IN THE COURT OF APPEALS OF IOWA

No. 6-739 / 96-1016

IN RE THE MARRIAGE OF JAMES R. LEHMAN AND CATHERINE A. LEHMAN

Upon the Petition of JAMES R. LEHMAN,

Petitioner-Appellee,

And Concerning CATHERINE A. LEHMAN,

Respondent-Appellant.

FILED
DEC 20 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, Peter Van Metre, Judge.

Catherine Lehman appeals from the decree dissolving her marriage to James Lehman. **AFFIRMED.**

Robert L. Day, Jr., Dubuque, for appellant.

Mary M. Schumacher, Dubuque, for appellee.

Considered by Sackett, C.J., and Streit and Vogel, JJ.

STREIT, J.

Catherine Lehman appeals from the decree dissolving her marriage to James Lehman. She contends the district court erred in awarding primary care of the parties' four minor children, Jason, born November 21, 1979, Ryan, born January 14, 1981, Christopher, born October 13, 1983, and Alicia, born December 21, 1985. She also asks for attorney fees on appeal.

Catherine and James Lehman were married on June 8, 1973. James filed a petition for dissolution of marriage on March 27, 1995. At the time of the dissolution hearing, Catherine was working as a secretary in the Western Dubuque School Library from 8:30 a.m. until 3:00 p.m. For most of the marriage, Catherine had remained home to care for the children. James worked as a maintenance lineman at Maquoketa Valley REC from 8:00 a.m. until 4:30 p.m.

At trial, the sole issue of dispute concerned primary physical care of the children. Following a hearing, the district court entered its findings and decree on April 3, 1996. The court awarded joint legal custody but gave primary care of the children to James. The court provided Catherine would have liberal visitation and ordered she would not be required to pay child support at this time due to her financial circumstances. The court divided the property and ordered James to pay $500 of Catherine's attorney fees. The parties each filed posttrial motions. The district court entered a ruling on the motions which corrected the date of marriage but denied the motions in all other respects.

Catherine appeals. She contends she should have been awarded primary care of the children. She maintains the court ignored her role as primary care giver for the children. She suggests James showed relatively little interest in them during the marriage. She also argues the court failed to give adequate weight to testimony regarding James' drinking habits and drunken episodes. She also asserts the court should have split physical care of the children, with Jason being placed with James and the rest of the children placed with her. She finally seeks appellate attorney fees and costs.

I. Scope of Review: Our review of custody provisions of a dissolution decree is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations. *Id.*

II. Primary Care: In child custody cases, our first and governing consideration is the best interests of the child. *In re Marriage of Burkle*, 525 N.W.2d 439, 441 (Iowa App. 1994). The factors courts consider in awarding custody are found in our statutes, as well as prior cases. *See* Iowa Code § 598.41(3); *In re Marriage of Weidner*, 338 N.W.2d at 355-56; *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). These factors essentially bear on what will be in the long-term best interests of the child. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985).

This decision requires selection of a custodial parent who can minister more effectively to the long range best interest of the child. The objective should always be to place the child in the environment most likely to bring that child to healthy physical, mental and social maturity. *In re Marriage of Weidner*, 223 N.W.2d 165, 167 (Iowa 1974).

The court should also consider the characteristics and needs of the child, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the child, the relationship of the child with each parent, the nature of each proposed environment and the affect of continuing or changing an existing custodial status. Gender is irrelevant in the determination. *Id.* Neither party should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. *Id.*

Catherine maintains she was the primary care giver for the children during the marriage and should have been awarded primary custody. Greater primary care experience is one of many factors the court considers but does not ensure an award of physical care. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). The role of primary care taker of the children during the marriage does not ensure the court will designate that parent as the primary caretaker at the time of the divorce. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995). The district court found both parties would be capable care givers for the children and granted primary physical care to James. Catherine asked for split physical care of the children, with

Jason being placed with James and the rest of the children placed with her. The court believed the children should stay together.

After reviewing the record we find no reason to disturb this ruling. Catherine has trouble getting along with her eldest son, Jason, who was 16 at the time of trial. Her three other children are approaching their teens. There is testimony that Catherine has difficulty disciplining the children and ends up arguing and screaming at them. The district court ultimately concluded that James could provide a "more stable, calm, emotional environment for the children as they grow up." We affirm.

Catherine's request for attorney fees is also denied.

AFFIRMED.