IN THE COURT OF APPEALS OF IOWA

No. 1-707 / 01-0248
Filed December 12, 2001

IN RE THE MARRIAGE OF SHERRI L. KOSTER AND MICHAEL W. KOSTER

FILED
DEC 12 2001
CLERK SUPREME COURT

Upon the Petition of
SHERRI L. KOSTER,
Petitioner-Appellee,

And Concerning
MICHAEL W. KOSTER,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Lawrence W. Fautsch, Judge.

Michael Koster appeals from the custody provisions of the decree dissolving his marriage to Sherri Koster. **AFFIRMED.**

Brian R. McPhail of Gross & McPhail, Osage, for appellant.

Todd N. Klapatauskas of Reynolds & Kenline, L.L.P., Dubuque, for appellee.

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

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HECHT, J.

The respondent, Michael Koster, appeals from the custody provisions of the decree dissolving his marriage to the petitioner, Sherri Koster. He contends the district court erred in awarding physical care of the parties' minor children to Sherri. We affirm.

I. **Background Facts and Proceedings.** Michael and Sherri Koster were married on February 14, 1992. They have three children: Jordan, born July 8, 1993; Andrea, born March 5, 1996; and Marissa, born November 2, 1997. On September 23, 1999, Sherri filed a dissolution of marriage petition. Following trial, the district court awarded joint legal custody and granted physical care of the children to Sherri. In making its determination, the court acknowledged Sherri had made numerous mistakes in her lifetime, including four marriages, a drug overdose, and six founded abuse reports at the daycare she managed. However, the court determined Sherri had provided a stable environment for the children since her move to Dubuque in 1999 and noted her strong support system there. The court also noted testimony that Michael was controlling and may have sexually abused Sherri, as well as the fact that Sherri had been the children's primary caregiver. Michael appeals, challenging the district court's primary care decision. Sherri seeks an award of appellate attorney fees.

II. **Standard of Review.** We review child custody determinations de novo. Iowa R. App. P. 4; *In re Petition of Purscell,* 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Stark*, 542

N.W.2d 260, 262 (Iowa Ct. App. 1995) (citing *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981)). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses but are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Novak*, 220 N.W.2d 592, 597 (Iowa 1974).

III. Discussion. In assessing child custody, the controlling consideration is the best interest of the children. Iowa R. App. P. 14(f)(15); *Purscell*, 544 N.W.2d at 468. The court determines placement according to which parent can minister more effectively to the children's long-term best interests. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996). The court's objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *Id.* The critical issue in determining the best interests of the children is which parent will do better in raising them; gender is irrelevant, and neither parent should have a greater burden than the other. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa Ct. App. 1996) (citing *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa 1985)).

We consider numerous factors to help determine which parent should serve as the primary caretaker of the children in a divorce. *In re Marriage of Berry*, 588 N.W.2d 711, 713 (Iowa Ct. App. 1998) (citing *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa Ct. App. 1997)). In this case, applicable factors include "the characteristics of each parent, including age, character, stability, mental and physical health." *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). Each factor, however, does not necessarily impact the

decision with equal force. *Daniels*, 568 N.W.2d at 54. Some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the facts of each case. *Id.*

Michael contends the district court's decision to award physical care to Sherri is unsupported by the evidence and is not in the best interests of the children. Michael emphasizes aspects of Sherri's past conduct to challenge her suitability as a parent. In particular, he notes Sherri's four failed marriages. Three ended in divorce before she reached age twenty-four, and the break-up of the third marriage resulted in an alcohol and antidepressant-induced overdose. Michael also posits that six founded abuse reports stemming from Sherri's management of a daycare center demonstrate her ineffectiveness as a caretaker of children. The founded abuse reports were for lack of adequate supervision, as Sherri was discovered sleeping on occasions while children were under her care.

Notwithstanding our concerns about these aspects of Sherri's history, we recognize, as the district court did, the significant changes in Sherri's performance as a parent following her move to Dubuque in 1999. In particular, we are strongly encouraged by Sherri's efforts to increase the exposure of the children to positive influences of her extended family. The Helmkes have helped Sherri understand the importance of family and encouraged her to attend to the spiritual needs of the children. Furthermore, Lynn Helmke's training in special education has had a dramatic impact on Jordan's reading ability and performance in school.

We find that either parent would be a suitable caretaker for the children. Michael was actively involved in parenting the children prior to the separation of the parties. He is a hard worker who deeply loves his children. However, we conclude Sherri will provide the environment most likely to bring the children to healthy physical, mental, and social maturity. The record indicates the children are doing well in Dubuque under her care. We conclude the district court's award of physical care to Sherri was in the children's best interest, and we affirm the district court's decision.

IV. Attorney's Fees. Sherri seeks appellate attorney's fees. An award of appellate attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). In determining whether to award appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the decision of the trial court on appeal. *Id.* After consideration of these factors, we deny Sherri's request.

AFFIRMED.