IN THE COURT OF APPEALS OF IOWA

No. 0-362 / 99-1994
Filed June 28, 2000

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CLERK SUPREME COURT

IN RE THE MARRIAGE OF ADAM DANIEL HOLM AND ELISE JANEL HOLM

Upon the Petition of
ADAM DANIEL HOLM,
Petitioner-Appellant,

And Concerning
ELISE JANEL HOLM,
Respondent-Appellee.

Appeal from the Iowa District Court for Mitchell County, Paul W. Riffel, Judge.

Petitioner appeals from a decree dissolving his marriage and granting primary physical care of his two children to the respondent. **AFFIRMED.**

Russell Schroeder, Jr., of Schroeder Law Office, Charles City, for appellant.

Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellee.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

STREIT, P.J.

When parents ask the courts to determine which parent should have primary physical care of their children, we must rely on numerous statutorily and judicially-fashioned factors that evidence those children's best interests. Adam Holm alleges the trial court failed to properly employ these factors in determining his wife, Elise, should have primary physical care of their two children. After reviewing the record and weighing all appropriate factors, we find the court properly granted Elise primary physical care and affirm the decree.

I. Background Facts & Proceedings.

Adam and Elise Holm married in November of 1995 and had two children: Adam, born July 29, 1996, and Cierra, born September 8, 1997. The parties married in California while Adam was in the Marine Corps. While in California Adam worked, and Elise stayed home with the children. In July of 1998 Adam received an honorable discharge, and the parties moved to Osage, Iowa.

The parties separated in August of 1998, after having an extremely heated argument. Elise took Cierra and fled to a women's shelter in Mason City. Cierra later went to stay with her grandparents in California. Adam did not see his daughter for three months. Elise later lived with various people in Muscatine. For the seven months prior to trial, Elise had been living with her boyfriend in a three-bedroom mobile home they recently purchased. Elise is employed at a pallet company as a secretary. She is home with the children by 3 p.m. each day. Adam had been living with his parents, but later purchased a mobile home where he presently resides. He works for an oatmeal company working the night

shift. The children stay with his parents in the evenings, and his sister baby-sits during the day.

In October of 1999 the trial court dissolved the Holms' marriage, awarding primary physical care of the children to Elise. The court found both parents to be loving and nurturing, but found Elise more credible, stable, and mature.

Adam appeals, claiming the trial court erred in awarding primary physical care to Elise.

II. Standard of Review.

We review primary physical care determinations de novo. Iowa R. App. P. 4; *see In re Marriage of Miller,* 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings, but give them deference because it had an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians. *In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997).

III. Primary Physical Care.

In determining primary physical care, the children's best interests are our governing consideration. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa App. 1996). Determining which parent will do better in raising the children is the critical issue. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). The objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *In re Marriage of Harris*, 499 N.W.2d 329, 332 (Iowa App. 1993).

There are a number of statutorily and judicially-recognized factors designed to assist in determining the primary caregiver. *See* Iowa Code §

598.41 (1997); *In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974). Those applicable to this case include: (1) the traits of each parent, including stability and character; (2) the capacity of the parent "to provide for the emotional, social, moral, material, and educational needs of the child"; (3) the stability of each proposed environment; and (4) the parent with greater primary physical care experience. *In re Marriage of Winter*, 223 N.W.2d at 166; *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Wilson*, 532 N.W.2d at 495. To the contrary, some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the particular facts of each case. *Id.*

A. The Traits of Each Parent. The stability and character of each parent will play a large role in the healthy maturation of the children. Although neither parent is completely sound in both of these areas, Elise's stability and character appears better suited to meet the children's long-term needs. While Elise did suffer a period of months where she somewhat drifted between residences, at the time of trial Elise was employed and had a stable residence. With regard to her character, the court specifically found her more mature and credible. We concur with the trial court's assessment. Additionally, Elise appears more encouraging and supportive of the children's relationship with Adam. Adam is not unstable nor of poor character. However, Adam did have a tendency to paint Elise as a poor mother, inattentive to her children's needs, when the record simply did not support such a conclusion. We acknowledge Elise displayed

inappropriate behaviors in ferreting away the parties' daughter and her rather casual relationships with men, but in balancing both stability and character, the scale tips in Elise's favor.

B. Providing for the Children's Needs. Children rely on their parents for all of their core needs. A parent's ability and willingness to supply these needs are of utmost importance. Both parents are perfectly capable of providing for the children's core needs. Their ability appears to be roughly equal as each actively engages their children in a process that will undoubtedly lead to their healthy maturation. This factor fails to cut in favor of either parent.

C. The Proposed Environments. The environment proposed by each parent is suitable for raising healthy children. Both parents now have their own home, and they both have the support of their family and the community. However, given Adam's work schedule, the children live a lifestyle marred by a constant state of flux. While Adam is at work, the children sleep at their grandmother's home, and during the day they are back at his home in the care of a baby-sitter while he sleeps. The willingness of his extended family to assist in the care of the children is to be applauded, but it certainly does not generate stability and routine in a child's life. Therefore, the environment proposed by Elise is marginally better.

D. The Parent with Greater Primary Care Experience. The record indicates Elise has the greater primary care experience. She was the most heavily involved in the day-to-day care of the children and provided for most of

their meals and major needs. We once again recognize Adam's active involvement in the lives of his children, but Elise has superior experience.

E. Conclusion. The best interests of the children require their placement with Elise. We give deference to the trial court's credibility findings and its decision as it had the opportunity to view firsthand the parties' demeanor and character. The district court is affirmed.

AFFIRMED.