

IN THE COURT OF APPEALS OF IOWA

No. 6-425 / 95-2217

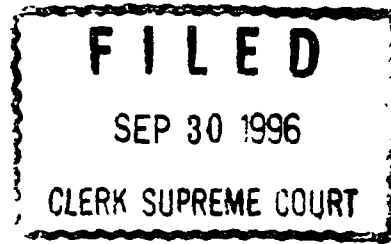
**IN RE THE MARRIAGE OF KIMBERLY MARIE
MANETTA AND VINCENT JAMES MANETTA**

**Upon the Petition of
KIMBERLY MARIE MANETTA,**

Petitioner-Appellant,

**And Concerning
VINCENT JAMES MANETTA,**

Respondent-Appellee.



Appeal from the Iowa District Court for Wapello County, Phillip R. Collett,
Judge.

Kimberly Manetta appeals from the child custody provisions of the decree
dissolving her marriage to Vincent Manetta. **PHYSICAL CARE AWARD
REVERSED AND REMANDED.**

Susan E. Lynch of McKay, Moreland & Webber, P.C., Ottumwa, for appellant.

Allan C. Orsborn of Orsborn, Bauerle & Milani, Ottumwa, for appellee.

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

SACKETT, C.J.

Petitioner-appellant Kimberly Manetta appeals the child custody provisions of the decree dissolving her marriage to respondent-appellee Vincent Manetta. Kimberly contends the district court should not have awarded primary physical care of the parties' children to Vincent. We reverse the primary physical care award and make Kimberly the primary physical custodian.

Kimberly and Vincent were married in 1984. They have three children: Matthew, born in 1985; Rachael, born in 1986; and Steven, born in 1991. Matthew suffers from what is termed an "oppositional defiance disorder." He is aggressive and destructive on occasion.

Kimberly left full-time employment after Matthew was born and stayed home to care for the children. Vincent, a plant construction supervisor at Cargill in Ottumwa, has been employed outside the home at all times.

In 1995, Vincent was convicted of serious assault after slapping Matthew across the face and causing bruises. At this time, Kimberly left the family home and took the children to a family crisis center. Kimberly filed a petition for dissolution of marriage. The parties agreed to split custody of the children during the pendency of the dissolution proceedings.

In April 1995, Kimberly had Matthew committed to the Mental Health Institute in Independence, Iowa. He remained a resident there through November 1995.

Vincent did not cooperate with programs established for Matthew at the institute.

At the time of trial, Kimberly was thirty-three years of age and Vincent was thirty-six. Kimberly was working as a bank teller and attending college, hoping to become a physical therapist. Vincent continued working at Cargill.

The trial court found both parties admitted to physically abusing their children. In addition to the assault on Matthew, Vincent once spanked Rachael with a belt, leaving bruises which lasted three weeks. Kimberly slapped Matthew across the face and gave him a bloody lip. The trial court further found both parents had abused alcohol. Kimberly and Vincent each received outpatient treatment for alcohol abuse and attended Alcoholics Anonymous. Kimberly had been sober for eighteen months, while Vincent had a relapse following his assault conviction.

The court noted the testimony by staff workers at the Mental Health Institute was that Vincent did not appear supportive of Matthew's treatment at the institution. They further testified Vincent should have returned Matthew to the Mental Health Institute twice after Matthew fought with Rachael.

The court found both parents had good insight into Matthew's problems and his need for treatment. The court believed Vincent had shown he could provide a structured, consistent environment for all the children, including Matthew. The court further found Vincent could work fewer hours, but Kimberly needed to be gone from home several nights a week.

The court awarded joint legal custody and gave primary care to Vincent. The court awarded Kimberly liberal visitation and ordered her to pay \$75 per month in child support.

Kimberly appeals. She contends the district court should not have awarded primary care of the children to Vincent. She maintains the trial court did not give sufficient weight to Vincent's assault on Matthew or his lack of support for the treatment program at the Mental Health Institute. She contends Vincent's witnesses were family members, friends, or persons who testified without adequate knowledge. She argues the trial court failed to consider she was the children's primary care giver during the marriage and she had better insight into Matthew's problems. She finally asserts the trial court did not correctly assess the time she and Vincent would need to be away from home.

The question is which parent has the better qualifications to meet the children's needs as primary physical custodian when the dissolution is granted. *See In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa App. 1991). We look to a number of factors. *See In re Marriage of Urban*, 359 N.W.2d 420, 424 (Iowa 1984). We look to Kimberly's position as the primary custodian. *See In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa App. 1994); *In re Marriage of Snyder*, 241 N.W.2d 733, 734 (Iowa 1976). We consider her availability to the children. We consider her efforts to correct Matthew's behavior. We look at the time she will be available to the

children. The question is which one of these parents will be the better custodian. On our review we find Kimberly has shown she will provide the children the better care.

We remand to the trial court to fix Vincent's child support obligation.

Costs on appeal are taxed to Vincent. We award no attorney fees.

REVERSED AND REMANDED.