

IN THE COURT OF APPEALS OF IOWA

76

No. 2-090 / 91-1022

IN RE THE MARRIAGE OF SHERIE E. BRENDLINGER AND
GEORGE F. BRENDLINGER

Upon the Petition of

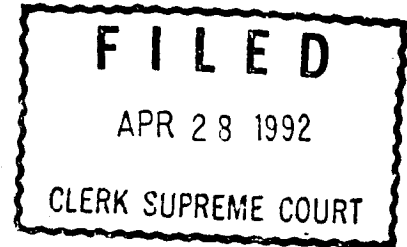
SHERIE E. BRENDLINGER,

Petitioner-Appellee,

And Concerning

GEORGE F. BRENDLINGER,

Respondent-Appellant.



Appeal from the Iowa District Court for Polk County,
Ross A. Walters, Judge.

The husband appeals from a dissolution decree.

AFFIRMED.

Artis Reis and Carolyn Wolter of the Reis & Bowman Law
Office, Des Moines, for appellant.

Jeff Carter of the Tom Whitney Law Office, Des Moines,
for appellee.

Heard by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

Respondent-appellant George F. Brendlinger appeals the custody and economic provisions of his dissolution decree. We affirm as modified.

George and petitioner-appellee Sherie E. Brendlinger were married in 1982. At the time of their marriage, George was twenty and Sherie was sixteen. Sherie was pregnant with the parties' first child who was born in July 1982. Their second child was born in July 1984. During the marriage George received an Associate of Arts Degree in computer science and is a computer programmer analyst at Employers Mutual. He continues to study toward a bachelor's degree. Sherie has had various types of employment outside the home and has done considerable baby-sitting.

When the parties separated, a temporary custody order was entered whereby George was given physical care of the children and stayed in the family residence. Sherie lived across the street with a girlfriend and her children.

When the matter came on for trial, the trial court awarded primary care to Sherie and made a division of the property of the parties. George has appealed.

George first contends he should have physical care of the children. Our review on this issue is de novo. Both parties were immature at the time of marriage and have gone through some difficult periods. George elected to continue

his education. He went to an area community college and obtained an Associate degree. He currently is working on a B.A. or B.S. through Simpson college. He has stable employment with Employers Mutual.

During the marriage, Sherie assumed a substantial amount of the responsibility for the two children. She has worked outside the home at a variety of jobs and has done in-home day care.

We generally agree with the factual findings made by the trial court. The trial court found Sherie was the primary caretaker during the marriage, but that after George was awarded temporary custody he directed his spare time and energy to the children and functioned admirably as a parent. The temporary custody order was in place for nine months. The trial court found Sherie, during the nine months the temporary custody order was in place, sought to discover her lost youth. During the time she had the children for visitation, she spent little time with them but left them with caretakers generally from her extended family.

The trial court also found George exhibited more financial and job stability than Sherie. Additionally, the trial court found Sherie had an unfavorable attitude toward George and involved the children in her disputes with him.

The trial court went on to find George's intentions are good and his efforts during the separation admirable. The

trial court found, however, it did not believe George was capable of being the primary parent over the long term.

The custody issue is close. Both parents have strengths and weaknesses. George has made recent improvements. Sherie's recent performance has been poor. The trial court apparently concluded Sherie's recent conduct was an aberration and over the years she had been the primary caretaker.

The court also found:

Respondent was physically and verbally abusive toward Petitioner on several occasions testified to by the parties at length in the record, and apparently was domineering in his relationship with Petitioner and the children.

Respondent's earlier alcohol abuse was more serious and his use of another controlled substance, marijuana, more regular than Petitioner's substance usage, however, since moving to Altoona and obtaining responsible employment, Respondent's use of these substances has abated as he has matured.

Each party has strengths and weaknesses with respect to the issue of child care. Petitioner is the superior child care provider between the two. Except during the pendency of these proceedings, she was the party who primarily cared for the children. She was a good homemaker, her relationship with the children is good, and as observed by the custody investigator, 'comfortable.'

The trial court, faced with deciding which parent would be capable of being the primary parent over a number of years, selected Sherie. We find no adequate reason to find otherwise. We affirm the trial court's custody decision.

The second issue is the property division. The division of personal property is not an issue. The trial court awarded George a lien of \$10,000 against the parties' \$15,000 equity in their personal residence and gave the residence to Sherie because she had custody of the children. In light of our decision regarding custody, we affirm the property award.

Each party shall pay his or her attorney fees, and one-half the costs on appeal.

AFFIRMED.

Habhab, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I must dissent. I would award George primary care of the children.

During the nine months prior to the dissolution George assumed nearly total responsibility for the children and, as the trial court and the majority find, functioned admirably as a parent. During that time frame Sherie sought to discover her lost youth, spent little time with the children and when she had the children for visitation generally left them with caretakers.

I do not forgive as easily as does the majority Sherie's disregard for the responsibilities of parenthood during the separation period. George has shown he can successfully function as a single parent. I can find no basis in the record for the trial court's finding he cannot parent over the long term. I am impressed by the care and concern George provided for the children during the difficult separation. Despite problems early in the marriage, he has matured and shows considerable stability.

Sherie has not been attentive to the children's needs during this period. She also has used the children in her conflicts with their father.

The facts here support awarding primary care to George. Children of a divorce need to maintain meaningful relationships with both parents. In re Marriage of Gravatt, 371 N.W.2d 836, 840 (Iowa App. 1985). We have

frequently made known our concern about a parent undermining the relationship of the child with the other parent. See In re Marriage of Abkes, 460 N.W.2d 184, 186 (Iowa App. 1990).

The second issue is the property division. The division of personal property is not an issue. The trial court awarded George a lien of \$10,000 against the parties' \$15,000 equity in their personal residence and gave the residence to Sherie because she had custody of the children. I would modify the property award to direct the personal residence should go to George, and George should pay Sherie the sum of \$5,000 payable at the rate of \$1,000 annually for the next five years with interest to accrue at the rate of 7 percent on any unpaid balance.

I would further modify the decree to provide that Sherie pay George child support of \$169.65 a month for two children and \$118.30 a month for one child.