

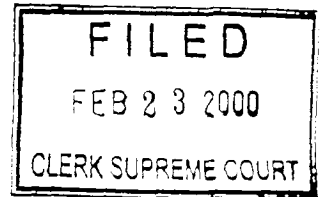
IN THE COURT OF APPEALS OF IOWA

No. 0-16 / 99-29
Filed February 23, 2000

**IN RE THE MARRIAGE OF NANETTE J. RIVAS
AND DAVID RIVAS**

**Upon the Petition of
NANETTE J. RIVAS,**
Petitioner-Appellant,

**And Concerning
DAVID RIVAS,**
Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, Linda R. Reade,
Judge.

The petitioner appeals the child custody provision of the parties'
dissolution decree. **AFFIRMED.**

Robert A. Wright, Jr. of Wright & Wright, Des Moines, for appellant.

Debra Hockett-Clark of Hockett-Clark Law Office, Des Moines, for
appellee.

Heard by Streit, P.J., Miller, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

STREIT, P.J.

~~Nanette~~ Rivas appeals the portion of the trial court's dissolution decree that grants ~~her~~ husband, David, primary physical care of their daughter, Lindsay. Upon our de novo review, we find it is in the child's best interests to award her father, David, primary physical care. Both parents are capable; however, David has a more acute understanding of Lindsay's need for stability and consistency, promotes good communication between him and Nanette, is open to compromise, and has a flexible work schedule that will allow him to cater to the needs of his daughter. The trial court is affirmed.

1. Background Facts & Proceedings.

David and Nanette Rivas married in February of 1995. They have one minor child, Lindsay, born February 22, 1996. In July 1998 Nanette filed a petition for dissolution of marriage. David is a diagnostic and therapeutic radiation therapist at Bliss Cancer Center in Ames, Iowa. He works Monday through Friday 8:30 a.m. to 4:30 p.m. Nanette is a registered nurse at Mercy Hospital in Des Moines, Iowa. She works a rotating night shift of three twelve-hour days and every other weekend. The parents acknowledge one another as good parents that have equally shared the duties of raising Lindsay.

At ~~trial~~, the main issue between the parties concerned physical care of Lindsay. ~~Nanette~~ requested primary physical care, claiming her work schedule was considerably more flexible, whereas David's position prevented him from spending adequate time with his daughter. David also requested physical care, claiming he believed Lindsay should have a stable residence and not be shuffled

between separate homes. David argued although Nanette was a good mother, her parenting philosophy was too lax and inconsistent. The district court, in entering the dissolution decree, awarded David the primary physical care of Lindsay. The court specifically noted David's thoughtful insight into Lindsay's need for stability and consistency, his ability to foster open lines of communication, his willingness to compromise, and the flexibility he enjoys at his present position. The court also found David's flexible work schedule would better benefit Lindsay in the long term, as she would soon begin school. Conversely, Nanette planned to remain working evenings, which would limit the interaction between mother and child.

Nanette appeals, claiming the trial court erred in granting David primary physical care.

II. Standard of Review.

We review child custody 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. The Merits.

In child custody cases, 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 stability and character; (2) The capacity of the parent "to provide for the emotional, social, moral, material, and educational needs of the child;" and (3) The stability of each proposed environment. *In re Marriage of Winter*, 223 N.W.2d at 166. Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). 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.*

In assessing the facts gleaned from the record and their application to the above-enumerated factors, we find the trial court correctly awarded David primary physical care of Lindsay. The trial court's well-articulated findings echo our own independent conclusions. Therefore, given its thoughtful polish we do not hesitate to incorporate the trial court's findings as our own:

It is clear that both parents are loving and competent to meet the child's basic needs. David appears to have given more thought to Lindsay's needs and the effect the current practice of shuffling the child from one parent to another, especially late at night or early in the morning, may have on the child. David is the parent that recognizes it is in the child's best interest to have one residence

which she knows is her home and at which she sleeps every night. David recognizes the need of the child for consistency in training and discipline. He recognizes that the child must have her own bed, sleep in her own room, and have a bedtime. Of the two, David appears to be more easy going and more likely to support the other parent's relationship with the child. David understands the need for good communication between him and Nanette. . . . David has been the one to compromise. . . . In addition, David has a job which offers considerable flexibility to attend to the child's needs.

The trial court is affirmed.

AFFIRMED.