

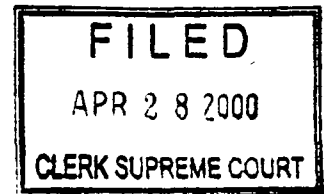
IN THE COURT OF APPEALS OF IOWA

No. 0-172 / 99-900
Filed April 28, 2000

**IN RE THE MARRIAGE OF EDWARD JOHN
VANOUS AND REBECCA FAITH VANOUS**

**Upon the Petition of
EDWARD JOHN VANOUS,**
Petitioner-Appellant,

**And Concerning
REBECCA FAITH VANOUS,**
Respondent-Appellee.



Appeal from the Iowa District Court for Linn County, William R. Eads,
Judge.

Edward Vanous appeals from the decree dissolving his marriage to
Rebecca Vanous, contending the district court erred in awarding primary physical
care of the parties' daughter to Rebecca. **AFFIRMED.**

Douglas D. Wolfe of Wolfe Law Offices, Mount Vernon, and T. Todd
Becker and Anne Updegraff of Tom Riley Law Firm, P.L.C., Cedar Rapids, for
appellant.

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellee.

Heard by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

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HUTINK, J.

I. Background Facts and Proceedings.

Ed and Rebecca Vanous were married on May 7, 1994. They have one child, Shea Elizabeth, who was born on January 17, 1995. Rebecca has one child, Gavin, from a previous marriage.

Prior to their separation in June 1998, Ed and Rebecca resided with their children at their home near Lisbon. Since that time Rebecca and the children have lived in Cedar Rapids with her sister. The parties shared custody of Shea while these proceedings were pending in district court.

The primary trial issue was Shea's physical care. The district court, citing Rebecca's greater primary care experience and need to avoid Shea's separation from Gavin, awarded Shea's physical care to Rebecca. Ed was granted joint custody and liberal visitation.

The sole issue on appeal is Shea's physical care. Ed maintains the district court erred in awarding Rebecca primary physical care of Shea.

II. Standard of Review.

Our review of the district court's decision is de novo. Iowa R. App. P. 4. See *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). Our review of a custody order is also de novo, and our primary consideration is the best interests of the child. *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997). In assessing a custody order we give considerable weight to the judgment of the district court, which has had the benefit of hearing and observing the parties firsthand. *Id.*

Physical Care

In deciding an issue of child custody, the controlling consideration is the interest of the child. *In re Marriage of Rebouche*, 587 N.W.2d 795, 797 (Iowa App. 1998). This decision requires selection of a custodial parent who can minister more effectively to the long-range best interest of the child. *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa App. 1997). The court's objective is to place the child in the environment most likely to bring her to a healthy physical, mental, and social maturity. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). The critical issue in determining the best interests of the child 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 re Marriage of Rebouche*, 587 N.W.2d at 798.

We identify several factors to help determine which parent should serve as the primary caretaker of the child of a divorce. *In re Marriage of Daniels*, 568 N.W.2d at 54. These include the characteristics of the parents, as well as the capacity and desire of each parent to provide for the needs of the child. See Iowa Code § 598.41 (1997). Moral misconduct is also a factor to be accorded weight in a child custody determination; however, it has been weighed most heavily only in those cases where the misconduct occurred in the presence of the child. *In re Marriage of Rebouche*, 587 N.W.2d at 800. Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Daniels*, 568 N.W.2d at 54. 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.*

Ed argues the district court erred in awarding primary physical care to Rebecca. In particular, Ed complains (1) the long-range emotional needs of Shea would be better administered by him; (2) Shea's long-range best interests would be better administered in his home environment; (3) Rebecca's conduct, inappropriate discipline, and temper places Shea's physical well-being at risk; (4) Rebecca's insensitivity and discouragement has contributed to a strained relationship between Ed and Gavin; and (5) Rebecca is unaware of or unable to meet the psychological and emotional needs of her children. We disagree.

In reaching its decision, the court stated:

It appears from the uncontroverted evidence that Becca was the primary caretaker of the children during the marriage. Her employment was often interrupted for reasons relating to childcare while Ed's was not. She cared for the children during the evening hours when Ed was at work and also during the summers. While Ed did provide care to the children during the marriage, it was generally at times that did not conflict with his work schedule. Becca has been able to provide a suitable home for the children despite the fact that she had to leave the home with few assets and possessions and does not have the advantage of free rent and childcare. Ed has been a good provider. He receives assistance from his family in the form of free rent and childcare.

The relationship between Gavin and Ed is strained at the present time. If Shea were placed with Ed, the children would be separated and deprived of the opportunity to grow up together. While the Court does not dispute that Ed has been involved with raising the children, apparently he only assumed the primary care role after the temporary order was entered. Ed's insistence that Shea should be in his care so she can attend the Lisbon schools implies that she cannot get a good education elsewhere. Giving Shea the security of remaining with her mother could enhance her chances for academic success more than the school that she attends.

Neither parent is an unfit parent. The fact Ed was willing to grant liberal visitation to Becca in his proposed findings, conclusions and decree is evidence that he does not fear for Shea's well-being during that time. The liberal visitation being given Ed affords him and Shea's paternal grandparents the opportunity to play a significant role in Shea's development. It is to be noted that some day neither party will have primary care of Shea. Therefore, her childhood should be one of happy memories rather than of parental discord. Both parents should attend school events involving Shea. Fortunately, both parties live relatively close together, whereby visitation is convenient and inexpensive.

These findings are abundantly supported by the record, and we adopt them as our own. We share the district court's confidence in the parties' individual abilities to attend to Shea's primary care needs. Each offers a custodial environment preserving the stability and security Shea needs. Although both parties possess many favorable parental qualities, Rebecca's primary care experience and ability to preserve Shea's relationship with Gavin distinguish her as the preferred physical care provider. We conclude both equity and Shea's best interests are served by placing her physical care with Rebecca.

In reaching this decision, we do not intend to minimize Ed's past or future parental role. The fact that we do not award him physical care does not imply Shea will be deprived of the benefit of his considerable parental qualities. As joint custodian Ed has the right to continuing physical and emotional contact with Shea and is entitled to share the rights and responsibilities of raising her. See Iowa Code § 598.41(5) (1997). Ed's faithful attention to these rights and obligations is essential to Shea's welfare, and he should not be discouraged from their assertion.

We therefore affirm the district court's decision granting primary physical care of ~~Shia~~ to Rebecca.

IV. Attorney Fees.

In determining an award of appellate attorney fees, 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. *In re Marriage of Crotty*, 584 N.W.2d 714, 719 (Iowa App. 1998). We affirm the district court's award in trial attorney fees and award Rebecca \$750 in appellate attorney fees. Costs are taxed to Ed.

AFFIRMED.

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