IN THE COURT OF APPEALS OF IOWA

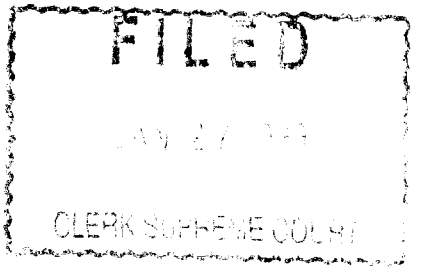
No. 8-596 / 98-0534
Filed January 27, 1999

IN THE INTEREST OF ARRAN E. WEECES, Minor Child,

RICHARD CHARLES WEECES,
Appellant,

vs.

LORI ANN McINTYRE,
Appellee.



Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge.

Richard Weeces appeals a district court ruling in his action for paternity, custody, and child support, awarding Lori McIntyre physical care of their minor child.

AFFIRMED.

Karla M. Wolff, Cedar Rapids, for appellant.

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

STREIT, J.

Richard Weeces appeals the trial court's award of primary physical custody of his daughter, Arran, to her mother, Lori McIntyre. Because we find it in Arran's best interests for Lori to be awarded primary physical custody of Arran, we affirm.

I. Background Facts & Proceedings.

Richard Weeces and Lori McIntyre are the unwed parents of Arran Weeces, born September 18, 1993. Richard was thirty-eight at the time of trial and Lori was twenty-eight. Richard has two children from his first marriage, Karris, age nineteen, and Laura, age seventeen. Lori has three daughters from her first marriage, Jessica, age twelve, Amanda, age ten, and Rochelle, age eight.

After her birth, Arran resided with Richard, Lori, and Lori's three daughters. Richard moved out of the home for a six-month period in 1994, then moved back. In July 1995, Richard moved out permanently. During both of these times, Arran remained in the primary physical care of Lori. Arran has an extremely close relationship with Lori's other daughters, her half-sisters. At all times while Arran was in Lori's physical care, Richard had liberal visitation with Arran. Richard has married and is living in Solon, Iowa, with his new wife.

Richard filed a petition for determination of paternity, custody, visitation, and child support on November 12, 1996. When Lori did not answer, he amended his petition, seeking physical care of Arran. The amendment was not served upon Lori either personally or by mail. A copy was sent to John Moeller, an attorney who was

advising Lori but had not filed an appearance. Richard filed a motion for default which neither Lori nor her attorney promptly responded to. Default judgment was entered, awarding Richard physical care of Arran and ordering Lori to pay child support of $272.73 per month. Upon Lori's application, the district court set aside the default and ordered the custody provisions of the default order would be considered temporary orders.

The matter was tried in February 1998. The court found it in Arran's best interests to award primary physical custody to Lori and ordered Richard pay child support of $231 per month. Richard was ordered to provide medical insurance for Arran. Each party was given the right to claim Arran as a dependent in alternate years. Richard appeals.

II. Standard of Review.

Review of the custody provisions of a divorce decree is 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 of fact, but do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.; In re Marriage of Brown,* 487 N.W.2d 331, 332 (Iowa 1992). The controlling consideration in child custody cases is always what is in the best interests of the children. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). Although Richard and Lori never wed, the criteria for determining custody is the same as if the parties were married. *Heyer v. Peterson,* 307 N.W.2d 1, 7 (Iowa 1981).

III. Primary Physical Custody of Arran.

Richard argues the trial court erred in awarding Lori primary physical custody of Arran. Richard argues he is more mature than Lori, has a more stable income, and is better able to provide predictability and continuity in Arran's life.

The parent who can administer most effectively to the long-term best interests of the child and place her in an environment that will foster a healthy physical and emotional life is chosen as primary physical care giver. *In Re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997).

Both parents are suitable caretakers for the children. Arran has developed a strong relationship with her mother and her father. De novo review of the record, however, has convinced us it is in Arran's best interests for physical care to be awarded to Lori. Several factors have strongly influenced our decision, including Lori's status as Arran's primary physical caregiver for most of Arran's life, Arran's relationship with her half-sisters, and Lori's ability to foster a healthy relationship between Arran and Richard.

Richard argues he can provide Arran with more stability and continuity than can Lori, but the record demonstrates otherwise. It is Lori and Lori's daughters that have been the constant in Arran's life. Lori and Richard shared the caretaking duties when Arran was an infant, but when Arran was approximately one year old, Richard moved out of the couple's home for six months. He then moved out permanently when Arran was about two. Although he has always been allowed liberal visitation

by Lori, it is Lori who remained the primary physical caretaker of Arran for the majority of her young life. The role the primary caretaker has played in the lives of the children is given consideration in custody disputes. *In re Marriage of Burkle*, 525 N.W.2d 439, 441 (Iowa App. 1994). Allowing a parent to continue as the primary caretaker after the divorce gives continuity to the lives of children. *Id.*

Another strong factor in making our decision was Arran's relationship with her half-sisters. Arran has lived with Jessica, Amanda, and Rochelle since her birth. She knows family life in no other context. All four girls are within seven years of each other. Although Arran and the girls are half-siblings, they share a bond as strong as full siblings. *See In re Marriage of Pundit*, 547 N.W.2d 243, 247 (Iowa App. 1996)(recognizing a strong public policy of keeping siblings together following divorce so as not to deprive children the important benefit of growing up together). The relationship is such that the presumption of keeping full siblings together applies.

Testimony at trial indicated while Arran lived with Richard under the temporary custody order, the behavior of all four girls changed for the worse. Jessica and Rochelle were despondent and depressed, while Amanda isolated herself from her family and social activities. Arran displayed behaviors such as engaging in baby talk, demanding to be the center of attention, and became selfish; demanding to have things done her way. It is in Arran's best interests to remain in the same household with her sisters.

Another factor is Lori's ability to foster Arran's interpersonal relationship with Richard. A parent's ability to foster a relationship with the noncustodial parent is an important factor in the best interests analysis. *See McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 826 (Iowa 1996). During the time Lori had primary physical custody of Arran, she allowed Richard liberal visitation; sometimes up to three days a week. Richard attempts to use this as a strike against Lori. Our review of the record shows Lori's motivation in granting Richard extensive visitation was not selfish as Richard suggests but, rather, an effort to foster Arran's relationship with her father. Richard, while having primary physical custody of Arran under the temporary order, has not done the same.

Based on these factors, we determine the trial court was correct in ruling it was in Arran's best interests to have primary physical custody of Arran awarded to Lori. The trial court's ruling is affirmed in all respects.

AFFIRMED.