

IN THE COURT OF APPEALS OF IOWA

No. 6-738 / 96-0938

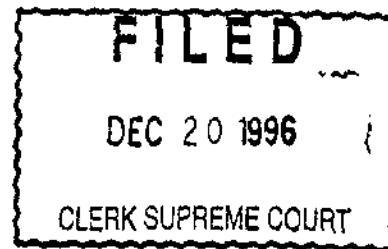
**IN RE THE MARRIAGE OF BECKI L.
ALPEN AND DANIEL W. ALPEN**

**Upon the Petition of
BECKI L. ALPEN,**

Petitioner-Appellant/Cross-Appellee,

**And Concerning
DANIEL W. ALPEN,**

Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Cedar County, David E. Schoenthaler,
Judge.

Petitioner appeals, and respondent cross-appeals, from child custody and
various economic provisions of the parties' dissolution decree. **AFFIRMED.**

Douglas C. Scovil of Ruud, Scovil & Marsh, Rock Island, Illinois, for
appellant.

John C. Stevens of Lewis and Stevens, P.C., Muscatine, for appellee.

Heard by Sackett, C.J., and Cady and Huitink, JJ.

PER CURIAM.

In this appeal and cross-appeal from a decree dissolving a five-year marriage, appellant Becki Alpen challenges the award of physical care of the two children of the marriage to appellee/cross- appellant Daniel Alpen. Both parties challenge certain economic provisions of the decree. We affirm.

Becki and Daniel both love their children, have been good parents, and have assumed primary care responsibilities for the two children born to them. The trial court found it difficult to decide which parent would be the better custodian and ultimately resolved the issue in Daniel's favor after finding he was more stable and of better moral character.

We review de novo giving deference to the credibility findings of the district court. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992); *In re Marriage of Hart*, 547 N.W.2d 612, 614 (Iowa App. 1996).

The critical issue is which parent appears to be better suited to provide a safe, nurturing, and stimulating environment and will give the children the better opportunity to become well-adjusted adults. *See Hart*, 547 N.W.2d at 615. We find no reason to depart from the trial court's decision on this issue and affirm.

We have considered the economic challenges to the decree, including Becki's conclusion she should receive her property settlement earlier and should have been awarded additional attorney fees. The trial court did not abuse its discretion in the

attorney fee award. *See In re Marriage of Zoellner*, 219 N.W.2d 517, 523 (Iowa 1974). The economic provisions as a whole are equitable.

We affirm the trial court in all respects. We award no appellate attorney fees. Becki shall pay the costs on appeal.

AFFIRMED.

Sackett, C.J., and Huitink, J., concur; Cady, J., dissents.

CADY, J.

I respectfully dissent. I would award primary care of the children to Becki.

I question the quality of a parent who begins to show quality parenting only after a divorce is filed. This is what Daniel did.

Moreover, Becki was the primary caretaker of the children prior to the breakdown of the marriage. By all accounts the children have been raised well. They are happy and well-adjusted. The strike against Becki is the two affairs she had during the later years of the marriage. This is a proper factor to consider in determining the primary caretaker. However, it should not disqualify a parent from assuming the role of primary caretaker. *In re Dawson's Marriage*, 214 N.W.2d 131 (Iowa 1974). In truth, it can be more of a sign of a bad marriage than an immoral parent. Morality and character have many components, and cannot be viewed in isolation.

I believe the trial court and the majority placed too much emphasis on Becki's past adulterous relationships. There was no evidence Becki left the children alone to engage in the affairs, or that she engaged in the affairs in the home while the children were present. Nor was there any evidence Becki would raise the children in a less than moral environment. The totality of the circumstances supports an award of primary care to Becki.