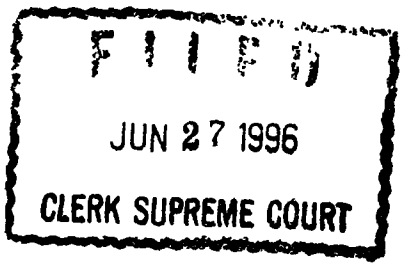
IN THE COURT OF APPEALS OF IOWA

No. 6-327 / No. 95-1344



DOUGLAS A. VANDENBRINK,

Appellant,

vs.

SHEILA M. (JEWSBURY) PATTERSON,

Appellee.

Appeal from the Iowa District Court for Webster County, Kurt Wilke, Judge.

Douglas Vandenbrink appeals from a district court order on his petition for visitation and custody. **AFFIRMED.**

Edward Bjornstad of Bjornstad Law Office, Spirit Lake, for appellant.

Dan T. McGrevey, Fort Dodge, for appellee.

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

VOGEL, J.

Douglas Vandenbrink met Sheila Jewsbury on July 4, 1991 and they began living together. On October 17, 1991, Douglas told Sheila to leave. On July 13, 1992, Tanner Douglas Jewsbury was born to Sheila.

Douglas initially denied being Tanner's father. The State brought an action to determine paternity. Blood tests completed in the fall of 1993 indicated a 99.91% probability that Douglas was Tanner's father. Douglas then began to seek visitation with Tanner. Sheila initially allowed visitation but curtailed the visits when child support was not forthcoming.

Douglas filed a petition for visitation on February 14, 1994. On June 30, 1994, the court ordered Douglas to pay child support of $342 per month, including $50 per month towards accrued support of $7008. Douglas then amended his petition to include a request for custody.

At the time of the hearing, Douglas was twenty-six years old. He is a graduate of Northwest Iowa Technical College and works for Hill Straight Auto Body in Spirit Lake, earning about $27,000 per year. Douglas was married once before and is currently married to Jeanette who was pregnant with Douglas's child at the time of the hearing.

Sheila was twenty-seven at the time of the hearing and is a high school graduate. Her first marriage ended in divorced in 1989 with no children of that marriage. She

met Brian Seay in the Navy and had a child with him. Sheila has had little contact with that child. She now works at White Transfer and Storage and lives with Tanner and her husband, William "Butch" Patterson, in an apartment in Badger, Iowa.

Following trial, the district court entered an order continuing sole legal custody of Tanner with Sheila but awarding Douglas visitation. The district court believed Sheila had many faults; however, the court also found Sheila had been Tanner's primary care giver and seemed genuinely concerned with his well-being. The district court believed Douglas had many factors weighing in his favor, including a steady job, a stable spouse, a good home, and a fine family. The district court also questioned Douglas's motives for seeking custody and found "[h]is concern for Tanner's well being seems more a facade for the well being of his pocket book."

Douglas appeals.

Our review of this case is de novo. *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa App. 1994). The criteria governing custody decisions are the same regardless of whether the parties are dissolving their marriage or are unwed. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988).

The mother of a child, whose paternity has not been acknowledged and who has not been adopted, has sole custody of the child unless and until the court orders otherwise. Iowa Code § 600B.40 (1993). Once a paternity judgment is entered, the father may then seek visitation or custody rights. *Id.* In the case before us, Sheila had

sole custody of Tanner for two years prior to Douglas seeking custody in his amended petition. At the time this ruling was entered, Tanner had been in Sheila's care for three years. Douglas is now attempting to disrupt this custodial arrangement. Like the district court, we believe Douglas's motives in seeking custody of Tanner are questionable. Douglas denied paternity until it was proven, despite testimony which indicated he should have known Tanner was his child. Also, testimony was provided from a number of witnesses regarding Douglas's threat to seek custody if Sheila attempted to make him pay child support. In addition, Douglas initially only sought visitation and did not attempt to seek custody of Tanner until after the district court ordered him to pay child support in June 1994. While this evidence does not reflect on Douglas's ability to raise Tanner, it does raise serious questions regarding Douglas's selfish motives and his true concerns for Tanner's well-being.

Consideration should be given to allow the child to remain with the parent who has been the historical primary care giver so as to provide continuity and stability for the child. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995); *In re Marriage of Burkle*, 525 N.W.2d 439, 441-42 (Iowa App. 1994); *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa App. 1992). Sheila has been the primary caretaker since the child's birth, while Douglas has had minimal contact with the child.

In child custody cases, the best interests of the child is the first and governing consideration. *Id.* The factors the court considers in awarding custody are enumerated

in Iowa Code section 598.41(3), in *In re Marriage of Weidner*, 338 N.W.2d 351, 355-56 (Iowa 1983), and in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration" -- 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 determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). The district court sifted through extensive testimony on this issue. Our de novo review of the record does not reveal evidence supporting a finding that Douglas can better raise Tanner than Sheila.

Accordingly, we affirm the ruling of the district court giving sole legal custody of Tanner to Sheila.

AFFIRMED.