

IN THE COURT OF APPEALS OF IOWA

No. 8-174 / 97-1509

IN RE THE MARRIAGE OF TERESA HEGDAHL AND DOUGLAS M. HEGDAHL

Upon the Petition of
TERESA HEGDAHL,
Appellee,

And Concerning
DOUGLAS M. HEGDAHL,
Appellant.

Appeal from the Iowa District Court for Marshall County, Timothy J. Finn, Judge.

The appellant appeals the child custody provisions of the parties' dissolution decree. **AFFIRMED.**

Eric Borseth of Borseth & Genest, Pleasant Hill, for appellant.

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellee.

Heard by Huitink, P.J., Mahan, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PETERSON, S.J.

Teresa Hegdahl and Douglas Hegdahl were married on April 1, 1989. The marriage was dissolved on July 9, 1997. The trial court awarded Teresa and Douglas joint custody of their minor child, Ryan, with the physical placement and primary care being placed with Teresa. Douglas appeals that decision, contending that the trial court erred in placing the primary care of Ryan with Teresa and awarding her $1,750 from their joint savings account. We affirm the trial court.

I. Background Facts.

Douglas was born on September 1, 1956, and was forty years old at the time of the trial. He was living at 304 South 15th Avenue in Marshalltown, Iowa. This was a home he had purchased prior to his marriage to Teresa.

He is employed, along with his brother, at Bill's Wheel Alignment Service. This is a automobile repair service owned by his father. It specializes at this time in "front-end work." However, in the past, they have also done transmission work. The trial court found his yearly income is $19,517.

Teresa was born on May 31, 1967, and was thirty years old at the time of trial. She is living in an apartment at 216 Glenda Drive in Marshalltown, Iowa. She moved into this apartment when she left the marital home at 304 South 15th Avenue in April of 1996. This is a two-bedroom apartment with a living room and a kitchen.

She is employed at Action Auto Parts, which is an auto salvage yard. The trial court found her yearly income to be approximately $15,552. In addition, she has

worked part-time at Brewster's Tavern and is paid $5 an hour. She estimated her income from this employment to be approximately $560 per year. She works at the tavern during the times Ryan is with Douglas. She felt she needed this additional income in order to pay the debts she was responsible for as a result of the dissolution decree.

Ryan was born on March 9, 1994, and was three years old at the time of the trial. During the time the parties lived together, Teresa was the primary caretaker of Ryan. She fed him, bathed him, changed his diaper and his bedding. When he was sick, although one time they got up together, most of the time she took care of this. She took him to the doctor most of the time; however, they did make some appointments on Saturday so Douglas could go. Douglas felt these activities were "woman's work" as well as taking care of the house in general. Although later in the marriage, when Teresa complained about the housekeeping activities, Douglas attempted to assist her in these endeavors.

Teresa stayed home with Ryan for six weeks immediately after he was born. She stayed with him in his room so Douglas could sleep and go to work the following day. Normally she did not work on Saturdays; however, on one occasion she did have to go to work and Douglas called her in order to come home and change Ryan's diaper.

Douglas and his brother and his wife and their parents all live within a close proximity to each other in Marshalltown. They are a very close family and participate

in numerous activities together. These include vacations to a cabin owned by Douglas's parents in Minnesota, as well as the celebration of the various holidays.

Teresa's parents also live in Marshalltown and a brother and a sister. Her older sister lives in Des Moines, and all three are employed. However, in growing up, they did encounter some difficulties. Teresa's little sister ran away starting when she was thirteen. However, she has been in Marshalltown since she was nineteen and, at the time of trial, was twenty-four. Her brother had some juvenile problems which were not all his fault but some were. He was caught at one time with some drugs. The type of drug was not identified. Her mother did use excessive punishment upon her at times, and Teresa said she would not do this to her own children. She feels that the relationship with her mother and father is a lot better at this time than it has been in the past.

The major difficulty in this marriage is the relationship between Douglas and his brother and his mother and father and what Teresa perceived was expected of her in this relationship. The social activities revolved almost exclusively around Douglas and his family. The impression that was given to Teresa was that her family did not do things in the correct manner and Douglas's family did things in a more appropriate manner. After the parties were married, Douglas expected Teresa to change to a degree her manner of dress as well as her language. She felt that Douglas, after the marriage, spent more time with his brother when he should have been spending time with her and Ryan.

