

IN THE COURT OF APPEALS OF IOWA

No. 6-044 / 95-1424

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**IN RE THE MARRIAGE OF TERRY
J. STAUDT AND SHEILA A. STAUDT**

Upon the Petition of

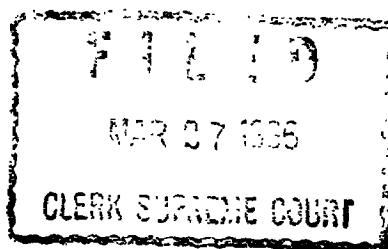
TERRY J. STAUDT,

Petitioner-Appellee,

And Concerning

SHEILA A. STAUDT,

Respondent-Appellant.



Appeal from the Iowa District Court for Floyd County, Paul W. Riffel, Judge.

Sheila Staudt appeals the custody provision of the parties' dissolution decree.

AFFIRMED.

Brian R. McPhail of Gross & McPhail, Osage, for appellant.

Russell Schroeder, Jr., of Schroeder Law Office, Charles City, for appellee.

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

HABHAB, J.

Terry and Sheila Staudt were married on July 22, 1989. They have one child, Jacob Staudt, born March 5, 1991. During the marriage, the parties lived in Marble Rock.

Terry was thirty years old at the time of the dissolution hearing. He is employed at Hormel in Austin, Minnesota. He has annual income of about \$24,600 and net monthly income of \$1538. He has worked at Hormel since he graduated from high school. Terry is in good health.

At the time of the dissolution hearing, Sheila was twenty-seven years old. She is presently employed at Midwest Plastics. She has annual income of \$9696 and net monthly income of \$683. She had several different jobs during the parties' marriage. She is a high school graduate. Sheila is in good health, except for a work-related injury to her shoulder. She has been placed under a weight-lifting restriction.

The parties separated in May 1994. Sheila moved to Nora Springs, which is about seventeen miles from Marble Rock where Terry still lives. Sheila had temporary physical care of Jacob until September 1994, when the district court awarded the parties alternating physical care of Jacob every other week while the case was pending. After the parties separated, Sheila began dating Doug Van Hooser. Sheila and Doug plan to marry.

The parties' marriage was dissolved on July 17, 1995. The court granted the parties joint legal custody of Jacob, with Terry having primary physical care. The

court found Terry was the more mature and responsible parent and that he is more willing to support Jacob's relationship with Sheila. The court found Sheila had restricted Terry's access to Jacob. Sheila was granted reasonable visitation rights and ordered to pay child support.

Sheila now appeals. She believes the district court should have placed Jacob in her physical care. She claims the evidence does not support the court's finding she was not willing to give Terry extra visitation. She also points out on one weekend when it was her turn to have Jacob, Terry came to her apartment while she was at work and took Jacob for visitation. She also believes Terry placed too much emphasis on the fact Doug had spanked Jacob on two occasions.

Our review of 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).

The best interests of the child dominates our consideration in child custody cases. *In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa App. 1994). Numerous factors exist to supplement the best interests standard which are enumerated in Iowa Code section 598.41(3). *Id.* The critical issue in determining the best interests of the child is which parent will do better in raising the child into a healthy, content, well-adjusted young adult. *Id.*

We find both Terry and Sheila are capable of raising Jacob. We agree with the district court, however, the evidence shows Sheila tends to be overly restrictive of Terry's contact with Jacob. Sheila's testimony shows she prefers to follow the parties' visitation schedule, even if it means hiring a babysitter to care for Jacob while she has his physical care. Terry testified he would allow Sheila extra visitation when she has a day off from work.

There is additional testimony Terry is more prone to remain at home with Jacob. In keeping with his home responsibilities, Terry would get up during the night if Jacob cried, prepared his bottle the majority of the time, did most of the laundry, and did at least one-half of the cooking and always did the dishes. In addition, Terry to his credit has always encouraged Jacob to spend time with his mother and has allowed Sheila extra days with Jacob when she has requested them.

In summation, although we have set forth many of the favorable qualities of Terry, we also find Sheila has a number of fine attributes as a mother to Jacob. We agree with the district court Terry is more likely, as the custodial parent, to foster equal participation by Sheila, as the noncustodial parent, in decisions affecting Jacob's education, extracurricular activities, and religious instruction. We also agree with the district court the best interest of Jacob will be served by awarding his physical care to Terry, for he is in the better position to raise Jacob into a healthy, content, and well-adjusted young adult.

For these reasons, we affirm the decision of the district court. Costs of this appeal are assessed to Sheila.

AFFIRMED.