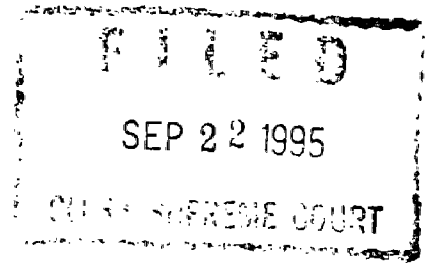


IN THE COURT OF APPEALS OF IOWA

No. 5-406 / 94-2045



**IN RE THE MARRIAGE OF PATRICK M. VACANTI
AND DEBORAH A. VACANTI**

Upon the Petition of
PATRICK M. VACANTI,

Appellant,

And Concerning
DEBORAH A. VACANTI,

Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Leo V.
Connolly, Judge.

Patrick Vacanti appeals the parties' dissolution decree contending the district
court should have awarded the physical care of the parties' children to him.

AFFIRMED.

Joseph J. Hrvol, P.C., Council Bluffs, for appellant.

Kellie Rae Taylor of Perkins, Sacks, Hannan, Reilly, and Petersen, Council
Bluffs, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

Patrick and Deborah Vacanti were married on March 30, 1989. They had three children together: Jerad, born July 8, 1989, and twins Janelle and Jason, born August 3, 1991. Deborah has two children, Justin and Jordan Montello, from a former marriage that also lived with the family.

Janelle has been blind since birth, and Deborah applied for supplemental security income (SSI). Three hundred and thirty dollars of SSI is received in Deborah's name per month. Deborah quit working outside the home upon the birth of the twins. She takes care of her children and baby-sits one to three children in her home earning about \$229.50 per month. Patrick works for Metropolitan Utilities District and has a net monthly income of \$2200.

Patrick filed a petition for dissolution of marriage. At the hearing, Patrick testified that he would pay the debts incurred for family necessities and living expenses. Patrick sought custody of the parties' three children and testified that Deborah had a drinking problem. Deborah denied any alcohol-related problems and testified that she had always been the children's primary caregiver.

The district court specifically found that Deborah's drinking is not excessive, occurred outside the presence of her children during her involvement in bowling or volleyball, and has not been detrimental to the children. The court also found that Deborah has been the primary caretaker of the minor children and awarded her their

physical care. Patrick was ordered to pay \$578 in child support and, "in lieu of additional spousal support," to "satisfy all financial obligations and other indebtedness which have been incurred by the parties for family necessities and living expenses." The court noted that the parties owed \$1037.48 to the Social Security Administration.

Patrick appeals. He contends Deborah should not have been awarded the children's primary physical custody in light of her drinking problem. He also argues "it is unclear if the Social Security debt" is one of the debts he is required to pay. Deborah responds that the SSI debt is included in the marital obligations for which Patrick is responsible.

I. Standard of Review.

The principles governing our review in proceedings of this nature are familiar and well established. The standard of review for all issues presented is de novo. Iowa R. App. P. 4. Accordingly, we review the facts and the law and determine the parties' rights anew where issues have been properly presented and preserved. *In re Marriage of Havran*, 406 N.W.2d 450, 451 (Iowa App. 1987) (citation omitted). Although we are not bound by the trial court's findings, we do give them weight, *especially where the credibility of witnesses is implicated*. *Id.* (emphasis added). We base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983); *In re Marriage of Riddle*, 500 N.W.2d 718, 719 (Iowa App. 1993).

II. Child Custody.

Patrick Vacanti contends the trial court erred awarding custody of the child to Deborah Vacanti. The factors we consider in determining child custody disputes are enumerated in Iowa Code section 598.41(3) and in the cases of *In re Marriage of Weidner*, 338 N.W.2d 351, 355-56 (Iowa 1983), and *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974) (citations omitted).

All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. *In re Marriage of Urban*, 359 N.W.2d 420, 424 (Iowa 1984). The objective in resolving a custody dispute is to place the child in an environment most likely to bring the child to a healthy physical, mental, and social maturity. *In re Marriage of Rodgers*, 470 N.W.2d 43, 45 (Iowa App. 1991) (citation omitted). The critical issue is who will do a better job parenting the child. *Riddle*, 500 N.W.2d at 719 (citation omitted); *In re Marriage of Harris*, 499 N.W.2d 329, 330 (Iowa App. 1993) (citation omitted). After an evaluation of the circumstances, it is apparent the trial court correctly placed custody with Deborah.

Patrick argues Deborah has an alcohol problem and should not be awarded custody. Patrick, however, fails to provide any evidence supporting this contention. The trial court found, and we agree, Deborah's drinking is not excessive and has not been detrimental to the minor children. Deborah willingly participated in an alcohol

evaluation, and the test giver concluded Deborah did not have a problem. We give the trial court's findings weight, particularly where the credibility of witnesses are implicated. *Havran*, 406 N.W.2d at 451.

Deborah has consistently been the primary caretaker of the three children and has provided the best care for the children. She has been instrumental in the children's educational development by encouraging preschool for all of the children. In addition, Deborah is a member of the support team working with her blind child, Janelle. Deborah's care and efforts have been central to Janelle's progress. Deborah has consistently provided the love and support necessary to bring the children to a healthy physical, mental, and social maturity. *Rodgers*, 470 N.W.2d at 45. In consideration of the factors enumerated in Iowa Code section 598.41(3), we affirm the trial court's decision to place custody with Deborah.

III. Social Security Debt.

Patrick contends it is unclear if he is required to pay the social security debt. The trial court ordered Patrick to satisfy all financial obligations and other indebtedness incurred by the parties for family necessities and living expenses. The social security debt was supplemental security income for their disabled minor child, Janelle. It represents overpayments made by the Social Security Administration on behalf of Janelle. We consider it a family necessity and the parties' obligation. Patrick testified he would. "pay any outstanding bills right now." The social security debt is to be paid by Patrick as ordered by the trial court.

IV. Attorney Fees & Costs.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994); *In re Marriage of Kern*, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Castle*, 312 N.W.2d 147, 150 (Iowa App. 1981); *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). Patrick is ordered to pay the costs of the appeal and \$500 of Deborah's appellate attorney fees.

AFFIRMED.