

IN THE COURT OF APPEALS OF IOWA

No. 5-180 / 94-1273

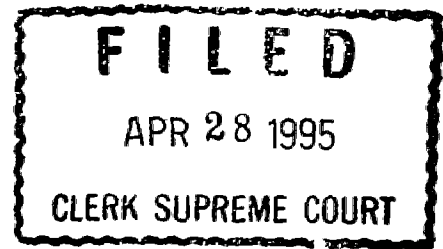
**IN RE THE MARRIAGE OF TIMOTHY
D. EHRHARDT AND NICOLE E. EHRHARDT**

Upon the Petition of
TIMOTHY D. EHRHARDT,

Petitioner-Appellant,

And Concerning
NICOLE E. EHRHARDT,

Respondent-Appellee.



Appeal from the Iowa District Court for Worth County, Jon Stuart Scoles,
Judge.

Timothy Ehrhardt appeals the decree of dissolution of marriage. **REVERSED
AND REMANDED.**

Jacqueline R. Conway of Laird, Heiny, McManigal, Winga, Duffy &
Stambaugh, P.L.C., Mason City, for appellant.

John G. Sorenson of Stanton & Sorenson, Clear Lake, for appellee.

Considered by Donielson, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

The question in this appeal from a decree dissolving a short term marriage is whether the trial court correctly named respondent-appellee Nicole E. Ehrhardt as the physical custodian of Teshia. Teshia, who was born December 11, 1991, is the daughter of Nicole and petitioner-appellant Timothy D. Ehrhardt. Timothy contends that he, not Nicole, should be the physical custodian. We agree. We reverse and remand to the trial court to fix Nicole's child support obligation.

We review de novo giving weight to the factual finds of the trial court but are not bound by them. *In Re Marriage of Joens*, 284 N.W. 2d 326, 327, (Iowa 1979).

Timothy and Nicole were married in Alaska on April 8, 1991. Timothy, born in 1971, graduated from high school in Manly, Iowa and was serving a four-year term in the U.S. Army assigned to Fort Wainwright in Fairbanks, Alaska. He worked as a diesel mechanic.

In Alaska Timothy met Nicole, a Native American. Nicole was born in Alaska in 1972. Nicole, who had a troubled childhood, had only completed the ninth grade. In her teen years, she ran away from her parents and used alcohol to excess. She appears at this time to have a close relationship with her extended family.

The couple spent the first part of their married life while Timothy was in the U.S. Army in Alaska. After four years in the Army, Timothy received an honorable discharge. In June of 1993 they moved to Manly where Timothy immediately found

employment as a truck mechanic. He was employed as a mechanic at the time of trial. He has a net monthly income of \$1,166.

In Manly, Nicole worked at a convenience store and a health care facility before returning to Alaska in January of 1994. She is not currently employed and has not been employed since she returned to Alaska. She receives AFDC of \$821 a month, as well as \$141 in food stamps. She spends her time doing beadwork, visiting with friends, going to Bingo with her mother and taking long walks with her daughter. She has had employment in the past as a dishwasher, waitress, preparation cook, cashier and nurse's aid.

After Teshia was born she lived with both her parents in Fairbanks. During the marriage, both parents assumed responsibility for her care. There was some marital strife and on several occasions. Nicole took the child and stayed with friends for a short time. Problems continued after the family came to Iowa. On January 8, 1994, Nicole left the family home and took Teshia with her. She stayed in Minneapolis for a few days and then flew to Alaska.

Nicole has continued to live in Alaska. She did not return for trial but testified by deposition. The trial court found a home study shows Nicole has a small, comfortable home and her housekeeping is appropriate. The trial court also found that Timothy conceded that Nicole provided for Teshia's medical needs and Teshia is a happy and healthy child. We agree with these findings.

The trial court voiced concern with Nicole's problem with alcohol. Nicole had two charges of driving under the influence before she was married and had a third charge the night she left Iowa. Nicole testified by deposition that she had not had a drink for three weeks and attended four or five AA meetings a week. The trial court noted there was no independent verification of this claim. In fact, other testimony would indicate she has exaggerated her attendance at AA meetings.

