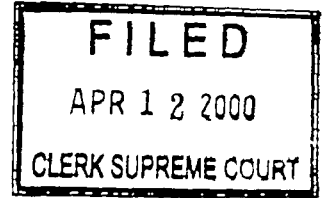


IN THE COURT OF APPEALS OF IOWA

No. 0-57 / 99-1001
Filed April 12, 2000



JEFF ACKLEY,
Petitioner-Appellee,

vs.

SARAH REBEKAH KOEHN, n/k/a SARAH REBEKAH DVORAK,
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Max R. Werling,
Judge.

Respondent appeals from the district court ruling granting petitioner
custody of the parties' child. **AFFIRMED.**

Carol M. Pentuic of Anderson & Nelson, P.C., Rock Island, Illinois, for
appellant.

Cheryl J. Newport and Stephen W. Newport of Newport & Newport,
P.L.C., **Davenport**, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

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STREIF, J.

When parents ask the courts to determine which parent should have primary physical care of their child, we must rely on numerous statutorily and judicially-fashioned factors that evidence the child's best interests. Sarah Koehn alleges the trial court failed to properly employ these factors in determining her daughter's father, Jeff Ackley, should have primary physical care. After reviewing the record and weighing all appropriate factors, we find the court properly granted Jeff primary physical care.

I. Background Facts & Proceedings.

Charlie Rose Ackley, born October 23, 1998, is the daughter of Sarah Koehn and Jeff Ackley. Sarah lives in McCausland, Iowa, and Jeff lives in Westerville, Ohio. Jeff, thirty-three, is a police officer for the city of Columbus, Ohio. Sarah is twenty-two and does not work outside the home. Since the child's birth, Sarah has been the primary caregiver.

Jeff and Sarah met through an Internet chat room in 1997. Their casual conversations via computer became progressively more intimate and soon an electronic romance blossomed. Jeff came to Iowa to meet Sarah in person in September of 1997. For the next five months Jeff made numerous pilgrimages to see Sarah in Iowa. In January of 1998 this long-distance couple decided to move in together, and Sarah left for Jeff's home in Ohio. A month later Sarah was pregnant.

In March of 1998 Jeff and Sarah decided to return to Iowa for a short visit. Sometime during the visit, Sarah decided not to return to Ohio with Jeff. From

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March until Charlie Rose's birth in October of 1998, the parties remained in touch regarding the pregnancy. Jeff came to Iowa a few days after the birth. From the time of the birth, Jeff made the five-hundred-mile trip to see his daughter every other weekend and called about her well being weekly. Jeff's visitation was consistently hindered by Sarah's minor excuses. Jeff was not allowed to visit Charlie alone because Sarah claimed she was fearful Jeff would flee with the child. She refused to bring the child fifteen miles to Jeff's hotel room, despite his eight-hour drive from Ohio. She also cancelled or altered visitation times for apparently dishonest reasons. Although Jeff would often bring diapers and other necessities during his visits, he did not offer Sarah any financial support for his daughter's care.

Paternity was conclusively established in February of 1999, and Sarah rekindled a relationship with an old boyfriend and married him in March of 1999. In May of that year the district court awarded primary physical care of Charlie to Jeff. The court found Jeff more stable, the living environment Jeff could provide more conducive to Charlie's healthy upbringing, and that Jeff had a better understanding of the child's best interests.

Sarah appeals, claiming the court considered inappropriate factors in making its determination and erred in granting Jeff primary physical care.

II. Standard of Review.

We review primary physical care determinations de novo. Iowa R. App. P. 4; *see In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings, but give them deference because it had

an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians. *In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997).

III. Primary Physical Care.

Sarah claims the court considered improper factors in determining primary physical care and erred in awarding Jeff primary physical care.

In determining primary physical care, the child's best interest is our governing consideration. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa App. 1996). Determining which parent will do better in raising the child is the critical issue. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). The objective is to place the child in the environment most likely to bring her to healthy physical, mental, and social maturity. *In re Marriage of Harris*, 499 N.W.2d 329, 332 (Iowa App. 1993).

There are a number of statutorily and judicially-recognized factors designed to assist in determining the primary caregiver. See Iowa Code § 598.41 (1997); *In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974). Those applicable to this case include: (1) the traits of each parent, including age, stability, and character; (2) the capacity of the parent "to provide for the emotional, social, moral, material, and educational needs of the child;" (3) the stability of each proposed environment, including stability and wholesomeness; and (4) the parent with greater primary physical care experience. *In re Marriage of Winter*, 223 N.W.2d at 166; *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Wilson*, 532 N.W.2d at 495. 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.*

A. The Traits of the Parents. The stability and character of each parent will play a large role in the healthy maturation of Charlie. Although neither party is perfectly sound in each of these areas, Jeff is better suited to meet Charlie's long-term needs. Jeff has proven to be a stable, positive parent to his daughter. He has an established career as a police officer, has a stable living environment, and has taken enormous strides not only to maintain contact with his child but also to educate himself as to proper parenting techniques. He has been the parent most willing to foster a positive relationship between the child and *both* parents. He has remained calm and rational throughout this difficult ordeal, attempting at every turn to work amicably with Sarah.

