IN THE COURT OF APPEALS OF IOWA

No. 8-230 / 97-1546

IN RE THE MARRIAGE OF MARK ALLAN HOLMGREN AND LINDA ANN HOLMGREN

Upon the Petition of
MARK ALLAN HOLMGREN,

Petitioner-Appellee,

And Concerning
LINDA ANN HOLMGREN,

Respondent-Appellant.

FILED
JUN 24 1998

Appeal from the Iowa District Court for Montgomery County, Keith E. Burgett, Judge.

Linda Holmgren appeals from the decree dissolving her marriage to Mark Holmgren. **AFFIRMED AS MODIFIED.**

G. Elizabeth Otte, Council Bluffs, for appellant.

Bruce E. Swanson of Swanson Law Firm, Red Oak, for appellee.

Heard by Cady, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Linda Holmgren appeals the primary physical care portion of the district court's dissolution decree. Linda contends the district court erred when it awarded Mark Holmgren primary physical care of the parties' minor children. We affirm as modified.

Linda and Mark married in 1993. Linda was pregnant with the parties' first child, Lexis, at the time of the marriage. Lexis was born in July 1994 and Madison, their second child, was born in September 1995. Linda also has custody of two children from a prior marriage. One child is eleven years old and the other is thirteen.

Linda did not work outside the home until shortly before Madison's birth, when she began part-time employment. Mark worked full-time. Linda later became a full-time waitress at a local restaurant. She worked nights to enable her to care for the children during the day and Mark to care for the children at night.

The parties and the district court all agreed both parents are loving and caring and each would make excellent primary caretakers of Lexis and Madison. Mark testified:

> MR. SWANSON: Is it your feeling Linda is a very good mother?
> MARK: She's a terrific mother.

Linda testified:

> MR. SWANSON: Okay. Mark said you were a very, very good mother. Would you say Mark's a very good father?
> LINDA: Yes. He's a good father.

In its ruling, the district court stated:

> The Court believes that the respondent has an extremely busy lifestyle in view of her new job, her new relationship, and the fact that she has to continue to rear two children who are approaching or are in their early teens. The Court finds that the petitioner is the more suitable primary physical custodian of the parties' two minor children because of his devotion and commitment to spend as much time as he has been allowed with his children during the pendency of this dissolution proceeding. The petitioner has been equally as responsible as the respondent for the physical and emotional needs of the children.

The district court also expressed some concern over the fact Linda had dated her boyfriend prior to her marriage to Mark and the relationship had failed.

I. STANDARD OF REVIEW. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Although our review of the trial court's award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity. *In re Marriage of Romanelli*, 570 N.W.2d 761, 763 (Iowa 1997).

II. PRIMARY PHYSICAL CARE. The critical issue before us is the best interests of the children. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This must, of necessity, be the first and controlling consideration in our discussion. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41; *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983); and *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The issue in determining the best interests of the children 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). This decision requires selection of a custodial parent who can minister more effectively to the long-range best interests of the children. *Winter*, 223 N.W.2d at 167. The objective should always be to place the children in the environment most likely to bring them to a healthy physical, mental, and social maturity. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). Each custody decision is based on its own particular facts. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

We find the district court erred when it awarded Mark primary physical care of the parties' children. First, the district court expressed concern over Linda's duties as a mother to the children from her previous marriage. However, there is no evidence these duties would hamper her ability to care for her other children. In addition, there is a preference for keeping siblings together. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa App. 1996). Second, the district court was concerned about Linda's relationship with her boyfriend. However, there is nothing in the record to suggest the relationship is inappropriate or that any misconduct has taken place in front of the children. *See In re Marriage of Pothast*, 539 N.W.2d 199, 202-03 (Iowa App. 1995) (mother exercised poor judgment when she slept with a boyfriend in front of the child in a motel room; and taking a child to a place where the

child would know his mother was in bed with another man to whom she is not married is not looked upon as acceptable social conduct, nor is it considered appropriate parenting). Third, the district court expressed concern over Linda's new job as contributing to an "extremely busy lifestyle." We find this concern to be misplaced. Last, Linda was the primary physical caretaker during the marriage. We note the fact a parent was the primary caretaker prior to separation does not assure he or she will be the custodial parent. *In re Marriage of Kunkel*, 546 N.W.2d 634, 635 (Iowa App. 1996). However, we think it is an important factor in this case given the strength of both parents.

In summary, this is a close case in which both parents are fit to assume the duties and responsibilities of primary physical care. However, after weighing all the factors present, we find the fact Linda was the primary physical caretaker during the marriage and the fact step-siblings would be separated to be controlling. We modify the decision of the district court and grant Linda primary physical care of the children. Costs of this appeal are to be taxed to Mark.

AFFIRMED AS MODIFIED.