On one occasion, she attempted to get Douglas to change jobs. She wanted to get some distance between him and his family so that he was not with them so much. He declined to do so and would only move if his parents moved also. She felt Douglas had a lot of stress on his job and she felt that he had some feeling that he wasn't good enough and that was passed on to her.

Teresa felt that Douglas, and his family, placed undo emphasis upon mistakes. As an example, she cited the fact that she had become pregnant prior to the time she and Douglas were married and that Douglas did not tell his parents of this situation because of this general feeling. Unfortunately, she suffered a miscarriage and Douglas's family only found out about this during the trial.

Both Douglas and Teresa accuse each other of having a "temper." The only possible support of these accusations may have been a situation which occurred with Teresa and Dorothy Hegdahl, Douglas's mother. During a visitation Douglas had with Ryan, Dorothy discovered that Ryan had a "real black stool." She contacted her doctor and was told it would be a good if they reviewed the matter. Consequently she made an appointment and it was determined there was nothing wrong with Ryan. Douglas told Teresa about that the following day, and Teresa contacted Dorothy to find out more details about the situation. Teresa contends Dorothy accused her of child abuse to the extent it would cause internal bleeding. Dorothy indicated in her testimony that she did not know what could cause that type of situation, but thought maybe ulcers and things of that type could cause it. Dorothy said that Teresa "royally

blew up" on the telephone and said she had never had anyone rip into her like that. The reason for the black stool was some berries Ryan had eaten. Teresa felt a phone call to her would have been more appropriate so the situation could have been explained.

Both parties are in good health; however, Teresa has passed out on occasions. The situations were diagnosed at the McFarland Clinic in Ames as stress-related anxiety. The first occasion happened because someone found out that she was pregnant and no one was supposed to know about this. This occurred in a restaurant and Teresa felt that Douglas was very upset with her because she passed out. She said Douglas was very angry with her when he took her to the hospital. Another occasion happened a week after they were married because she believed she was required to change the way she dressed and how she spoke because "she was a Hegdahl."

Penny Hegdahl, Dennis Hegdahl's wife, believes that Douglas is capable of providing the emotional support for Ryan equally as well as Teresa and that he would be a better custodial parent of the two because he has a stable home. She said she had gotten along fine with Teresa and talked about things in the past, including the fact that Teresa was pregnant before she and Douglas were married. She felt that Teresa was a good mother, she is articulate and speaks well, and is fun to be around.

Dennis Hegdahl said he liked Teresa and thought she was a good mother until her temper flared. His main objection about Teresa is that he thinks she is an immoral person because he does not "believe that it's morally right to jump around from man

to man and have Ryan involved." He also objected to Teresa having Ryan at the automobile races at a time he considered to be too late in the evening.

Dorothy Hegdahl, Douglas's mother, believes that Douglas would be a better custodial parent for Ryan than Teresa. She believes Douglas is more concerned but he's not strait-laced. She believes Ryan would be more supervised with Douglas, but that Ryan would not have his freedom and that Ryan would be encouraged in his education and that Douglas would want Ryan to have a better future than Douglas has. During the marriage of Teresa and Douglas, Dorothy felt that she had a very close relationship with Teresa. She felt like she was a daughter to her. She feels now like she has lost a daughter. She felt Teresa would come to her and ask her for advice, and she felt very close to Teresa. Dorothy contends Teresa told her she felt closer to her than she did to her family.

Dorothy said Teresa was a very good cook; however, she did not keep her house the way she did. She said she didn't expect her to keep house the way she did because she has been told she is "too fussy" about her housekeeping.

Teresa was issued a citation as a result of serving beer to a customer after hours when she was on duty at the bar. She paid a fine as a result of the issuance of this citation. The record contains no indication of any criminal activity on the part of Douglas.

After Teresa moved out of the home at 307 South 15th Avenue in Marshalltown, Iowa, on April 29, 1996, she began a relationship with an individual

she met through the family's attendance at the races. She subsequently discovered the individual was married and terminated that relationship. She has dated other men subsequent to the separation from Douglas and does not rule out the fact that she may marry again.

