

IN THE COURT OF APPEALS OF IOWA

No. 7-418 / 96-1644

000357

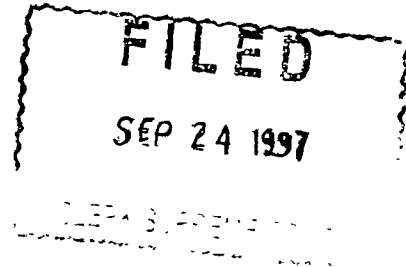
EUGENE WULFEKUHLE,

Petitioner-Appellee,

vs.

KARAN NEUHAUS,

Respondent-Appellant.



Appeal from the Iowa District Court for Delaware County, John Bauercamper,
Judge.

Karan Neuhaus appeals from a decree awarding primary physical care of her
son, Dylan Lee Neuhaus, to his father, Eugene Wulfekuhle. **AFFIRMED.**

Robert J. Murphy, Independence, for appellant.

Tom Jenk, Dyersville, for appellee.

Considered by Streit, P.J., Vogel, J., and Perkins, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PERKINS, S.J.

Eugene (Gene) Wulfekuhle and Karan Neuhaus are the unmarried parents of Dylan Lee Neuhaus, born March 19, 1995. They lived together for two or three years, then separated in 1996.

On February 20, 1996, Gene filed a petition for custody of Dylan or, in the alternative, for visitation. Dylan lived with Karan during the pendency of the petition. Karan had a romantic relationship with Daniel Hahn, a convicted felon. A temporary custody order required that Karan have no contact with Hahn. Gene later filed a contempt application alleging the no-contact order had been violated.

At the time of the joint hearing on the petition and contempt application, Gene lived in Manchester and Karan lived in Lamont. Gene worked at Tegler Design Center, Inc. earning a net monthly income of \$1386.67. Karan worked at Monona Wire with a net monthly income of \$759.28. She had two children from a previous marriage who were in her ex-husband's primary care.

Following the hearing, the district court entered its findings of fact, conclusions of law, and decree. The court found there was insufficient evidence to hold Karan violated the no-contact order. The court further adjudged Gene to be Dylan's father. The court concluded, without elaborating, that Gene was the parent best able to provide for Dylan's care, health and education. The court accordingly awarded joint legal custody but placed Dylan in Gene's primary physical care. The

court ordered visitation for Karan and required her to pay \$156 per month in child support.

Karan appeals. She contends the district court erred in awarding Dylan's primary physical care to Gene. She alleges the record does not show any detrimental effect on Dylan based on her relationship with Hahn. She asserts Dylan flourished in her care. She maintains her work schedule is more conducive to Dylan's care and argues continuity favors allowing Dylan to remain with her.

I. Scope of Review

A review of this equitable proceeding is de novo. *Hobson v. Hobson*, 248 N.W.2d 137, 139 (Iowa 1976); Iowa R. App. P. 4.

Although weight should be given to findings of fact made by the trial court, especially when considering the credibility of witnesses, the appellate court is not bound by such findings. Iowa R. App. P. 14(f)(7).

II. Issue Primary Physical Custody

The sole issue urged by the appellant Karan is that the district court erred in granting primary physical custody of the parties' minor child to the petitioner Gene.

The first and governing consideration of the courts in determining custody is the best interest of the children. Iowa R. App. P. 14(f)(15).

In comparing the parenting skills of the parties and the ability of each to provide a suitable home for two year old Dylan, we conclude the district court

reached the correct decision. The child's father, Gene, has attended classes to prepare him for the responsibility of being a single parent. He has an apartment where he and Dylan live. He has arranged for a suitable person to care for the child when he is at work. An important factor is Gene's parents who testified at the custody hearing. They are ready, willing and able to assist in the care of Dylan.

Karan has two sons ages six and eight. These children are in the physical care of their father. Karan has visitation rights. Karan admitted in her testimony that she has a temper but denied that she "took it out on the children." There was other testimony that she often yelled and screamed at them.

Karan has a romantic interest in a married man who has a criminal record. This relationship has continued and while it does not serve to rule out physical custody of Dylan it does reflect upon Karan's judgment since she was aware it would be an issue at the hearing on custody.

Under all of the facts of this case, including the temperments of the parties, we conclude it is in Dylan's best interest to be placed in the primary physical care of his father.

AFFIRMED.