The trial court also found that Timothy had grabbed Nicole and pinned her against the wall during arguments. The court believed by this Timothy demonstrated the potential for abusive behavior. There was evidence there was some domestic violence in Alaska which Timothy denied. There is evidence there were problems and shouting when the couple was in Manly and Nicole became intoxicated.

The trial court was further concerned about Timothy's current living arrangement. Within a month of his separation from Nicole, he established a relationship with Melodie and he now lives with Melodie and her two year old daughter. Tim's relationship with Melodie is described as functional and they both were found to possess many notable strengths. The home was clean and organized. He is affectionate towards Miranda.

The trial court also considered that as a person with Native American blood Teshia may feel isolated living in Manly Iowa.

Timothy contends the trial court was not sufficiently concerned about Nicole's alcoholism, put too much emphasis on her need to maintain her Native American roots, and incorrectly found he had the potential for abuse.

There is substantial evidence in the record that Nicole has had a serious problems with alcohol resulting in at least three alcohol-related arrests. Nicole had been picked up for driving under the influence the night before she left Iowa. After the charge, Timothy picked her up at the police station. The next morning, she cleaned out the bank accounts and took the family car to Minneapolis without telling Timothy where she was. There is evidence that she would be difficult to handle when she had too much to drink. She became angry when a friend told her if she became intoxicated again she would call the police for the protection of the child. She admitted she continued to drink in Alaska. She has had no treatment. She claims to have currently attended AA meetings. Her alleged attendance was for a short period. We do not find that she sufficiently recognizes her problem and has it under control. The evidence does not support Nicole's statements that she has her alcoholism problems under control. There is substantial evidence this is a long-term problem. It will have an effect on Nicole's ability to care for her daughter. We look very carefully at this evidence in assessing Nicole's suitability as a parent.

Timothy contends that the trial court put too much emphasis on the need for Teshia to maintain contact with her mother's culture. We understand the trial court's concern that Nicole continue to have contact with her Native American heritage. She

has a Native American mother whose roots are in Alaska. Teshia has a Caucasian father whose roots are in Manly, Iowa. Both parents love her and want her to be a part of their extended family. We agree that it is of benefit to Teshia to be made aware of both of her backgrounds. The trial court has elevated the need for Teshia to be in contact with her mother's heritage over Teshia's need to be in contact with her father's heritage.

Our first concern is which home will provide the more secure and safe place for Teshia to live and determine what parent is better able to attend to these needs. *See In re Marriage of Winter*, 223 N.W. 2d 165, 166-67 (Iowa 1974).

We have concern also with Nicole's spiriting the child away from her father, taking the money and car and leaving for Alaska.

We are disappointed that Timothy has not made any direct child support payments for Teshia's well being. We are aware that Nicole receives ADC and most, if not all, of any child support she receives would be paid to the State of Alaska. We note that Timothy is of the opinion that Alaska will be garnishing his wages and he has provided the State of Alaska with information on his place of employment. We note also there have been no support or temporary awards and Timothy has been unable to see his daughter by Nicole's decision to leave without notice.

We have reviewed the evidence of Timothy's alleged domestic abuse. The instance of which Nicole complains appear to arise out of situations where she was

intoxicated and Timothy made an attempt to control her. There is no evidence Timothy has ever abused Teshia.

Timothy has a close relationship with his own family, including his parents who live and work in Manly. Timothy's parents are very supportive of his relationship with his daughter.

Tim has attempted to be open and tries to put negative feelings about Nicole aside. Tim has exhibited financial maturity. There being no evidence Nicole's alcohol-related problems have been corrected, her lack of maturity and inability to establish a stable life style support an award of physical care to Timothy. We modify to determine that he should be the custodial parent.

We remand to the trial court to fix Nicole's child support obligation and visitation.

REVERSED AND REMANDED.