

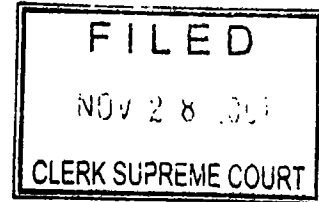
IN THE COURT OF APPEALS OF IOWA

No. 1-689 / 01-0119
Filed November 28, 2001

**IN RE THE MARRIAGE OF AMY D. LEE
AND MARTY E. LEE**

**Upon the Petition of
AMY D. LEE,**
Petitioner-Appellant,

**And Concerning
MARTY E. LEE,**
Respondent-Appellee.



Appeal from the Iowa District Court for Hamilton County, Michael J. Moon,
Judge.

Amy Lee appeals from the custody provisions of the decree dissolving her
marriage to Marty Lee. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Paul B. Ahlers of Bottorff & Ahlers, Webster City, for appellee.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

000164

HECHT, J.

The petitioner, Amy Lee, appeals from the custody provisions of the decree dissolving her marriage to the respondent, Marty Lee. She contends the district court erred in awarding physical care of their minor children to Marty. We affirm.

I. Background Facts and Proceedings. Amy and Marty Lee were married on January 18, 1997. They have two children: Jordan, born March 19, 1996, and Brady, born June 3, 1998. On June 28, 2000, Amy filed a dissolution of marriage petition. Following trial the district court awarded joint legal custody and granted physical care of the children to Marty. In making its determination, the court acknowledged both parties were good parents, but noted Marty had a more stable lifestyle. The court also noted Amy was quick-tempered and occasionally physically rough with the children. The court granted Amy liberal visitation and ordered her to pay child support. Amy appeals, challenging the court's primary care determination.

II. Standard of Review. We review child custody determinations de novo. Iowa R. App. P. 4; *In re Purscell*, 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Stark*, 542 N.W.2d 260, 262 (Iowa Ct. App. 1995) (citing *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981)). 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); *In re Marriage of Novak*, 220 N.W.2d 592, 597 (Iowa 1974).

III. Discussion. In assessing child custody, the controlling consideration is the best interest of the children. Iowa R. App. P. 14(f)(15); *Purscell*, 544 N.W.2d at 468. The court determines placement according to which parent can minister more effectively to the children's long-term best interests. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa Ct. App. 1996). The court's objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *Id.* The critical issue in determining the best interests of the children is which parent will do better in raising them; gender is irrelevant, and neither parent should have a greater burden than the other. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa Ct. App. 1996) (citing *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa 1985)).

We consider numerous factors to help determine which parent should serve as the primary caretaker of the children in a divorce. *In re Marriage of Berry*, 588 N.W.2d 711, 713 (Iowa Ct. App. 1998) (citing *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa Ct. App. 1997)). In this case, applicable factors include "the characteristics of each parent, including age, character, stability, mental and physical health." *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). Each factor, however, does not necessarily impact the decision with equal force. *Daniels*, 568 N.W.2d at 54. Some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the facts of each case. *Id.*

Amy contends the district court's decision to award physical care to Marty is not supported by the evidence and is not in the best interests of the children. We disagree. Our de novo review of the record convinces us the district court

correctly awarded the children's physical care to Marty. We acknowledge, as the trial court did, that either parent would be a suitable caretaker. However, several significant factors lead us to conclude Marty will provide the environment most likely to bring the children to healthy physical, mental, and social maturity. In particular, Marty's lifestyle is more stable than Amy's. Marty has had the same job since the parties relocated to Clarion, Iowa, in 1996. Moreover, Marty's family lives in the area providing him and the children with a broad based support system.

Furthermore, we share the district court's concerns about Amy's stability. A review of the record suggests Amy had multiple relationships with male co-employees while still married to Marty. Additionally, one former boyfriend testified about Amy's ongoing struggle with an eating disorder that led her to induce vomiting to control her weight. While an eating disorder is not dispositive on the issue of custody, it demonstrates Amy's failure to make appropriate choices regarding her physical and emotional well-being.

The district court also noted Amy's temper and use of foul language in the presence of the children. Witnesses testified Amy was physically rough with the children. On prior occasions Amy has kicked the children in the buttocks to keep them walking, slapped Jordan in the mouth to discourage him from chewing loudly, and held her hand over Brady's mouth to keep him from crying. We agree with the district court's concern regarding these aspects of Amy's parenting style and conclude the award of physical care of Jordan and Brady to Marty was in the children's best interest. Accordingly, we affirm the district court.

AFFIRMED.

000107