Conversely, Sarah, although currently in a stable marriage, has a proven track record of being wholly dependent on others and has been unwilling to foster a relationship between father and child. She has refused to make even menial sacrifices in order to promote a healthy relationship between Charlie and Jeff. She has lied to Jeff regarding visitation schedules and has threatened to completely bar Charlie from Jeff's life. Based on the traits of the parties and the circumstances in which those traits have been manifested, it appears Jeff can better cater to Charlie's long-term best interests.

B. Providing for Charlie's Needs. Children rely on their parents for all of their core needs. A parent's ability and willingness to supply these needs are of utmost importance. With regard to ability, Jeff can better provide for the child's

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emotional, social, moral, and educational needs. Prior to Charlie's birth, Jeff educated himself on proper child development, how to care for a child, and how to foster a child's relationship with both mother and father. He did this through reading, taking parenting classes, and seeking out opportunities to practice his newfound knowledge. He has also participated in a children's mentoring program where he counseled troubled youth. Educationally, Jeff has already researched and selected a preschool and has preliminarily explored whether public or private schooling will be appropriate. It is undisputed Sarah will be able to spend more time with Charlie by not working outside the home; however, Jeff can better supply the lion's share of Charlie's needs.

The ability of a parent, however, is moot if that parent is unwilling to recognize the child's needs as paramount. Jeff has at times recognized Charlie's needs to be paramount. He has selflessly caravanned hundred of miles every other weekend to be with Charlie and has offered to pay Sarah, her husband, and Charlie's transportation expenses to Ohio, so Charlie can have interaction with her extended family. In other instances, however, he has not voluntarily supported his child by way of financial assistance, clearly contrary to Charlie's best interests. Sarah too, however, has refused to recognize Charlie's needs as paramount. She has occasionally disrupted Jeff's visitation for seemingly selfish purposes and has threatened to cut Jeff out of his daughter's life as means of revenge. The parties' respective acts of selfishness cancel one another and fail to cut in favor of either parent.

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C. The Proposed Environments. A child's environment is not limited to the four walls of the immediate home. Rather, a child's environment consists of a series of concentric circles, including the immediate family, extended family, the immediate neighborhood, and the larger community. Each of these spheres of influence does not impact the child's life with equal force, but each sphere does play a role in the healthy maturation of the child.

Jeff has a large home situated on a large lot in a quiet Ohio suburb. He is a police officer and has demonstrated predominantly wholesome values. He has the unbridled support of his family as well as members of the community. His sister has already agreed to provide daycare for the child, and as previously mentioned Jeff has already made plans for her education.

Sarah's home, although subject to a month-to-month lease, is equally acceptable. Her extended family is equally supportive, but carry enormous baggage with regard to substance abuse. Sarah's parents, brother, sister, and husband all have had significant problems with substance abuse. They all were somewhat routine users of marijuana, and all fail to see the harmful effects of substance abuse. Sarah's mother has attempted to commit suicide on a number of occasions and is so heavily medicated she can barely care for herself. Sarah's husband has also expressed suicidal ideation, threatened others with physical harm, and has assaulted Sarah. We do not fault Sarah for the ills of her family; however, she continues to expose Charlie to people who openly promote unhealthy lifestyles. Sarah has left Charlie alone with her mother and permits

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her siblings to watch the child. The overall environment proposed by Jeff is simply better suited to provide for Charlie's long-term best interests.

D. The Parent with Greater Primary Care Experience. The fact Sarah was the primary care provider is not lost upon this court; yet primary care experience is simply another factor to be considered. *See In re Marriage of Ihle*, 577 N.W.2d 64, 69 (Iowa App. 1998) (despite being the primary care provider during the marriage, a mother's recent dishonesty and instability weighed heavily in the decision to grant the father primary physical care). This factor does weigh in favor of Sarah, but is not determinative. Jeff's traits, abilities, and proposed environment outweigh her previous primary care commitment.

IV. Conclusion.

The trial court properly awarded primary physical care of Charlie to Jeff. After reviewing the evidence de novo and appropriately weighing both statutory and judicially-recognized factors, we conclude it is in Charlie's long-term best interests to grant Jeff her primary physical care. The district court is affirmed.

AFFIRMED.

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