

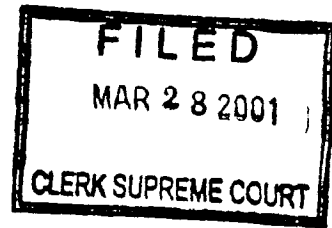
IN THE COURT OF APPEALS OF IOWA

No. 1-28 / 00-567
Filed March 28, 2001

**IN RE THE MARRIAGE OF DEBRA ANN ROSENBAUM
AND RICHARD JAMES ROSENBAUM**

**Upon the Petition of
DEBRA ANN ROSENBAUM,**
Petitioner-Appellant,

**And Concerning
RICHARD JAMES ROSENBAUM,**
Respondent-Appellee.



Appeal from the Iowa District Court for Chickasaw County, Jon Fister,
Judge.

Debra Rosenbaum appeals from the decree dissolving the parties'
marriage contending the district court erred in awarding primary physical care of
the parties' children to Richard Rosenbaum. **AFFIRMED.**

Christy R. Liss of Clark, Butler, Walsh & Hamann, Waterloo, for appellant.

Mark E. Huegel, New Hampton, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Debra and Richard Rosenbaum were married on July 18, 1981. They have two children: Carla, born August 2, 1983, and Matthew, born September 5, 1987. In its April 7, 2000, decree, the district court determined the parties' children should be placed in Richard's physical care, subject to Debra's right to visitation. Debra appeals.

II. Standard of Review.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact-findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

III. Primary Physical Care.

In assessing an issue of child custody, the controlling consideration is the interest of the children. *In re Purscell*, 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). The court determines placement according to which parent can minister more effectively to the children's long range best interests. *In re Marriage of Barry*, 588 N.W.2d 711, 712 (Iowa Ct. App. 1998). 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 Ct. App. 1996). Insofar as is reasonable and in the best interests of

the children, the court should make an award of custody that will assure the children the opportunity for the maximum continuing physical and emotional contact with both parents and which will encourage the parents to share the rights and responsibilities of raising the children. See Iowa Code § 598.41(1) (1999).

We identify numerous factors to help determine which parent should serve as the primary caretaker of the children in a divorce. *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa Ct. App. 1997); see Iowa Code § 598.41. Some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the particular facts of each case. See *Daniels*, 568 N.W.2d at 54.

Debra argues the district court erred in awarding primary physical care to Richard. In particular, she complains the court erred in finding that (1) she has difficulty controlling and disciplining the children; (2) her actions in removing property from the marital home were inappropriate; (3) Richard has a stronger family support system; (4) her new romantic interest made her a less favorable candidate for physical placement; and (5) Richard has fully addressed his drinking and mental health problems. We disagree.

The district court found both Debra and Richard to be appropriate caretakers, noting both love their children and have their best interests at heart. Accordingly, the court noted that this was a very difficult issue, decided in the end based on the court's assessments as to credibility. Such assessments are entitled to our close attention because we are denied the impression created by

the demeanor of the witnesses during presentation of evidence. See *In re Marriage of Zabecki*, 389 N.W.2d 396, 400 (Iowa 1986).

In reaching its decision, the court stated:

[B]ased on the appearance and demeanor of the parties and their prior behavior, the Court finds that the children's growth and development and their relationship with both parents will be stronger in the long run if primary physical placement is with Respondent (Richard). . . . Respondent has a stronger family support system. His extended family, particularly his father and sister, has been more involved with and concerned about the welfare of the children than Petitioner's, and Respondent is more likely to support the children's relationship with Petitioner and her family than she. This is evidenced by the message she indirectly sends to the children whenever she refuses to communicate with Respondent by telephone, whenever she blocks her driveway so he cannot pull in when picking up or returning the children, and in her resistance to the videotaping of the contents of her residence as ordered in the pretrial conference on January 18. In addition, although Courts generally do not encourage repetitive, cumulative, partisan, and self-serving testimony, it is significant that no one in Petitioner's extended family appeared on her behalf

On balance, Respondent is more likely to take an active role to facilitate contact with Petitioner and her family than Petitioner, who is passive and who takes the position that, as long as she does not actually prevent the children from having contact with their family and his family, she is doing all that is required. In the Court's view, joint custody requires an affirmative effort on the part of each parent to maximize contact with the other parent and to support the other parent's relationship with the children. Petitioner is not only disinclined to do that by temperament, she is disinclined to do that by reason of her attitude toward Respondent.

These findings are supported by the record, and we adopt them as our own.

We, like the district court, are convinced Richard is more inclined to support Debra's relationship with the children than she is to support his. See *In re Marriage of Leyda*, 355 N.W.2d 862, 866 (Iowa 1984) ("This court has long recognized the need for a child of divorce to maintain meaningful relations with both parents."). This conclusion is supported by Debra's actions in refusing to

speaking with Richard on the phone, insisting that he call the children while she is at work, sharing inappropriate details of the divorce proceedings with her children, and refusing to allow Richard to pull into her driveway when picking up the children for visitation.

In reaching this decision, we have not ignored Debra's substantial primary care experience. However, the fact that she will no longer serve as the children's physical caretaker does not mean they will no longer enjoy the benefit of her parenting experience. As joint custodian, Debra is entitled to share in the rights and responsibilities of parenting the children, and she should not be discouraged in the exercise of her joint custodial responsibilities.

AFFIRMED.