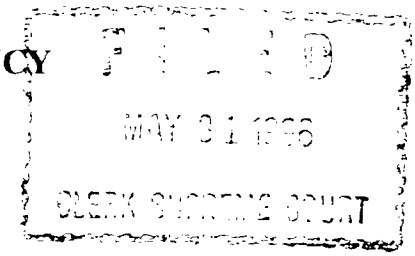
IN THE COURT OF APPEALS OF IOWA

No.6-206 / 95-1429



IN RE THE MARRIAGE OF CHRISTINE MARIE LUCY AND VIC LEROY LUCY

Upon the Petition of
CHRISTINE MARIE LUCY,

Appellee,

And Concerning
VIC LEROY LUCY,

Appellant.

Appeal from the Iowa District Court for Washington County, Robert Bates, Judge.

Vic Lucy appeals the custody provisions in the parties' dissolution of marriage decree. **AFFIRMED.**

Richard S. Bordwell, Washington, for appellant.

Susan Dulek, Legal Services Corporation, Iowa City, for appellee.

Heard by Habhab, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

CADY, J.

This appeal requires us to determine which parent can best provide for the needs of the parties' two minor children. On our de novo review, we affirm the district court's award of primary physical care to Christine (Chris) Lucy.

Chris and Vic Lucy married in 1985. They moved to various places, yet eventually resided in Washington, Iowa, where several members of Chris' immediate family resided. The couple had two children together, Jesse, born April 1987, and Autumn, born September 1990. Chris has primary physical care of her two children from a former marriage. Vic has one adult child from a previous marriage whom he owes child support. Vic's parental right to another minor child were terminated several years ago. Shortly before the separation, Charlene Vasquez, along with her two children, resided with Chris and Vic.

The parties separated in April 1994. Following a fight with Chris, Vic decided to take the children to live in Tennessee. He confided in Charlene, who agreed to also go to Tennessee with her children. Vic left Chris a note, but did not reveal where he was taking Jesse and Autumn.[1] At the time of the move to Tennessee, Vic and Charlene's relationship was platonic. For two weeks, Chris did not know the whereabouts of her two children. The children remained in Tennessee, where Vic,

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[1] Vic testified at the dissolution hearing, he was afraid to tell Chris where he had taken their children in case she would attempt to take them back to Iowa.

now involved in a romantic relationship and living with Charlene, provided a safe nurturing home, until May 1995.

Chris filed for dissolution and temporary custody in Iowa in October 1994. Vic filed shortly after in Tennessee. Both courts agreed Iowa should assume jurisdiction, and the Tennessee proceeding was dismissed. In April 1995, the Iowa district court granted Chris temporary custody, noting Vic caused the delay in custody proceedings by litigating the jurisdictional issue after removing the children from Iowa without giving Chris any notice.

At the dissolution hearing, Chris testified Vic assaulted her on numerous occasions, yelled and hit the children's head or arm while disciplining them, and pled guilty to assault on another individual. Chris also testified she allowed her older daughter's eighteen-year old boyfriend to move into her home, but threw him out when she suspected they were sleeping together. Vic testified Chris would often party and come home very late. He stated rumors about Chris' infidelity and her late nights led to the separation. Vic denied abusing Chris, but admitted to using marijuana during the marriage.

The district court found both parties to be active, concerned, caring parents, observing both had made mistakes in the past. It, however, found Chris could more adequately provide for the children's best interests and welfare, especially since she had several family members in the Washington area. The district court found the bond between Jesse and Autumn was stronger with their half-siblings than with

Charlene's children, and Chris had better insight into the children's educational needs. It also noted Vic's relationship with Charlene was not permanent, and Chris appeared to be more fixed and stable in her future. The court awarded Chris primary physical care of the children, with liberal visitation for Vic.

Vic appeals contending the district court erred in granting Chris primary physical care. He maintains the evidence shows he is the better parent to provide for the children's long-term best interests. He also contends the district court improperly applied a preference to Chris in its determination because she is the children's mother.

I. Standard of Review

Our review in this matter is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

In child custody cases, the best interests of the child is the first and governing consideration. The critical issue in determining the best interests of the child is which parent will do better in raising the child. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). Gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. *Id.*

II. Primary Physical Care

Children should be placed in an environment most likely to bring them to healthy physical, mental, and social maturity. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1991). A stable environment is also necessary. *Id.* The district court may also consider the denial by one parent of the child's opportunity for maximum continuing contact the other parent, without just cause, in determining the proper custody arrangement. Iowa Code section 598.41(1)(1993).

We agree with the district court Chris is the better parent to provide a stable, nurturing environment for Jesse and Autumn. Both parties are very interested in the children's needs and educational development. However, Chris' family ties in Washington, and her motivation to seek better employment, show her desire for stability and permanence for the children. Chris also has not attempted to undermine the children's relationship with their father. Vic, on the other hand, took the children to Tennessee without telling Chris, and seriously impeded a healthy relationship between Jesse, Autumn, and their mother. Testimony also indicated Vic was abusive toward Chris, and often yelled at the children.

The court also recognized the strong bond the children have with their half-brother and sister. We recognize the separation of half-siblings should only be done where it may promote the long-range interests of the children. *In re Marriage of Holcomb*, 471 N.W.2d 76, 80 (Iowa App. 1991) (citing *In re Marriage of Orte*, 389

N.W.2d 373, 374 (Iowa 1986)). The bond between these half-siblings further indicates Chris should be awarded primary physical care of Jesse and Autumn.[2]

We agree with the district court and find it to be in Jesse and Autumn's best interest that the parties enjoy joint custody of Jesse and Autumn with primary physical care granted to Chris.

III. Maternal Preference

Vic argues the district court gave a preference to Chris solely because she is the children's mother, and never substantiated its reasons for why Chris would be the better parent to provide for the children. We find the district court's finding were supported by the record, and were not the result of a preference of one gender over the other. *See Ullerich*, 367 N.W.2d at 299 (gender is irrelevant in custody determinations). Therefore, we find no merit in Vic's contention of a maternal preference.[3]

AFFIRMED.

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[2] We, however, do not condone the allowance of a child's adult boyfriend to live in the same home as the child and other younger children. Chris also recognized permitting her daughter's boyfriend to remain in the home was a bad example to set for the younger children.

[3] Chris contends Vic never filed a 179(b) motion on this issue and, as such, failed to preserve error on this issue. Since we find Vic's claim to be without merit, we need not address her preservation of error argument.