FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-577 / 91-863

IN RE THE MARRIAGE OF STEVEN DALE EVANS AND DONNA JEAN EVANS

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Upon the Petition of
STEVEN DALE EVANS,

Appellee,

And Concerning
DONNA JEAN EVANS,

Appellant.

Appeal from the Iowa District Court for Polk County, James W. Brown, Judge.

Donna appeals a dissolution decree, challenging only the child custody determination which placed primary physical care of their two children with Steven. **AFFIRMED.**

John P. Roehrick of Roehrick, Hulting & Moisan, Des Moines, for appellant.

Dan Stamatelos and James Scheetz of Stamatelos and Kenyon, P.C., West Des Moines, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Steven and Donna Evans were married in 1975. They have two young children, a girl born in May 1985 and a boy born in April 1987. Their marriage was dissolved on May 13, 1991. The decree placed the two children in joint legal custody and in Steven's primary physical care. Donna appeals the dissolution decree. She contends the children should be transferred to her primary physical care.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew the issues properly presented. 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. Iowa R. App. P. 14(f)(7).

The factors we consider in awarding custody are enumerated in Iowa Code section 598.41(3), in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983), and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on our determination of what will be in the long-term best interests of the children. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the children is which parent will do better in raising the children; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of

Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985). We agree with the trial court determination that Steven will be a better physical custodian, and we affirm the award of physical care to Steven.

Donna first argues the trial court incorrectly awarded primary care to Steven based on the credibility of witnesses. She feels that since the "credibility 'finding' of the Court was directed not at the parents, but rather witnesses, . . . slight weight should be given to the credibility issue." Donna has lived with Jamie Weyer since the separation, and Steven is now living with Gwen Alcorn. Both Weyer and Alcorn testified.

The trial court awarded physical care to Steven, contrary to the recommendation of the child custody investigator. The court set forth its reasons for such action:

> [The investigator's] opportunity for contact with the situation was limited by economic considerations. Also, his impressions of the two people who will probably have almost as much contact with the children as their parents' -- Gwen Alcorn and Jamie Weyer -- were not the same as the courts'. This also is probably due to the limited contact, and the lack of opportunity to test any claims by cross-examination. The court's impression of Ms. Alcorn was generally favorable: direct, straightforward, and generally without guild [sic]. Mr. Weyer, on the other hand, was somewhat devious and glib. There would be some question as to his concern for the children's welfare; perhaps, again, a priority problem.

Donna believes the trial court's assessment of the credibility of the witnesses (other than the parties) is unwarranted. We disagree.

The trial court must view all evidence before it and, therefore, must assess all witnesses. The court focused on the companions of the parties because, once the court determined either parent was capable of acting in the best interest of the children, these were the witnesses who, other than the parents, would have the most direct impact on the children. In order to determine physical custody, the court needed additional information on which to base its decision. The court determined from the entire record that Steven would be better as physical custodian. See Winter, 223 N.W.2d at 166 (ultimate issue is which parent can "minister more effectively to the long-range best interests of the children").

Donna also argues the trial court concentrated on "the fact the [child investigator's] recommendation may well have been different if more money had been paid." She continues, parenthetically, with the unnecessary question: "[i]s this an inference that money controls expert's opinion and findings?" A limited child custody investigation was performed. At trial, the investigator stated that if a more expensive investigation had been performed and different information discovered, the recommendation could have been different. The court made no inferences; it simply noted that it had more opportunity to view all the people involved in this case than the investigator under the existing financial constraints.

Donna next claims the trial court should have put more weight on her entire past history with the children and not just the period of time during which the parties were separated. After Donna left the home in August 1989 she had very little contact with the children for about three months. She did not start overnight visitation until several months later; she did not have weekend visits until January 1991. Donna has not provided any help with the family expenses, and her contact with the schools and child care providers has been minimal. The court found "[a]ll of this does not mean she does not care for the children; it does suggest she has had other priorities for the last eighteen months."

We believe the court did look at Donna's entire history, including the year and one-half before the dissolution. We do note, however, that past conduct is a good indicator of future actions. In re Loeffelholz, 162 N.W.2d 415, 419 (Iowa 1968). The evidence shows that during the separation Steven adjusted to the children's increased demands and provided them with the needed care and attention. As the court determined, the "children are doing well in their present environment and it is in their best interests to continue Steven as their primary caretaker." We reject Donna's contention that her lack of contact may have been caused by Steven. In fact, there is evidence Steven took the children to visit Donna and Donna's parents, and his requests that Donna look after the

children on several occasions were denied. Donna could have had as much visitation with the children as she desired.

We agree with the trial court determination that "[b]oth parents would be more than satisfactory" in the role of physical caretaker for the children. We must determine, however, who would be best. We find Steven should remain the physical custodian. See In re Marriage of Abkes, 460 N.W.2d 184, 185 (Iowa App. 1990) (considerable weight given to trial court determination of credibility of witnesses). We affirm the trial court decision in all respects.

AFFIRMED.