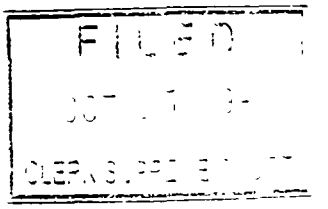
IN THE COURT OF APPEALS OF IOWA

No. 1999-142 (9-358) / 98-1811
Filed October 15, 1999



IN RE THE MARRIAGE OF JULIE HAMMERS AND PAUL HAMMERS

Upon the Petition of
JULIE HAMMERS,
Petitioner-Appellant,

And Concerning
PAUL HAMMERS,
Respondent-Appellee.

Appeal from the Iowa District Court for Hardin County, M. D. Seiser, Judge.

Petitioner appeals from the dissolution decree, contending the district court erred in awarding primary physical care of the parties' children to the respondent.

AFFIRMED.

G.A. Cady III of Hobson, Cady & Cady, Hampton, for appellant.

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan & Condon, Marshalltown, for appellee.

Heard by Streit, P.J., and Vogel and Zimmer, JJ.

STREIT, P.J.

Deceit, anger, and hate permeated the final months of Julie and Paul Hammers' marriage. The district court, after wading through the murk of this deteriorated marriage, awarded Paul primary physical care of their two children. Julie appeals, claiming the trial court erred in awarding Paul primary physical care. After reviewing the record and giving proper deference to the trial court's credibility findings, we affirm.

I. Background Facts & Proceedings.

Julie and Paul Hammers married on August 11, 1989. They have two children, Dustin, born June 6, 1991, and Wesley, born December 28, 1993. In January 1998 Julie filed a petition for dissolution of marriage. The chief issue at trial was the primary physical care of Dustin and Wesley. The district court awarded joint legal custody and gave primary care to Paul. The court found Paul to be more stable, more credible, and better capable of providing for the children's long-term needs. The court found Julie to be involved in a number of unsatisfactory relationships, to have lied in and out of court, and to have difficulty controlling her anger. The court found Paul's custody evaluator more convincing than Julie's. The court granted Julie liberal visitation and ordered her to pay child support. Julie appeals, challenging the court's primary care determination.

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. Awarding Primary Physical Care to Paul Is in the Best Interests of the Children.

In child custody cases, the children's best interests are 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 children is the critical issue. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). The objective is to place the children in the environment most likely to bring them 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 judicially and statutorily recognized factors designed to assist in determining the primary care giver. *See In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974); Iowa Code § 598.41 (1997). Those applicable to this case include: (1) The traits of each parent, including character, stability, and mental health; (2) "The capacity and interest of each parent to provide for the emotional, social, moral, . . . and educational needs of the [children];" (3) The report and recommendation of independent professionals; and (4) The parent with greater

primary care experience. *In re Marriage of Winter*, 223 N.W.2d at 166-67; *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Daniels*, 568 N.W.2d at 54. 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.*

The actions and behaviors of *both* parties in the course of this marriage and separation were deplorable. The relationship teemed with deceit, lies, and hatred; yet the award of primary physical care is not to be used as punishment nor reward. *In re Marriage of Brogden*, 344 N.W.2d 271, 273 (Iowa App. 1983). It is equally clear and undisputed both Paul and Julie are good parents and could adequately provide for their children. However, the absolute best interests of the children must predominate. Accordingly, the factors enumerated above must be appropriately weighed.

*A. **Character, Stability, and Mental Health.*** The character, stability, and mental health of each parent will play a large part in the healthy maturation of their children. Although neither party is sound in all these areas, Paul's character and stability appear best suited to meet the children's long-term needs. Paul's character and stability is conducive to parenting. Based on the evidentiary record, Paul seemed slow to anger, attempted to be civil in a deteriorating relationship, and showed great concern both for his marriage and his children. Julie was far more abrasive and explosive. Her exposed lies reflect poorly on her credibility and honesty. We

acknowledge Paul too displayed inappropriate behaviors, but in balancing both character and stability the scale tips in Paul's favor.

The mental health of the respective parents is of obvious concern. Paul does have an isolated incident of suicidal ideation, but Dr. Roland testified Paul currently displays no symptoms associated with such a diagnosis. Julie's combative behavior the week prior to trial demonstrates some rather overt problems with anger management. The parties' respective mental health issues cancel one another and fail to cut in favor of either parent.

B. Providing for the Children's Emotional, Social, Moral, and Educational Needs. Children rely on their parents for all their core needs. A parent's ability and willingness to supply these needs are of utmost importance. With regard to ability, Paul can best provide for the children's emotional, social, and moral needs. Paul displays better consistency and patience. Julie tends to overreact, and her anger appears to simmer just below the surface. Emotional consistency and patience will better serve the children. The nature and number of Julie's extramarital relationships are of minor concern. It is undisputed Julie's education, training, and profession would likely make her better suited to care for the children's educational needs. Paul, however, can better supply the lion's share of the children's needs.

The ability of a parent, however, is moot if that parent is unwilling to recognize the children's needs as paramount. Julie's letters to her paramour are troubling in this regard. She stated in those letters her desire to place this newly-formed relationship

above all—even her children. Although such a statement is likely attributable to flirtatious banter, it is illuminating nonetheless. Paul demonstrates a greater willingness to provide for the needs of his children.

C. The Reports and Recommendations of Independent Professionals. Each party offered the testimony and reports of psychologists evaluating which parent is better suited for primary physical care of the children. The district court found the report and testimony of Paul's psychologist, Dr. Roland, more compelling. We agree. Dr. Roland's testimony and report is more detailed and delves with greater depth into the intricacies of each parent's ability, character, and willingness. We afford Dr. Roland's opinion Paul is better suited to provide for the long-term interests of the children greater weight.

D. The Parent with Greater Primary Care Experience. The fact Julie was the primary care provider is not lost upon this court, yet primary care experience is simply another factor to be consid ;red. *See In re Marriage of Ihle*, 577 N.W.2d 64, 69 (Iowa App. 1998) (despite being the primary care provider during the marriage, a mother's recent dishonesty and instability weighed heavily in the decision to grant the father primary care). This factor does weigh in favor of Julie, but is not determinative. Her instability, poor anger management, and dishonesty outweigh her previous primary care commitment.

IV. Conclusion.

The trial court properly awarded primary physical care of Dustin and Wesley to Paul. We understand making such statements as "it's a close call" or "this was an extremely difficult decision" provides little more than token comfort to petitioner, but it was indeed both a "close call" and a "difficult decision." We give deference to the trial court's credibility findings and its decision as it had the opportunity to view firsthand the parties' demeanor and character. The district court is affirmed.

AFFIRMED.