FILED
AUG 27 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-235 / 90-1699

421

IN RE THE MARRIAGE OF MARIE REYNOLDS AND GLEN REYNOLDS

Upon the Petition of
MARIE REYNOLDS,

Appellant,

And Concerning
GLEN REYNOLDS,

Appellee.

Appeal from the Iowa District Court for Marshall County, Timothy J. Finn, Judge.

Petitioner mother appeals a district court order awarding the parties joint custody of their three children and awarding respondent father primary physical care. **AFFIRMED.**

Douglas W. Beals of Welp, Harrison, Brennecke & Moore, Marshalltown, for appellant.

T. R. Hoglan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

Marie Reynolds and Glen Reynolds were married in March of 1985. At the time Marie was seventeen years old and Glen was twenty-one years old. Glen was in the Marines when the parties met in 1985. He was given an honorable discharge shortly thereafter, however. Glen was asked to leave the Marines because of allegations of homosexuality. The parties moved many times during the marriage, and both parties have held many jobs. The parties have three minor children: Christina, born in February 1987; Stephen, born in March 1988; and Nicholas, born in August 1989.

Marie has her GED and is currently studying child care at the Marshalltown Community College. Marie has generally worked as a waitress or as a cocktail waitress during the marriage. At one point during the marriage Marie left the children with Glen and traveled with a carnival for a month. Otherwise, Marie was the primary caretaker for the children. Marie separated from Glen in June 1989. At first she and the children moved in with her sister. They then moved to an apartment and, finally, to low-income housing. A man named Russ Bagnell was living with Marie and the children.

Glen has a high school diploma and an associate of arts degree from Marshalltown Community College. He received some training as an electrician in the Marines, and most of his employment has been as an electrician. At the time of trial, Glen was working for Manpower, Inc. and had been

placed at Fisher Controls in Marshalltown where he installs computers. Glen had held his job at Manpower, Inc. for seven months by the date of the trial--the longest he had held any job. After Marie and the children moved out, one of Glen's friends from the Marines, Ray Olson, moved in with Glen. Ray had also been asked to leave the Marines because of alleged homosexual conduct. At the time of trial, however, Glen was romantically involved with a woman named Jamie Allen.

The district court entered a decree of dissolution for the parties on October 17, 1990. The parties were granted joint legal custody of the children. The court placed physical care of the children with Glen. The court found Glen was more stable and mature than Marie, noting in particular the time when she left the children to join a traveling carnival and her open relationship with Russ. Marie now appeals.

Marie claims physical care of the minor children should have been placed with her. She states she has been the primary caretaker for the children and she had always taken care of the children's medical problems. Marie asserts Glen has a temper with the children. Glen was convicted of simple assault because of an incident where he hit their son, Stephen. Marie also feels Glen did not financially support his children after the separation.

We review this matter 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, but are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us and must seek only to establish that which will be in the best interests of the children. Iowa R. App. P. 14 (f)(15); Iowa Code § 598.41 (1) (1991); In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983); In re Marriage of Bunch, 460 N.W.2d 890, 891 (Iowa App. 1990); In re Marriage of Krebsbach, 395 N.W.2d 189, 190 (Iowa App. 1986).

In child custody cases the best interest of the children is the first and governing consideration. 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, 356 (Iowa 1983), and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the court's determination of what will be in the long-term best interests of the children. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interest of the children is which parent will do better in raising the children; gender is irrelevant; and neither parent should have a greater burden than the other in attempting to gain custody. Iowa Code § 598.41(3) (1991); In re Marriage of Lacaeyse, 461 N.W.2d 475, 477 (Iowa App. 1990); In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

After a thorough evaluation of the record, we find the children's best interests are served by providing for joint custody in both of their parents and primary physical custody with Glen, their father. The trial court found that although Marie provided the children with their basic day-to-day needs, Glen showed greater maturity and stability. We are in agreement with the trial court and accordingly affirm.

Marie is significantly less mature than Glen. At least two times she has left when faced with problems. Several weeks after Christina's birth, she took Christina with her to Florida without telling Glen. Shortly after Stephen's birth, she left her children to join a carnival passing through the area. The district court also felt the evidence was clear Marie uses illegal drugs, called one child a "faggot," and she told one of the children that her live-in boyfriend was actually the child's father. Additionally, Marie has moved with the children four times in one year. These incidents demonstrate Marie's immaturity and lack of stability.

Since the separation, Marie has been involved with at least two men, Pete Babbinette and Russ Bagnell. Mr. Bagnell has been living with her and the children for more than four months. Marie testified she is careful not to engage in sexual relations with Mr. Bagnell in front of the children; we believe this testimony again shows her immaturity. Marie does not recognize having this man live

with her may cause the children significant confusion a have an adverse effect on them.

In addition, there is conflicting evidence abo excessive sexual curiosity and behavior by Christina a Stephen and their exposure to X-rated movies and horr movies while living with Marie. In such a situation feel it appropriate to rely on the trial court's decisi reached after hearing all the evidence coupled with t opportunity to watch the witnesses present the testimony. Maisel v. Gelhaus, 416 N.W.2d 81, 86 (Iowa Ap 1987). We agree, therefore, with the trial court that Gl can offer the children a better environment.

Marie contends Glen has a temper with the childre Glen has struck Stephen and caused cuts or bruises. testified these incidents occurred when Stephen was biti his sister and Glen had repeatedly tried to stop him fr doing it and used physical punishment only as a la resort. The district court had the opportunity to vi Glen in person and was not concerned about his temper.

Glen has always attempted to find work and be employ so that he can support his children. Marie asserts Gl did not financially support his children after t separation. At the time he supported his children as we as he could; he provided them with what they needed fir and then made child support payments.

Glen's alleged homosexuality alone was properly not guiding factor in determining custody by the distri

court. See In re Marriage of Walsh, 451 N.W.2d 492, 493 (Iowa 1990) (rejecting restriction that no unrelated adult could be present with homosexual father during visitation; most important to the court was that he was a good and loving father); D.H. v. J.H., 418 N.E.2d 286, 293 (Ind. Ct. App. 1981) (homosexuality without evidence of any adverse effect upon welfare of child does not render parent unfit to have custody). Glen is involved in a relationship with a woman now which has been significantly more discrete than Marie's relationship with her lover.

Both of these parents love the children and have provided significant physical care for them since the separation. We agree with the district court that the children have a better chance of being reared in a stable environment with Glen than they would with Marie. An important rule in child custody determinations is that children need a stable and continuing environment. In re Marriage of Carrico, 284 N.W.2d 251, 254 (Iowa 1979). The trial judge had the opportunity to judge the credibility of the witnesses, and he felt Glen was much more mature and stable than Marie. We find no reason to disturb the trial court's decision to place the children in Glen's physical care and to award him the baby bed.

AFFIRMED.