

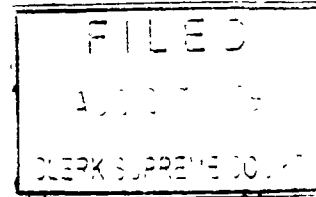
IN THE COURT OF APPEALS OF IOWA

No. 1999-209 (9-433) / 98-2022
Filed August 27, 1999

**IN RE THE MARRIAGE OF DEBRA LYN HOLST HRUBY
and WILLIAM J. HRUBY**

**Upon the Petition of
DEBRA LYN HOLST HRUBY,**
Petitioner-Appellee,

**And Concerning
WILLIAM J. HRUBY,**
Respondent-Appellant.



Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

Father appeals the custody provisions of his dissolution decree. **AFFIRMED.**

Cynthia Z. Taylor of Zamora, Taylor, Clark, Alexander, & Woods, Davenport,
for appellant.

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for appellee

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

SACKETT, C.J.

The sole issue in this appeal from a dissolution decree is whether the district court's decision to place the physical care of two boys born in 1991 and 1995 with their mother, petitioner-appellee Debra Lyn Holst Hruby, should be affirmed. Respondent-appellant William Joseph Hruby challenges the decision contending (1) he is the better custodian and (2) the district court failed to properly consider his position as an adoptive father. We affirm.

Our review is de novo. *In re Marriage of Bartlett*, 427 N.W.2d 876, 877 (Iowa App. 1988). We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Urban*, 359 N.W.2d 420, 423 (Iowa 1984). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). Our major concern is the interest of the children and our objective is to place the children in the environment most likely to bring the children to healthy physical, mental, and social maturity. *See Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988). The question is always which parent will do the better job of raising the children. *In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa App. 1991). We look to the factors set forth in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974).

We base our decision primarily on the particular circumstances of the parties before us. *Weidner*, 338 N.W.2d at 356. We give consideration to each parent's role

in child raising prior to a separation in fixing primary physical care. See *In re Marriage of Love*, 511 N.W.2d 648, 650 (Iowa App. 1993); *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa App. 1992).

A custodial placement has its primary goal of placing the children in an environment most likely to bring the children to a healthy physical, mental, and social maturity. See *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996).

This was Debra's third marriage and William's first. At the time of this marriage on March 8, 1996, Debra had three children. The oldest child was in a former husband's custody. The other two children were in her care and are the subject of this proceeding. It is unclear as to who are the children's biological fathers.

From the offset, the parties marriage was plagued with problems. However, six months into the marriage and four months before first leaving the family home, William adopted the two children.

The district court found both parents love the children and recognize the other parent loves them also.

William, however, contends he is more stable. He points out Debra's confusing relationships with a number of men and serious inconsistencies in her explanations of these relationships. William also focuses on an attempt by Debra to influence a witness. We agree with William this evidence reflects adversely on Debra's ability to provide the children with a stable environment.

William further argues his commitment to the children is clearly shown by his decision to adopt the children despite the unstable nature of the marriage. He advances the district court's reliance on Debra's long-term primary care of the children is not fair to him because he had no legal right to assume custodial care until such time as the adoption was finalized.

There is merit to William's argument. A person who voluntarily takes on responsibility for the care of a child through adoption is not necessarily given less consideration in a custodial dispute because he or she was not in the child's life from birth. Yet, this issue is not about the rights of parents, it is about the children. We are dealing with the lives of these children, not their parents. *In re Marriage of Crotty*, 584 N.W.2d 714, 717 (Iowa App. 1998). We, therefore, must agree with the district court that Debra's long-term primary care of the children weighs in her favor on the custody issue.

Also, while William may have adopted the children, he offered no support to them after the parties separated. This fact weighs heavily against him.

Though we do not award custody based on hours of service for past care, we attempt to determine which parent will in the future provide an environment where the child is most likely to thrive. *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa App. 1993) (Oxberger, C.J., dissenting). The fact a parent may have been the primary care parent is not dispositive. *See In re Marriage of Toedter*, 473 N.W.2d

233, 234 (Iowa App. 1991). However, in this case, that factor tips the scales in her favor.

We find no reason to disagree with the custody decision reached by the district court .

AFFIRMED.