

IN THE COURT OF APPEALS OF IOWA

No. 6-195 / 95-1062

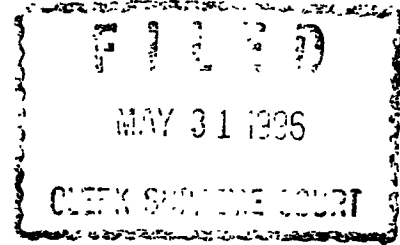
**IN RE THE MARRIAGE OF JAMES R. WELTY
AND SARA J. WELTY**

Upon the Petition of
JAMES R. WELTY,

Appellee,

And Concerning
SARA J. WELTY,

Appellant.



Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge.

Sara Welty appeals from a district court decree dissolving her marriage to James Welty. **AFFIRMED.**

Roger J. Hudson and Stacey N. Bell of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellant.

Ryan A. Genest of Borseth, Genest & Nasse' Law Office, Pleasant Hill, for appellee.

Heard by Sackett, P.J., and Habhab and Cady JJ. Huitink, Streit, and Vogel, JJ. take no part.

CADY, J.

The single issue presented on appeal is which parent should be designated the primary caretaker of their eleven-year old child following the dissolution of their marriage. The trial court awarded primary care to the father. We affirm the trial court on our review.

Sara and James Welty married on November 13, 1976. They had one child, Casey, born July 26, 1984. A petition to dissolve the marriage was filed in June 1994. Sara and James continued to reside in the family home and care for Casey during the pendency of the dissolution action.

The district court entered its dissolution decree on May 10, 1995, following a hearing. It found Sara and James were both good parents to Casey, but awarded primary care to James. The court found James was active in Casey's life and possessed a genuine concern for his well being and development. Sara was given liberal visitation.

The evidence at trial included a custody evaluation conducted by a court appointed investigator. The home study recommended James be given primary care of Casey.

Sara appeals the district court decree. She contends the district court decision was gender based, and James was granted custody because he was more involved in Casey's physical activities, such as soccer and cub scouts. She claims her overall

parenting skills are superior, and she is more able to meet Casey's long-term best interests and promote a relationship with the noncustodial parent.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the findings of the district court, but we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We recognize the superior viewpoint of the trial court to judge the demeanor of the parties and evaluate them as custodians. *In re Marriage of Krone*, 530 N.W.2d 468, 471 (Iowa App. 1995).

In our review of the record, we observe ample evidence to support granting primary care to either parent. Sara and James have both been active in Casey's life, and would continue to meet his needs as a primary custodian. Notwithstanding, we must choose one parent over the other.

The principles which guide our determination of primary care are well known. The first and primary consideration is the best interest of the child. Iowa R. App. P. 14(f)(15). It is important to consider which parent will do better in raising the child. *In re Marriage of Love*, 511 N.W.2d 648, 649 (Iowa App. 1993).

We agree with Sara gender is irrelevant in determining primary care, and neither parent should have a greater burden than the other in becoming the primary caretaker. *Love*, 511 N.W.2d at 649. We also agree custody must not be awarded based on which parent is more involved in a child's physical activities. Physical activities are only a part of a child's life. We look to which parent will provide the most complete environment. *See Krone*, 530 N.W.2d at 471.

Considering all the evidence and the findings of the trial court, we conclude the best interests of Casey would be served by designating James the primary custodian. He is active in Casey's life well beyond his physical activities, and we place weight in the trial court's finding his interest and concern for Casey is genuine and not driven by the divorce. While both parties acknowledge a communication problem exists between them, evidence indicated James will actively promote Casey's relationship with Sara.¹

We affirm the trial court and deny James' request for appellate attorney fees.

AFFIRMED.

¹ Evidence indicated James made no attempts to prevent Sara or her family from having a strong relationship with Casey. He testified the mother-child relationship is very important and he would not try to discredit Sara. He stated Sara had several good qualities and lots to offer Casey. He also indicated he would allow Sara and Casey to have as much visitation as they needed with each other, regardless of what the decree provided. Sara, however, testified she felt James' relationship with Casey was smothering, they are "too close," and James does not promote independent thinking with Casey.