At the time Teresa and Douglas were married, Douglas had a savings account that had $5,555.63 in it, and Teresa had a savings account with $231 in it. On September 29, 1989, the account in Douglas's name had $5,720.63 in it. On September 28, 1990, the account was now in his name and Teresa's jointly and had $7,860.03 in it. On April 29, 1996, when Teresa moved out of the house on South 15th Avenue, the account had $12,000 in it. Teresa withdrew $1,000 for a rent deposit at that time.

Two custody studies have been done in this matter. One was ordered by the court and was conducted by William N. Pierce. The other one was made at the request of Teresa. It was conducted by Kenneth A. Riedel. Both investigators interviewed the parties and based their opinions on substantially the same factual background.

William Pierce recommends that Ryan be placed in the primary care of Douglas with liberal visitation on behalf of Teresa. In his opinion, Douglas's environment would be more stable and wholesome than that of Teresa and that Ryan would find more security there. He also believes that decisions made by Douglas would be more sound, predictable, and consistent. A possible drawback would be less

recognition of the larger responsibilities and less opportunity for risk-taking that would help Ryan grow.

On the other hand, Kenneth Riedel recommends that the physical custody be awarded to Teresa with liberal visitation for Douglas. He believed that Teresa can be more flexible with her standards in the long run and in the short run can better meet the needs of a preschool and elementary child. He believes that over the long haul, a child will not develop fully if the expectation is that he fit in a rigidly-prescribed pattern.

II. Standard of Review.

Our review in this matter is de novo. Iowa R. App. P. 4. In child custody cases, the governing consideration in deciding the issue of primary care is the best interests of the child. *In re Marriage of Ihle*, 557 N.W.2d 64, 69 (Iowa App. 1998). The legislature has identified factors to weigh in determining the best interests of the child. *See* Iowa Code § 598.41(3) (1997). In addition, our courts have outlined other factors that are to be considered. *See In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997); *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983); *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). These factors all bear on the court's determination of what will be in the long-term best interests of the child. *In re Marriage of Vrban*, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in this determination is which parent will do better in raising the child; gender is irrelevant and neither party should have a greater burden than the other in attempting to gain

custody in the dissolution proceedings. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). We have a duty to examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). The findings of the trial court, however, are recognized and given weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). The trial court has had the advantage of hearing the evidence and observing the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). This important perspective can greatly enhance the decision-making process and is not forgotten on appeal. *See In re Marriage of Callahan*, 214 N.W.2d 133, 136 (Iowa 1974).

III. Custody.

In our de novo review of the evidence, we agree the district court correctly designated Teresa to be the primary caretaker of Ryan. Two studies have been made concerning the question of who should be the primary caretaker by equally-qualified individuals. The trial court accepted the recommendation of Kenneth Riedel as opposed to the opinion of William Pierce and set out the reasons for this. We believe we should defer to the trial court on this question; it had the opportunity to seeing both individuals testify in person.

Teresa has been the primary caretaker of Ryan. Douglas believed that this care was the responsibility of the mother and expressed this by saying this was "woman's

Douglas's activities are tied in almost exclusively with his family in what appears to be a rather rigid environment. Teresa is more flexible in her approach to daily activities and Kenneth Riedel noted that a child will not develop fully if the expectation is that he fit in a rigidly-prescribed pattern.

An issue has been made of the morals of Teresa. This is based upon her relationship with other individuals after the parties separated and her part-time work at a tavern and the fact that she was charged with a criminal offense. We do not believe these rise to the level of denying her physical custody of Ryan. The record does not reveal that her activities with other individuals after the parties' separation had an adverse affect on Ryan. The part-time job was necessary in her view in order to help her defer some of the obligations from the marriage. The crime she was charged with was not serious.

We have considered the issues raised by Douglas in his brief and, although we have not specifically addressed them, we find they do not rise to the level of denying Teresa physical custody of Ryan.

IV. Savings Account.

Douglas contends that the court erred in awarding Teresa $1,750 as her share of the savings accounts. Douglas contends that the trial court found that Douglas brought $5,555.63 into the marriage, whereas Douglas actually brought in $7,860. We find that the record shows that in September of the year following the marriage the balance in the account was $7,860 and that at the time of the marriage the savings

account Douglas had was in the amount of $5,555.63 and that the trial court was correct in its calculations.

In conclusion, we find the trial court correctly awarded physical custody of Ryan to Teresa and that the calculation of the amount Teresa was entitled to from the savings account was correct.

AFFIRMED.