

IN THE COURT OF APPEALS OF IOWA

No. 6-268 / 95-1442

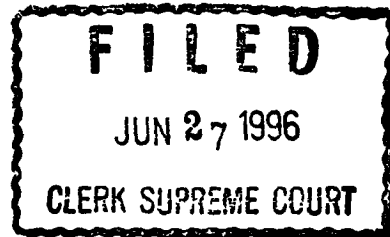
MARK R. ROBERTS,

Appellant.

vs.

KATHLEEN A. SULLIVAN,

Appellee.



Appeal from the Iowa District Court for Black Hawk County, Jon C. Fister,
Judge.

Petitioner appeals a district court ruling awarding physical care of the parties'
minor child to respondent. **AFFIRMED.**

Timothy L. Lapointe of Lapointe & Lapointe, Mason City, for appellant.

Tomas Rodriguez, Waterloo, for appellee.

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

STREIT, J.

Mark R. Roberts appeals from a district court ruling awarding physical care of the parties' minor child to Kathleen A. Sullivan. We affirm.

Mark Roberts and Kathleen Sullivan are the parents of Aleah Roberts, born April 3, 1991. Mark and Kathleen were never married but lived together until July 1992 when Kathleen and Aleah moved to Waterloo due in part to Mark's physical and mental abuse. Mark filed a petition for paternity and child custody in November 1993 and was granted temporary physical care pursuant to an ex parte order. Placement was later returned to Kathleen following a temporary custody hearing, and Mark was granted one week of visitation each month.

In September 1994 Kathleen, who was experiencing drug problems, sent Aleah to North Carolina to reside with her brother. Kathleen did not inform Mark of the move and Mark was unable to exercise his visitation with Aleah based on his inability to locate her. Kathleen later sent Aleah to Florida where she resided with Kathleen's mother. Aleah remained in Florida until November 1994 when Mark took her with him to Minnesota. While living in Minnesota, Mark filed an application for an ex parte protective order awarding him temporary custody. The Minnesota Department of Human Services assisted Mark in maintaining custody of Aleah until trial on July 18, 1995, in Black Hawk County, Iowa.

The district court concluded that although Kathleen had struggled with drug addiction, she was undergoing treatment and had recovered to the point of being able

to care for her second child, J.T. The court awarded Kathleen primary physical care of Aleah, finding no compelling reason to separate Aleah and J.T. Roberts appeals.

Our review in the matter is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but give them deference when the credibility of witnesses is implicated. Iowa R. App. P. 14(f)(7).

In cases involving a child whose parents have never married, the legal analysis used to resolve the question of physical care is the same as if the parents were married. *Lambert v. Everest*, 418 N.W.2d 40, 42 (Iowa 1988). The critical issue is not which parent possesses the greater right to the child, rather the controlling issue must be the best interest of the child. *Hagen v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. *In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). Gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody. *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa App. 1994).

The physical custody of siblings should only be separated for good and compelling reasons. *In re Marriage of Gonzales*, 373 N.W.2d 152, 155 (Iowa App. 1985). This presumption against separation also applies to half-siblings. *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993). We may depart from this principle where circumstances arise which demonstrate that separation may better promote the long-term best interests of the children. *In re Marriage of Jones*,

309 N.W.2d 457, 461 (Iowa 1981). The party seeking separation carries the burden to demonstrate that such circumstances exist to merit separation. *See In re Marriage of Hunt*, 476 N.W.2d 99, 102 (Iowa App. 1991).

On our de novo review, we conclude Aleah's interests are best served by awarding primary physical care to Kathleen. While Kathleen has experienced problems with drugs and alcohol in the past, and imprudently sent Aleah to Florida in 1994, she has completed an inpatient treatment program and is committed to maintaining her sobriety. She has taken parenting classes and has participated in family-oriented rehabilitation. Kathleen has demonstrated that she is able to effectively minister to Aleah's needs and is currently enjoying success in her role as primary care giver to her second child, J.T.

Mark also has a history of drug and alcohol involvement, but has not undertaken similar efforts to combat his problems or improve his parenting skills. He has a violent temper which he has displayed in Aleah's presence on more than one occasion and has subjected Kathleen to both physical and mental abuse. The district court questioned the sincerity of Mark's commitment to quality parenting and noted, "[Petitioner] took few affirmative steps to address his daughter's problems until he moved in with his parents, a good number of the steps he has taken appear motivated more by the impending trial date than by his own initiative, and he has not been supportive of respondent's relationship with their daughter since removing her to Minnesota." On our de novo review, we find Mark has not established sufficient

reason to justify separating Aleah from Kathleen and J.T. Aleah's long-term best interest will be met with Kathleen. The district court correctly awarded primary physical care to Kathleen. We affirm.

AFFIRMED.