taken proactive steps to incorporate Christina into her life including securing housing for both of them, steady employment, day care, and health insurance. She has truly placed Christina's needs ahead of her own and has the child's best interests at heart.

Joseph contends the district court improperly used his military deployment against him in determining which parent should have primary physical care of Christina. While the district court did mention Joseph would be deployed for six months out of every twenty-four, we cannot conclude from the record before us this is the only factor the district court considered. However, it is an important factor as Teri-Lyn will be able to consistently care for the child and will not be away from her for any extended periods of time. We also consider evidence Teri-Lyn's extended family will be near to her in Florida to offer support and assistance if she needs it.

Finally, Joseph argues separation of Christina from her half-sibling, Elijah, is not in her best interests. We acknowledge there is a strong interest in keeping children from broken homes together. *In re Marriage of Jones*, 309 N.W.2d 457, 461 (Iowa 1981). However, if circumstances arise which demonstrate separation may better promote the long-term best interests of a child, then the court may depart from this rule. *Yarolem*, 529 N.W.2d at 298. Although the testimony at trial indicates Elijah and Christina have a good relationship, they have never lived together. We are assured by the testimony at trial from Teri-Lyn and Joseph's parents that Teri-Lyn will endeavor to promote a positive relationship between Christina and Joseph's family, including Elijah. After weighing all appropriate factors, we conclude it is in Christina's best interests to be in the primary physical care of Teri-Lyn.

Both Joseph and Teri-Lyn are good parents and appropriate caregivers for Christina who will benefit greatly if her parents continue to cooperate regarding her needs. However, our responsibility is to determine which parent will better serve Christina's long-range interests. *See Heyer*, 307 N.W.2d at 9. We conclude that parent is Teri-Lyn and therefore affirm the decision of the district court.

AFFIRMED.