

IN THE COURT OF APPEALS OF IOWA

No. 5-405 / 94-2026

**IN RE THE MARRIAGE OF DIANE M. ROUDABUSH
AND DONALD P. ROUDABUSH**

Upon the Petition of

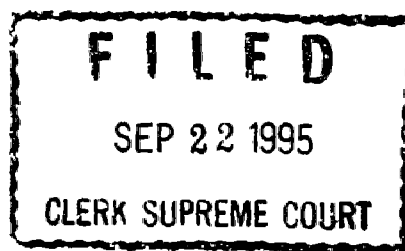
DIANE M. ROUDABUSH,

Petitioner-Appellant,

And Concerning

DONALD P. ROUDABUSH,

Respondent-Appellee.



Appeal from the Iowa District Court for Benton County, Thomas M. Horan,
Judge.

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

Constance Peschang Stannard, Iowa City, for appellant.

William D. Olson of Charnetski, Olson, Lacina, Pendleton & Garland, L.L.P.,
Grinnell, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

SACKETT, P.J.

Petitioner-appellant Diane M. Roudabush appeals from the decree dissolving her marriage to respondent-appellee Donald P. Roudabush. Diane contends she, not Donald, should have been awarded physical care of their son Shane, born June 10, 1991. She further challenges the provision made by the trial court for visitation, child support, and medical insurance. Diane contends the trial court should have ordered Donald to pay her attorney fees. We affirm.

Diane, born in 1968, and Donald, born in 1965, were married in October 1989. Their education ended with high school, but during the marriage both have been regularly employed. At the time of trial, Diane worked as an employment coordinator and Donald as a self-employed contractor.

The trial court, in ordering the dissolution, approved the parties' request for joint custody, placed physical care with Donald, and ordered Diane to pay child support of \$228.15 per month and one-half of the uninsured medical expenses. Donald was ordered to carry medical and dental insurance on Shane. Diane was given visitation every other weekend, one evening per week, alternate holidays, and six weeks during the summer. No attorney fees were awarded.

Diane challenges the physical care award and the trial court's failure to rule on her 179(b) motion requesting an expansion of the decree to include additional reasons for the physical care award and to award physical care to her. The trial court denied the motion, finding it was not filed in the required time period, but went on to find if

it were found to be timely, it would be overruled. Diane contends her 179(b) motion was timely. We find it unnecessary to address the issue of whether the motion was timely. The trial court found if it were timely it was denied.

The focal question is will Diane or Donald be the better custodian. *See In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). We review de novo. Iowa R. App. P. 4. We base our decision primarily on the circumstances of this particular case. *See In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Additional factual findings by the trial court would have been helpful to this court. However, we note the trial judge filed his decision less than forty-eight hours after the trial when the facts would still be fresh in his mind. We commend him for his prompt resolution of the case. Families are best served by prompt resolution of custody issues.

Our review of the record convinces us both Diane and Donald are loving and caring parents. They each love Shane and have had substantial involvement in his care. They each have strong points and weaknesses. The parents do not dispute Shane will be cared for in either home.

Diane has addressed in her brief each factor set forth in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). We have reviewed her arguments. We consider also the dictates of Iowa Code section 598.41(3) (1995). We note

Diane's substantial concern for her child and his care as well as her dedication and responsibility to her employment.

We look, too, at the evidence from Shane's child care provider that Shane has an extremely strong bond with his father. There is evidence from other witnesses Donald is a loving and caring father.

Donald lives in a rural area close to his family and would not have Shane attend preschool; and when Shane reaches school age, he will attend a rural public school. Diane argues the fact she lives in an urban area, is not certain about preschool, and would have Shane in what she claims is a better public school system, weighs in her favor. We find no valid reason to disagree with the decision of the trial court. We affirm the custody award.

Diane's next issue concerns the fact the trial court ordered Donald to maintain health and dental insurance on Shane. Diane advances at the time of trial she had medical and dental insurance on Shane through her employer and she should continue the coverage. Donald's brief says he takes no position on this issue. He says if Diane is ordered to carry insurance, he will acquiesce. He is uncertain what the cost of insurance coverage will be should he purchase it.

Shane must have health insurance. The problem is Diane's plan involves an HMO and the distance Donald lives from her care providers may make continuation of Shane in the plan impractical. The record is sketchy about Donald's plans to obtain insurance. If Donald cannot show Diane he has obtained medical and dental

insurance on Shane comparable to what she now carries, Diane shall continue her current insurance and Donald shall pay her monthly the additional amount she pays for the insurance to cover Shane.

Diane contends she should have been awarded attorney fees by the trial court. She argues Donald's monthly income exceeds hers by \$400. We review for an abuse of discretion. *See In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). The trial court did not abuse its discretion.

We award no attorney fees on appeal.

AFFIRMED.