

IN THE COURT OF APPEALS OF IOWA

**No. 1999-218 (9-442) / 99-13
Filed September 29, 1999**

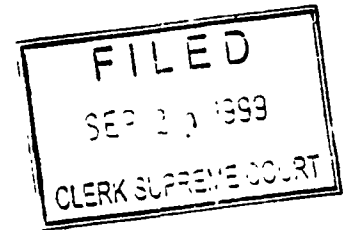
**IN RE THE MARRIAGE OF SHERRIE VAN ZANTE
AND JOHN VAN ZANTE**

**Upon the Petition of
SHERRIE VAN ZANTE,**

Appellant,

**And Concerning
JOHN VAN ZANTE,**

Appellee.



**Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel,
Judge.**

**Appellant appeals various economic and child custody provisions of the
parties' dissolution decree. AFFIRMED AS MODIFIED.**

**J. Terrance Denefe and Paul Zingg of Kiple, Kiple, Denefe, Beaver & Gardner,
L.L.P., Ottumwa, for appellant.**

Michael P. Brice of Michael P. Brice, P.C., Oskaloosa, for appellee.

Considered by Streit, P.J., and Mahan, and Zimmer, J.

ZIMMER, J.

Sherrie Van Zante appeals from a decree for dissolution of marriage. The principal issue is whether the district court erred in designating John Van Zante as the primary caretaker of the parties' minor child. We affirm the trial court decree as modified.

I. Background Facts and Proceedings. John and Sherrie Van Zante were married in 1986. They have one child, Cynthia Van Zante, born in December 1988. Both parties worked throughout the marriage. John and Sherrie separated in April 1998. Following their separation, Sherrie moved into a house in Fremont, Iowa, owned by her grandfather. John also remained in Fremont in the parties' former family home.

Trial was held in December 1998. John was thirty-six years old at the time of trial. Sherrie was thirty-two. The district court entered a decree which granted the parties joint custody of Cynthia, with John having primary physical care. The court denied Sherrie's Motion for New Trial.

On appeal, Sherrie contends the trial court erred by: (1) denying her request for a new trial based on its refusal to allow Cynthia to testify; (2) granting physical care of Cynthia to John; and (3) failing to award Sherrie a dependency deduction for tax purposes.

II. Scope of Review. In this dissolution action, our review is de novo. See Iowa R.App.P. 4. We have a duty to examine the entire record and adjudicate anew the rights and issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d

~~448, 453 (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 ruling upon the motion for new trial, the trial court has broad but not unlimited discretion in determining whether the verdict effectuates substantial justice between the parties. Iowa R.App.P. 14(f)(3).

III. Primary Physical Care. Our first and governing consideration in child custody cases is the best interests of the child. The factors to consider in awarding custody are found in our statutes, as well as prior cases. See Iowa Code § 598.41(3) (1997); *In re Marriage of Weidner*, 338 N.W.2d 351, 355-56 (Iowa 1983). The court determines placement according to which parent can administer more effectively to the child's long-term best interest. *In re Marriage of Buttrey*, 538 N.W.2d 322, 324 (Iowa App. 1995), citing *In re Marriage of Vrbanc*, 359 N.W.2d 420, 424 (Iowa 1994) the court's objective is to place the children in the environment most likely to bring them to a healthy physical, mental, and social maturity. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). A critical issue is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a greater burden than the other. *In re Marriage of Curtade*, 560 N.W.2d 36, 38 (Iowa App. 1996).

Sherrie contends the trial court's decision to award primary care to John is not in the best interests of Cynthia and is not supported by the evidence. We agree with the trial court's conclusion that either party would be suitable for providing primary

~~physical care for Cynthia.~~ We acknowledge the decision is close. Mindful of this, we give careful consideration in custody disputes to the findings of the trial court. See *In re Marriage of Wilson*, 532 N.W.2d 493, 496 (Iowa App. 1995) (citing *In re Marriage of McDowell*, 244 N.W.2d 238, 239 (Iowa 1976)).

In this case, the trial court recognized there was evidence both favorable and unfavorable to Sherrie and John. John has had a problem with attempting to control and dominate Sherrie. Sherrie has a bad temper which she has had difficulty controlling. John claims he has been assaulted by Sherrie on a few occasions. Cynthia has been present during some of Sherrie's verbal outbursts at John.

At the time of trial, Cynthia was in fourth grade at Fremont. She is a good student with lots of friends living in the area. Cynthia has a close relationship with both parents.

John intends to continue living in Fremont in the family home. He has always been actively involved in his community. He is a member of the Fremont city council, serves on the volunteer fire department, and is a volunteer member of the ambulance crew. He is also involved in the church choir at the Methodist church. Sherrie has not been involved in community activities and testified John is over-involved. John has maintained the same employment during the marriage. He has a long-term employment record with a reliable company.

During the marriage, Sherrie has provided the greater share of Cynthia's day-to-day care. John has assisted in providing care for Cynthia during the marriage and has been very involved in Cynthia's activities outside the home. At the time of trial,

Sherrie had a job in Oskaloosa, Iowa. She testified her job allowed her some flexibility to take time off when Cynthia is ill and for school functions. Sherrie's plans for the future are uncertain. It appears from her testimony that she will be moving away from Fremont at some point in the future.

Upon de novo review of the record, we find no basis for overturning the trial court's decision regarding primary physical care. The district court found John was a stable, responsible caretaker whose flexibility would make him better able to care for Cynthia's long-term best interests. We view John's community involvement as a strength, not a weakness as Sherrie contends. It is in Cynthia's long-term best interest to remain in the primary care of John, with Sherrie having frequent, liberal visitation.

IV. Motion For New Trial. During trial, Sherrie requested the court to permit Cynthia to testify. The court denied the request. Cynthia was not quite ten years old at the time. After the decree was entered, Sherrie filed a Motion for New Trial, contending the trial court's refusal to allow testimony from Cynthia was an abuse of discretion which prevented Sherrie from having a fair trial. Evidence of Cynthia's desire to live with her mother was submitted to the court through the testimony of the petitioner and other witnesses. We conclude the district court did not abuse its discretion in declining to consider further testimony from the parties' then nine-year-old child. We affirm the denial of the motion.

V. Income Tax Exemption. Sherrie contends the trial court erred by not awarding her the Iowa and federal income tax exemptions. The trial court's decree

~~did not address which party would be granted the dependency deduction for income tax purposes.~~ Sherrie raised this issue with the trial court in a motion to enlarge and amend findings. That portion of her motion was denied.

We have previously held that if primary care remains in one parent and the noncustodial parent is current on all support obligations, the noncustodial parent may be awarded the dependency exemptions. *In re Marriage of Potthast*, 539 N.W.2d 199, 203 (Iowa App. 1995). We conclude the tax exemptions for Cynthia should be allocated to Sherrie. Sherrie is paying substantial child support. We modify the decree to give Sherrie the federal and state tax dependency exemptions for Cynthia, so long as Sherrie is current on all child support at the end of each year. Each year, John shall sign and execute the required forms for Sherrie to be able to claim the exemption on both her federal and state income tax returns for Cynthia for the preceding calendar year.

VI. Summary. We affirm the trial court's decision to place primary care of Cynthia with John and its denial of Sherrie's Motion for New Trial. We modify the trial court's decree and grant Sherrie the federal and Iowa income tax dependency exemptions.

AFFIRMED AS MODIFIED.