FILED
OCT 31 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No 5-411 / 95-0050

CHRISTINE SHIELDS, As Mother and Next Friend of KATHLEEN HALL SHIELDS, A Minor,
Petitioner-Appellee,

vs.

DELANE K. STRUCKMAN, As Mother and Next Friend of BRYAN DAVID STRUCKMAN,
Respondent-Appellant,

And Concerning
TYLER DAVID STRUCKMAN,
A Minor.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Senior Judge.

Delane Struckman appeals a district court order, on behalf of her minor son, Bryan, awarding primary physical care of Bryan's son, Tyler, to Tyler's mother, Kathleen Shields. **AFFIRMED.**

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander and Preacher, Bettendorf, for appellant.

Carol A. H. Freeman of Lane & Waterman, Rock Island, Illinois, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

HUITINK, J.

Bryan and Kathleen are the unmarried parents of Tyler David Struckman, born December 27, 1993. Bryan and Kathleen were sixteen at the time Tyler was born.

Bryan and Kathleen originally agreed Tyler would be placed for adoption. Tyler was accordingly placed in foster care pending adoption. Bryan changed his mind and refused to consent to the adoption. Tyler was removed from foster care, and Bryan assumed custody. Tyler lived with Bryan at his parents' home for six days. Kathleen then assumed custody of Tyler following a visit, and he continued to reside with her and her family at the time this matter was tried.

The district court awarded the parties joint custody of Tyler. Kathleen was awarded physical care. Bryan was awarded liberal visitation privileges.

Bryan appeals. He contends the district court erred in awarding Kathleen physical care of Tyler. He argues Kathleen's sexual promiscuity and alcohol abuse disqualify her as Tyler's physical caretaker. Bryan also claims Tyler's best interests require placement with him.

Our review of this equitable matter is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but give them deference when the credibility of witnesses is implicated. Iowa R. App. 14(f)(7). We also recognize the district court "is greatly helped in making a wise decision about the parties by listening

to them and watching them in person." *In re Marriage of Behn*, 395 N.W.2d 540, 543 (Iowa 1986) (quoting *In re Marriage of Callahan*, 214 N.W.2d 133, 136 (Iowa 1974)).

In cases involving a child whose parents have never married, the legal analysis used to resolve the question of physical care is the same as if the parents were married. *Lambert v. Everest*, 418 N.W.2d 40, 42 (Iowa 1988) The critical issue is not which parent possesses the greater right to the child, rather the controlling issue must be the best interest of the child. *Hagen v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This decision requires selection of a physical caretaker who can minister more effectively to the long-range best interest of the child. Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. *In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). Required considerations include the characteristics and needs of the child, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the child, the relationship of the child with each parent, the nature of the proposed environment, and the effect of continuing an existing custodial status. *Id.*

There is no presumption in favor of either the mother or the father. *In re Marriage of Bowin*, 219 N.W.2d 683, 688 (Iowa 1974). Insofar as it is reasonable and in the child's best interest, the court should make an award of custody, physical care, and visitation rights which will assure the child the maximum opportunity for continuing physical and emotional contact with both parents. Iowa Code § 598.41(1).

This objective requires consideration of the willingness of each party to allow the child access to the other party. *In re Marriage of Burham*, 283 N.W.2d 269, 274 (Iowa 1979).

Moral misconduct does not preclude the erring parent from custody. It is one fact that must be considered with other factors. *Jones v. Jones*, 175 N.W.2d 389, 391 (Iowa 1979).

Tyler, by all indications, is thriving in his current placement. He shares the common needs of all children including consistent love, affection, and stability. Both parents express a sincere desire to provide for Tyler's needs.

Neither Bryan nor Kathleen have significant primary care experience. This problem is compounded by their age and immaturity. Both live with their parents and are wholly dependent upon them for their subsistence. The paternal and maternal grandparents have been and remain willing to provide their children with needed support and supervision. Contrary to the parties' assertions, we find both sets of grandparents offer a suitable environment for Tyler to reside with his parents.

Kathleen was a high school senior at the time of trial. She would like to go to college. She has enrolled in a school program for teenage mothers and has completed courses in child development and family living. Kathleen has also found part-time employment and made day-care arrangements for Tyler with her mother.

Bryan was also in high school at the time this case was tried His future plans include college if he receives a football scholarship. There is, however, no indication that he has made an effort to enhance his parenting skills by availing himself of similar opportunities.

We, like the trial court, find Kathleen's efforts to accommodate the present and future demands of parenting distinguish her as the preferred physical caretaker. Although Bryan is appropriately motivated, he appears content to defer the day-to-day details of parenting Tyler to others. The dimensions of his custodial aspirations have not been matched by any significant preparation or planning for parenting Tyler. We conclude our custodial objectives recited earlier are best served by awarding Kathleen physical care of Tyler.

In reaching this conclusion, we have not ignored the substantial evidence of the parties' sexual misconduct and alcohol abuse disclosed in the record. However, a detailed discussion of the parties' past indiscretions would serve no constructive purpose. Although this evidence reflects badly on the parties, it is not sufficient to disqualify either party from an award of physical care.

We also share the district court's concern about the maternal grandmother's antipathy towards Bryan and his family. Fortunately, Kathleen possesses a greater appreciation for her obligations and Bryan's rights as Tyler's joint custodian than her mother does. We are encouraged by her express acknowledgment of Bryan's parenting

role, and she should not be faulted for her mother's behavior. The district court wisely noted the implications of future interference with Bryan's access to Tyler. The district court should not be discouraged from taking swift and decisive action to deal with this circumstance.

The judgment of the district court is affirmed.

AFFIRMED.