

IN THE COURT OF APPEALS OF IOWA

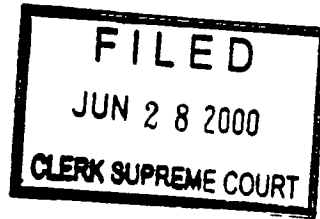
No. 0-359 / 99-1832

Filed June 28, 2000

**IN RE MARRIAGE OF DIANA M. DREDGE
AND ERIC L. DREDGE**

**Upon the Petition of
DIANA M. DREDGE,
Petitioner-Appellee,**

**And Concerning
ERIC L. DREDGE,
Respondent-Appellant.**



Appeal from the Iowa District Court for Ringgold County, Paul R. Huscher,
Judge.

Eric Dredge appeals from the decree dissolving his marriage to Diana
Dredge. **AFFIRMED.**

William L. Shelton of Shelton Law Firm, Chariton, for appellant.

Sherman W. Phipps of Phipps & Greenwood, L.L.C., Lamoni, for appellee.

Heard by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

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ZIMMER, P.J.

Eric Dredge appeals the custodial provisions of the parties' dissolution decree. ~~We~~ affirm the trial court's decision to award primary physical care of the children to Diana Dredge.

I. Background Facts and Proceedings. Eric and Diana were married in 1987. They have two children: Derrick, born in 1988, and Sarah, born in 1991. At the time of trial, Eric was thirty-five years old and Diana was thirty. Eric works for his father at the family-owned Dredge Feed Service, Inc. He continues to reside in the former marital home in Mt. Ayr. Diana is employed as a teacher's aid in the Mt. Ayr school system. After the parties separated in January of 1999, Diana and the children moved to another residence in Mt. Ayr. Her new home is close to Eric's place of employment and allows the children easy access to their father.

Diana filed a petition for dissolution of marriage following the couple's separation. She was granted temporary custody of the children in April 1999. Trial was held in September. The district court granted Eric and Diana joint custody of the children with Diana having primary physical care. Eric appeals. The sole issue presented by his appeal is primary physical care.

II. Scope of Review. In this equity action, our review is de novo. See 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 Stark*, 542 N.W.2d 260, 262 (Iowa App. 1995) (citing *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. See Iowa R. App. P. 14(f)(7); *In re Marriage of Griffin*, 570 N.W.2d 258, 259 (Iowa App. 1997).

III. Primary Physical Care. In assessing an issue of child custody, the controlling consideration is the best interest of the children. *In re Marriage of Purscell*, 544 N.W.2d 466, 468 (Iowa App. 1995). The court determines placement according to which parent can minister more effectively to the children's long-term best interests. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The court's objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *Id.* The critical issue in determining the best interests of the children is which parent will do better in raising them; gender is irrelevant and neither parent should have a greater burden than the other. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa App. 1996); *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995) (citing *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa 1985)).

We identify numerous factors to help determine which parent should serve as the primary caretaker of the children in a divorce. *In re Marriage of Berry*, 588 N.W.2d 711, 713 (Iowa App. 1998) (citing *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 facts of each case. See *Daniels*, 568 N.W.2d at 54. Pursuant to Iowa Code section 598.41 and prior case law, domestic abuse is a factor in determining the custodial parent. *Id.* Domestic abuse is, in every respect, dramatically opposed to a child's best interest. *Id.* The court also considers a parent's status as primary

caregiver during the marriage but it does not insure an award of physical care. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). Moral misconduct also weighs in the analysis but most heavily in those cases where the misconduct occurred in the presence of children. *In re Marriage of Grandinetti*, 342 N.W.2d 876, 879 (Iowa App. 1983).

Eric contends the district court's decision to award primary physical care to Diana is not supported by the evidence and is not in the best interests of the children. We disagree. The trial court made a number of specific and thoughtful findings on the issue. Our de novo review of the record convinces us the district court correctly awarded primary physical care to Diana. We acknowledge, as the trial court did, that either parent would be a suitable caretaker. These parents have demonstrated the ability to care for the children and keep them out of personal disputes with one another. Despite significant difficulty communicating with each other, Eric and Diana have shown an ability to communicate when necessary to promote the best interests of the children. Both parents assist each other when necessary in caring for the children. Both Eric and Diana have a good, loving relationship with Derrick and Sarah, who are described by most as good, well-adjusted children.

The evidence establishes Diana has been the primary caretaker of the children since their birth. Diana has demonstrated a willingness to promote visitation well beyond the schedule established by the court on a temporary basis. She is very supportive of Eric's relationship with the children. The children have done very well in her care during the pendency of this action.

Eric contends Diana conducted an affair in 1992 and was having an affair at the time of trial. Diana admitted the 1992 affair, which obviously took place long before this dissolution proceeding. She denied currently having a relationship. The trial court attributed the allegation to gossipmongering in the community. The meager evidence does not support a finding there has been an affair, much less one that has adversely affected the children.

Unfortunately, the issue of domestic abuse also enters into our conclusion. The evidence clearly indicates Eric has sometimes been physically abusive to Diana. This abuse has included demanding sex against Diana's wishes, driving dangerously with her in his vehicle, holding her down, pushing and shoving her, grabbing her forcefully, shaking her, and handling her roughly. He admitted many of these incidents in a batterers education program. These behaviors reflect poorly on Eric's request for primary physical care. We conclude the best interest of the children will be served if they are in the primary physical of Diana.

IV. Child Custody Investigation. Eric contends the trial court failed to give adequate consideration to the conclusions of a child custody investigation conducted by Pat Lowenberg of Children and Families of Iowa. Ms. Lowenberg recommended that Eric have primary physical care. The trial court found the background information in her report helpful, but disagreed with her final opinions. The trial court expressed considerable skepticism of her finding that Eric was not abusive, a conclusion reached despite the fact he admitted to abuse during the marriage. The testimony of experts must be accorded weight, but their final conclusions are not binding on the trier of fact or the appellate court. See *Nicolou v. Clements*, 516 N.W.2d 905, 909 (Iowa App. 1994). The trial court

also found Ms. Lowenberg exhibited an unexplained, personal animus toward Diana. Under the circumstances presented here, we find no fault with the trial court's failure to follow Ms. Lowenberg's recommendation.

For the reasons expressed, we conclude the award of primary physical care of Derrick and Sarah to Diana was in the children's best interest. We affirm the district court.

AFFIRMED.