

IN THE COURT OF APPEALS OF IOWA

No. 1999-86 (9-273) / 98-1306

Filed June 23, 1999

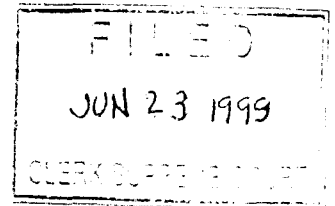
**IN RE THE MARRIAGE OF PAMELA JO PAIGE
AND MICHAEL EUGENE PAIGE**

Upon the Petition of
PAMELA JO PAIGE,

Petitioner-Appellee,

And Concerning
MICHAEL EUGENE PAIGE,

Respondent-Appellant.



Appeal from the Iowa District Court for Lucas County, Richard D. Morr,
Judge.

Michael Paige appeals the decree dissolving his marriage to Pamela Paige.

AFFIRMED.

Bruce L. Cook of Cook & Brown, P.L.C., Clive, for appellant.

Kolleen K. Samek, Des Moines, for appellee.

Heard by Sackett, C.J., and Vogel, and Zimmer, JJ. Streit, J., takes no part.

ZIMMER, J.

Michael Paige appeals the decree dissolving his marriage to Pamela Paige. He contends the district court erred in failing to order shared physical care of the parties' children. Pamela seeks an award of appellate attorney fees. We affirm the decision of the district court but decline to award appellate attorney fees.

I. Background Facts and Proceedings. Pamela Jo Paige and Michael Paige were married in September 1984. They have three children, Brett, born in September 1986, Bradlee, born in February 1990, and Joseph, born in July 1993.

Pamela filed a dissolution petition in June, 1997. Trial was held in April 1998. The district court entered a decree which granted the parties joint custody of the children with Pamela having primary physical care. Michael was awarded liberal visitation and was ordered to pay child support pursuant to the child support guidelines. The court rejected Michael's request for shared physical care in part because of perceived hostility between the parents. The sole issue raised by Michael on appeal is whether the trial court erred in failing to find a joint physical care arrangement was in the best interests of the parties' three sons.

II. Scope of Review. Review of the custody provisions of a divorce decree is de novo. See Iowa R. App. P. 4; *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by those findings.

See Iowa R. App. P. 14(f)(7); *Conklin v. Conklin*, 586 N.W.2d 703, 706–07 (Iowa 1998); *In re Marriage of Barry*, 588 N.W.2d 711, 712 (Iowa App. 1998). We give deference to the factual findings involving credibility of witnesses because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. See *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992). When reviewing child custody cases, our first and governing consideration is the best interests of the children. See Iowa R. App. P. 14(f)(15); *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before the court. See *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

III. Determination of Joint Physical Care. Traditionally, joint physical care arrangements have been disfavored in Iowa. See *In re Marriage of Roberts*, 545 N.W.2d 340, 342 (Iowa App. 1996); *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa App. 1994); *In re Marriage of Coulter*, 502 N.W.2d 168, 171 (Iowa App. 1993). Our historical aversion to joint physical care must, however, be tempered by recent legislative changes which proclaim joint physical care is a viable disposition of a custody dispute. See Iowa Code § 598.41(5) (Supp. 1997). In determining whether joint physical care is appropriate, we focus on whether such an arrangement is in the children’s best interests and whether it will preserve the relationship between each parent and the children. *Id.*; *In re Marriage of Swenka*, 576 N.W.2d 615, 617 (Iowa App. 1998). The objective is to place the children in the environment most

likely to bring them to healthy physical, mental, and social maturity. *See In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974).

In making custody determinations, there is no presumption in favor of the mother or the father. *See In re Marriage of Bowen*, 219 N.W.2d 683, 688 (Iowa 1974). Furthermore, the parent who has been the primary caretaker of the children during the marriage will not necessarily be designated the primary caretaker at the time of divorce. *See In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995). However, because the role of the primary caretaker is critical in the development of children, we must carefully consider allowing children to remain with the parent who has provided primary care. *Id.* Additionally, while the results of home studies should be given consideration, such reports are not controlling. *Id.*

The district court was faced with a difficult decision in this case. Pamela and Michael are both capable and loving parents. Their three boys are stable and developing well. Both parents are clearly capable of providing a stable, healthy home for their sons. The court concluded both parents were “healthy, intelligent, articulate, sincere, and good citizens . . .” who are equally good role models for their children. Michael believes the court’s conclusions suggest a joint physical care arrangement would clearly be in the best interests of the children. He contends this conclusion is buttressed by the recommendation of a child custody evaluation ordered by the court.

We agree with Michael joint physical care arrangements can sometimes be in the best interests of children. However, after careful de novo review of the record,

we believe the district court was correct in rejecting a joint physical care arrangement in this case.

The court found the parties have difficulty communicating and share some deep-seated animosity toward one another. We agree with this assessment. The stress of this marital breakdown has obviously taken a significant toll on each party's relationship and opinion of the other. The parties blame each other for their current unhappiness. The parties current level of conflict and mistrust as well as their questionable ability to communicate cast serious doubt on the feasibility of a shared physical care arrangement.

We agree Pamela should be awarded primary physical care. Pamela has consistently provided more of the day-to-day organizing for the children's health care, day care, tutoring, and education. She is obviously skilled in providing for the children's daily needs. Michael has been awarded liberal and extensive visitation, the parameters of which have been carefully delineated in the district court's decree of dissolution of marriage. We find no reason to challenge the district court's ultimate conclusion that this arrangement will best suit the children's physical, mental, and social development.

III. Attorney Fees. Pamela requests appellate attorney fees. An award of attorney fees on appeal is not a matter of right, but rests within the discretion of the court. *See In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). We are to consider the needs of the party making the request, the ability of the other party to

pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *See In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa App. 1997). We decline to award appellate attorney fees in this case. Costs of this appeal are to be split equally between the parties.

AFFIRMED.

No. 98-1306. [1999-86 (9-273)] IN RE MARRIAGE OF PAIGE

Appeal from the Iowa District Court for Lucas County, Richard D. Morr, Judge. **AFFIRMED.** Heard by Sackett, C.J., and Vogel, and Zimmer, JJ. Streit, J., takes no part. Opinion by Zimmer, J. (6 pages \$2.40)

Michael Paige appeals the decree dissolving his marriage to Pamela Paige. He contends the district court erred in failing to order shared physical care of the parties' children. Pamela seeks an award of appellate attorney fees. **OPINION HOLDS:** Pamela and Michael are both capable and loving parents. Their three boys are stable and developing well. Both parents are clearly capable of providing a stable, healthy home for their sons. However, after careful de novo review of the record, we believe

No. 98-1306. [1999-86 (9-273)] IN RE MARRIAGE OF PAIGE (continued)
the district court was correct in rejecting a joint physical care arrangement in this case. The court found the parties have difficulty communicating and share some deep-seated animosity toward one another. We agree with this assessment. The parties current level of conflict and mistrust as well as their questionable ability to communicate cast serious doubt on the feasibility of a shared physical care arrangement. We agree Pamela should be awarded primary physical care. Pamela has consistently provided more of the day-to-day organizing for the children's health care, day care, tutoring, and education. She is obviously skilled in providing for the children's daily needs. Michael has been awarded liberal and extensive visitation, the parameters of which have been carefully delineated in the district court's decree of dissolution of marriage. We find no reason to challenge the district court's ultimate conclusion that this arrangement will best suit the children's physical, mental, and social development. We decline to award appellate attorney fees in this case. Costs of this appeal are to be split equally between the parties.