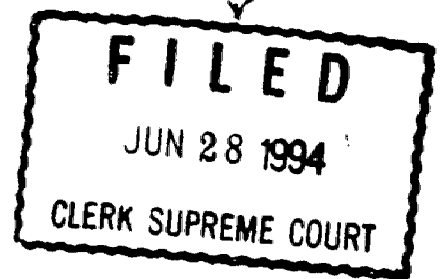


IN THE COURT OF APPEALS OF IOWA

No. 4-228 / 93-1585



IN RE THE MARRIAGE OF ANGELA S. BECTHOLD AND
BRIAN S. BECTHOLD

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Upon the Petition of
ANGELA S. BECTHOLD,

Appellant,

And Concerning
BRIAN S. BECTHOLD,

Appellee.

Appeal from the Iowa District Court for Floyd County,
John S. Mackey, Judge.

Petitioner appeals the child custody provisions of the
parties' dissolution decree. **AFFIRMED.**

Gary J. Boveia of the Boveia Law Firm, Waverly, for
appellant.

Judith O'Donohue of Eggert, Erb, Ott, O'Donohue & Frye,
Charles City, for appellee.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

HUITINK, J.

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Angela Becthold appeals from the physical care and attorney's fee provisions of the decree dissolving her marriage to Brian Becthold. We affirm.

Brian and Angela were married on June 27, 1984. Their only child, Amanda, was born on November 6, 1989. Angela provided for Amanda's physical care following her birth. In March of 1990 Angela took Amanda and went to live with her parents. She told Brian she was dissatisfied with his refusal to help around the house. Angela was pregnant at this time but did not tell Brian. She obtained an abortion, telling Brian only after the procedure was completed.

Brian and Angela subsequently reconciled. They continued to experience emotional and financial distress and agreed to go to a marriage counselor. Angela, however, decided counseling was not helpful and again left home with Amanda. A week later Angela telephoned Brian indicating she wanted to reconcile. She again changed her mind and expressed her intention to divorce Brian.

Angela retained a lawyer and placed \$1000 in the parties' joint checking account to pay attorney's fees. Brian wrote checks on the account and spent the \$1000. Angela informed Brian he would be denied visitation until he repaid the money. Although Brian repaid Angela, she refused to allow Brian to visit with Amanda.

Angela was awarded temporary care of Angela following a hearing on April 19, 1991. Brian was awarded liberal visitation. The district court found it necessary to admonish Angela for interfering with Brian's visitation with Amanda.

At the time of trial, Angela and Amanda were living in Des Moines with her parents. Angela was working as a customer service representative. Her prior employment was terminated in April 1993 when she embezzled \$3500 from her employer. As a result, Angela pled guilty to theft in the second degree. Angela's present net monthly income is \$1063.61.

Brian resides in Charles City, Iowa. He is employed as an operator at Solvay Animal Health, Inc. His net monthly income is \$1564.

Angela contends the district court erred in awarding physical care of Amanda to Brian. She argues her experience as a primary care provider and Brian's irresponsible financial behavior distinguish her as the better parent.

Our review in this matter is de novo. Iowa R. App. P. 4. The trial court was able to observe, firsthand, the demeanor and credibility of the witnesses, and we give weight to its findings. Iowa R. App. P. 14(f)(7).

In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa

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Code section 598.41(3), in In re Marriage of Weidner, 338 N.W.2d 351, 355-56 (Iowa 1983), and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration"--the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrbanc, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child 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 attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

We, based on our de novo review, find Brian and Angela are both capable of providing primary care for Amanda. We are, however, concerned about Angela's character as manifested by her past criminal conduct and deceitful behavior. Her refusal to allow Brian visitation until he repaid her \$1000 indicates a fundamental misunderstanding of her obligation as a physical care provider. We believe Brian will ensure Amanda has maximum continuing contact with her mother. We therefore conclude the child's long-term best interest would be best served by awarding physical care to Brian.

Angela also contends the district court's refusal to award her any attorney's fees was an abuse of discretion. We disagree.

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Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

The trial court's denial of attorney's fees was well within its discretion and its decision will not be disturbed on appeal. Appellant's motion regarding summer visitation filed June 21, 1994, is denied.

AFFIRMED.