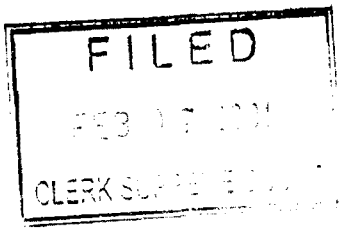
IN THE COURT OF APPEALS OF IOWA

No. 0-815 / 00-396
Filed February 7, 2001



SARA LEE BROWN,
Petitioner-Appellee,

vs.

WILLIE J. SHORTER,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

Willie Shorter appeals from a district court order awarding sole custody of the parties' children to Sara Brown. **AFFIRMED.**

Christopher L. Jorgensen of John C. Wagner Law Offices, P.C., Marengo, for appellant.

David Thinnes of Thinnes & Liesveld, Cedar Rapids, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

Will Shorter appeals from the district court's decree granting Sara Brown sole custody of their three children. We affirm.

I. Background Facts and Proceedings.

Will and Sara's relationship began in 1990 while both were serving in the Air Force and living in Oklahoma. They started living together in June 1991. Their first child, Stephane, was born January 6, 1992. Their twin daughters, Tiffane and Kia, were born April 14, 1993. Will and Sara never married.

Shortly after the twins were born Sara moved with the children to Missouri to attend college. Will remained in Oklahoma. Following graduation in 1997 Sara moved to Cedar Rapids where she currently resides.

In 1999 Will initiated custodial proceedings in Oklahoma. Those proceedings ended when the Oklahoma court determined it lacked jurisdiction to resolve Will's custodial claims.

Sara initiated these proceedings in June 1999 by filing a "Petition for Custody and Visitation Determination." The matter was reached for trial in December 1999. Although Will did not appear or present evidence, he was represented by counsel at trial. Sara was the only witness to testify at trial. When asked why she sought sole custody of the children, she testified:

> Only because I have been for the last – Stephane's almost eight and the twins are six, and I've been making all the decisions for them, and so I wish to continue that and because of past responsibility problems I've had with Willie. That's it. No abuse problems.

The district court granted Sara's request for sole custody, stating:

> The Court wants to make it clear that the award of sole custody to the Petitioner is in no way a reflection of any misconduct on the part of the Respondent, but rather is a recognition of the physical distance between the Respondent and the children, and the lack of contact the Respondent has had with the children over the past several years. . . . If the parties move closer together in the future, the Court will consider that a substantial, material change that would permit Respondent to petition for a change in legal custody.

Although the court declined to grant Will joint custody, Will was nevertheless awarded substantial visitation privileges.

Will's posttrial motions challenging the court's factual findings were overruled. On appeal Will contends the record does not support an award of sole custody and that he should be awarded joint legal custody of the parties' children. He does not contest the visitation provisions of the district court's decree.

II. Standard of Review.

Because this is an equity proceeding, our review is de novo. Iowa R. App. P. 4. We give weight to the court's findings of fact, especially where the credibility of witnesses is involved, but we are not bound by them. Iowa R. App. P. 14(f)(7); *In re Marriage of Athy*, 428 N.W.2d 310, 311 (Iowa Ct. App. 1988).

III. Child Custody.

We initially note that the legal analysis employed in determining custody of children born to unmarried parents is the same as that utilized if a child's parents were married and divorced. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988). We also recognize that Will bears no higher burden of proving parental fitness under these circumstances. *Id.* The best interests of the children are our first and governing consideration. Iowa R. App. P. 14(f)(15). The factors considered

in awarding custody are enumerated in section 598.41(3) of the Iowa Code and in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974), and they need not be repeated here. Our objective is to make a custody award that will assure the children the opportunity for the maximum continuing physical and emotional contact with both parents. Iowa Code § 598.41(1) (1999); *Athy*, 428 N.W.2d at 311.

As noted earlier, the only issue for our consideration is whether the parties should be awarded joint custody of their children. There is no dispute concerning Sara's entitlement to physical care or Will's visitation rights.

Our statutory preference for joint custody over other custodial arrangements is well settled. *See* Iowa Code § 598.41; *In re Marriage of Bartlett*, 427 N.W.2d 876, 878 (Iowa Ct. App. 1988). "Joint custody is preferred because, properly tailored to the parties' circumstances, joint custodial arrangements will often go a long way toward encouraging both parents to share the rights, responsibilities, and frequently joyful and meaningful experiences of raising their children." *In re Marriage of Weidner*, 338 N.W.2d 351, 359 (Iowa 1983). A court denying joint custody must cite in its decision clear and convincing evidence that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and parent should be severed. *See* Iowa Code § 598.41(2); *Bartlett*, 427 N.W.2d at 878.

Our review of the record indicates Sara has actively cared for the children since 1993. She has been solely responsible for their subsistence and has

exclusively attended to their physical, emotional, and educational needs since then.

In contrast, Will has no history of actively caring for the children. His only interest in parenting has been to compel summer visitation at his home in Oklahoma. In all other respects, Will has entirely deferred custodial responsibility to Sara. We share Sara's concern that Will's intrusion into custodial matters he has consistently ignored since the children were born would be unnecessarily disruptive for the children and for her. Lastly, we note the parties' geographic proximity and Sara's opposition to joint custody as additional factors weighing against granting joint custody in this case. *See* Iowa Code § 598.41(3).

Under these circumstances we conclude joint custody is unreasonable and not in the children's best interests. The visitation arrangements ordered by the district court more than adequately accommodate Will's interest in a relationship with his children. The judgment of the district court is therefore affirmed. Costs are assessed to Will.

AFFIRMED.