

IN THE COURT OF APPEALS OF IOWA

No. 7-605 / 96-2194

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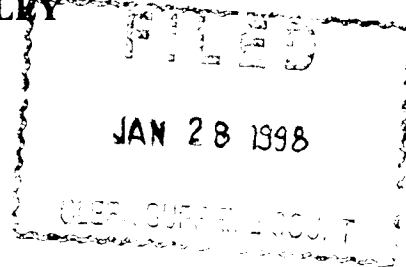
**IN RE THE MARRIAGE OF LINDA J. BARKLEY
AND BRIAN C. BARKLEY**

Upon the Petition of
LINDA J. BARKLEY,

Appellee,

And Concerning
BRIAN C. BARKLEY,

Appellant.



Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers,
Judge.

A husband appeals the custody and property provisions of the parties'
dissolution decree. **AFFIRMED.**

James D. Hoffman of James D. Hoffman P.C., Davenport, for appellant.

No appearance for appellee.

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

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CADY, C.J.

In this appeal, a husband challenges the custody and property division of the parties' dissolution decree. We affirm the decision of the district court.

Linda and Brian Barkley were married in 1980. They have four children: Stephanie, born in 1983; Brenton, born in 1985; Heath, born in 1986; and Blake, born in 1988. Linda did not work outside the home during most of the marriage. She was primarily responsible for the care of the children. Brian was self-employed as a piano tuner and restorer. The parties were both involved in drug and alcohol use during the marriage.

In January 1995 Linda filed a petition for dissolution of marriage. She took the children to a shelter and filed a petition alleging Brian was seriously mentally impaired. After a hearing he was involuntarily committed due to a probable personality disorder. Brian attended outpatient mental health treatment and substance abuse treatment. On his release from treatment, Linda obtained an injunction prohibiting Brian from having contact with her or the children.

Linda was concerned that Brian might have sexually abused the children. The Department of Human Services (DHS) conducted an investigation, and determined the report of sexual abuse was unfounded. DHS did issue a founded report against each of the parents for physical abuse. Linda voluntarily agreed to in-home services.

By court order Brian began visitation with the children on June 3, 1995. At the dissolution hearing Linda testified she no longer worried about Brian's contact

with the children. She testified she was willing to support Brian's relationship with the children.

The district court issued a dissolution decree for the parties on September 30, 1996. The court placed primary physical care of the children with Linda. Brian was granted visitation and was ordered to pay child support of \$606 per month for the four children. The court determined it was in the best interests of the children to award Linda the homestead, free from any claim by Brian. Brian was awarded other property, including his work tools. Brian appeals.

Our scope of review in dissolution cases 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).

Brian believes primary physical care of the children should have been placed with him. He asserts Linda was sexually abused as a child, and this causes her to suspect sexual abuse in situations where it is unwarranted. Brian admits he was not a very good father while the parties were married. He states he is now very active in his church and has turned his life around. He claims he has made a substantial improvement in his parenting skills since he completed substance abuse treatment.

In child custody cases, our first and governing consideration is the best interests of the children. *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App.

1995). The court's objective is to place the children in the environment most likely to bring the children to a healthy physical, mental and social maturity. *In re Marriage of Rodgers*, 470 N.W.2d 43, 45 (Iowa App. 1991).

In equity cases we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Here, the trial court specifically found Linda's testimony that Brian enjoyed engaging in shocking and exhibitionist behavior to be credible. He did not respect the privacy of the children, and took photographs of them while they were naked. The court found there was little complimentary testimony about Brian's involvement with the children when the family was residing together.

Linda, on the other hand, was amenable to services from DHS and had improved her parenting skills. Linda was also actively involved in the children's therapy. She supported the children's relationship with Brian.

We affirm the decision of the district court placing primary physical care of the children with Linda.

Brian requests the homestead if he is awarded custody of the children. He does not ~~dispute~~ the decision to award the homestead to the primary physical custodian. Because we have determined the children should be placed in the primary physical care of Linda, we do not modify the division of property.

We ~~affirm~~ the provisions of the parties' dissolution decree. Costs of this appeal are assessed to Brian.

AFFIRMED.