IN THE COURT OF APPEALS OF IOWA

No. 5-112 / 94-1191

IN RE THE MARRIAGE OF DUANE T. ERICKSON AND DIANA S. ERICKSON

Upon the Petition of
DUANE T. ERICKSON,

Petitioner-Appellant,

And Concerning
DIANA S. ERICKSON,

Respondent-Appellee.

FILED
APR 28 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

Duane appeals the custody provision of the district court's dissolution of marriage decree. **AFFIRMED.**

Dorothy L. Dakin of Dakin Law Office, Boone, for appellant.

C. A. Pasley of Singer, Pasley, Holm, Timmons, Mathison & Curtis, Ames, for appellee.

Heard by Sackett, P.J., and Habhab and Huitink, JJ.

PER CURIAM

Petitioner-appellant Duane T. Erickson appeals the custody provision of the district court's dissolution of marriage decree. He argues the court erred in awarding physical care of the parties' child to respondent-appellee Diana S. Erickson. We affirm.

Duane and Diana Erickson were married in 1985. One child, Levi, was born March 5, 1987. Diana has two children from a previous marriage.

The parties originally agreed they would have joint legal custody and Diana would have primary physical care of Levi. However, after all evidence had been presented but prior to the court's disposition, Duane filed a motion to reopen to present evidence on the issue of custody. Diana filed a resistance. The court granted Duane's motion and heard evidence on the custody issue.

The court found that although "both parents have the capacity to provide for the needs" of Levi, "the scales weigh in favor" of Diana and awarded her primary physical care.

Duana appeals. He argues the court erred in awarding Diana primary physical care and by placing a greater burden of proof on him than should be applied in an original dissolution action. Duane contends the district court treated the custody issue as though Duane had filed a petition for modification rather than a motion to reopen to present evidence.

We review de novo. This custody issue was tried as a part of the original dissolution action. Consequently, the issue we address is which parent will be the better custodian. *See In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983); *In re Marriage of Sparks*, 323 N.W.2d 264, 266 (Iowa App. 1982). We, therefore, find it unnecessary to address Duane's contention the trial court applied the incorrect standard in determining custody.

We agree with the trial court that both Duane and Diana have the capacity to provide for Levi's needs. We also find they both love their child and have strengths and weaknesses as parents. We find Levi would find love and security in either home. While the issue is very close, we find no reason to depart from the trial court's decision.

Each party shall pay their own attorney fees.

We affirm.

AFFIRMED.