IN THE COURT OF APPEALS OF IOWA

No. 3-484 / 93-452

000143

IN RE THE MARRIAGE OF MARK J. FLODEN AND JANET E. FLODEN

Upon the Petition of
MARK J. FLODEN,

Appellee,

And Concerning
JANET E. FLODEN,

Appellant.

FILED
OCT 28 1993
CLERK SUPREME COURT

Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel, Judge.

The mother appeals the physical custody provision of the parties' dissolution decree. **AFFIRMED.**

C. Jean Pendleton of Charnetski, Olson, Lacina & Pendleton, Grinnell, for appellant.

Michael W. Mahaffey of Mahaffey Law Office, Montezuma, for appellee.

Heard by Schlegel, P.J., and Habhab, J., and Perkins, S.J.* Donielson, J., takes no part.

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

000144

PERKINS, S.J.

Mark and Janet Floden were married on October 11, 1981. They had two children: Aaron, born on January 18, 1983; and Brandon, born on February 12, 1988. During the marriage the parties lived in Montezuma, Iowa.

From July 1990 until the end of that year, the children were primarily in Mark's care. Janet was then running a coffee shop in Sigourney. She would usually spend the night there with friends or her then boyfriend, Bill Kuntz, rather than return to Montezuma. In January 1991, Janet and the children moved to Montezuma. Mark filed a petition for dissolution of the marriage in February 1992.

Mark was thirty-four years old at the time of the dissolution hearing. He is employed at Montezuma Manufacturing. He is a tool maker and earns about $33,472. For every ten-week period, Mark works days for eight weeks and nights for two weeks.

Janet was also thirty-four years old at the time of the hearing. She is employed as a waitress at the Star Inn, which is about thirty miles from Sigourney, where she lives. Janet's annual income is $5,871. She presently works nights, but testified she may be moved to the day shift. Janet had a baby-sitter, Darlene Olson, watch the children during the week, and her family watched them on the weekends while she was at work. Her current

000145

boyfriend, Ken Ladly, also watches the children on occasion.

While the dissolution was pending the parties were able to agree to many issues, but disputed who should have physical care of the children. Mark filed an application to have a custody evaluation performed by Dr. John Tedesco of the Des Moines Child Guidance Center, Inc. This application was granted by the district court.

Dr. Tedesco completed his evaluation on January 8, 1993. He recommended that Mark be given physical care of the children. This recommendation was based on a finding that Mark showed more strength in the areas of child rearing knowledge, skills, and abilities. The report also found that child care was less predictable in Janet's home. Dr. Tedesco found Mark's interaction with the children was more positive.

At the hearing, Dr. Tedesco testified concerning his evaluation. Janet presented the testimony of Dr. Eva Christiansen, a psychologist with Medical Services in Des Moines. She testified that Dr. Tedesco's methodology was problematic. Dr. Christiansen did not meet with either of the parties or the children. Dr. Phil Porter, a clinical psychologist from Oskaloosa testified that he had met with the parties to discuss Aaron's motivational problems. He testified Janet was doing a good job with the boys.

The district court issued a decree of dissolution on February 17, 1993. The court granted the parties joint

000146

legal custody of the children, with Mark having primary physical care. The court noted that primary physical care was a close question in this case, but stated that the long-term best interests of the children would be best served by Mark having primary physical care. The court found Mark had a more stable personality and life than Janet. The court set forth a visitation schedule for Janet. She was ordered to pay child support of $85 per month. Janet has appealed.

Our scope of review in this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. In re Marriage of Brown, 487 N.W.2d 331, 332 (Iowa 1992).

Janet contends she should be given physical care of the parties' children. She claims she has been the primary caretaker of the children during most of their lives, and that she can better meet the children's emotional needs. She points out that she has been very active in Aaron's education because of his motivational problems in school.

In child custody cases, the long-term best interests of the children is the first and governing consideration. In re Marriage of McElroy, 475 N.W.2d 221, 222 (Iowa App. 1991). The factors we consider are enumerated in Iowa Code section 598.41(3). Id. The critical factor in determining the best interests of the children is which parent will do

000147

a better job in raising the children. In re Marriage of Rodgers, 470 N.W.2d 43, 44 (Iowa App. 1991). Gender is irrelevant and neither party should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. Id. at 45.

While we believe that Janet has a genuine interest in obtaining physical care of the children, we determine it is in the best interests of the children that they be placed in the physical care of Mark. We agree with the district court's conclusion that Mark is the more stable parent.

We also give weight to the recommendation of Dr. Tedesco. We agree with the evaluation's finding that Mark had a more positive attitude in his interaction with the children. This is particularly important due to Aaron's motivational difficulties in school. Janet admitted that she tended to ignore Aaron when his conduct did not comply with her wishes.

Based on these factors, we affirm the decision of the district court. Costs of this appeal are assessed to Janet Floden.

AFFIRMED.