IN THE COURT OF APPEALS OF IOWA

No. 1-68 / 99-1808
Filed April 11, 2001

IN RE THE MARRIAGE OF TROY T. LIEB AND GEORGINA L. LIEB

Upon the Petition of
TROY T. LIEB,
Petitioner-Appellee/Cross-Appellant,

And Concerning
GEORGINA L. LIEB,
Respondent-Appellant/Cross-Appellee.

FILED
APR 11 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

··On appeal from the entry of the parties' dissolution decree, both Georgina and Troy challenge the district court's award of split physical care. **AFFIRMED.**

Mark S. Beckman of Beckman Law Offices, Dubuque, for appellant.

Thomas J. Straka of the Law Office of Robert L. Day, Jr., Dubuque, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

STREIT, P.J.

Troy and Georgina Lieb appeal and cross-appeal the district court's decision to place their two daughters in their split physical care. We affirm.

I. Background Facts & Proceedings.

Troy and Georgina Lieb were married in February 1997. They have two daughters: Gabrielle, born in December 1997, and Gracelyn, born in July 1999. Troy and Georgina's marriage was dissolved in November 1999. The district court ordered joint legal custody of their children and placed Gabrielle in Troy's physical care and Gracelyn in Georgina's physical care. Both parties appeal the split physical care order.

II. Standard of Review.

We review de novo. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). We give weight to the district court's findings of fact, but we are not bound by them. *Id.*

III. The Merits.

The best interests of the children dominate our consideration in custody cases. *In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa Ct. App. 1994). Numerous factors, which are enumerated in Iowa Code section 598.41(3), exist to supplement the best interests standard. *Id.* The critical issue in determining the best interests of a child is which parent will do better in raising the child into a healthy, content, well-adjusted young adult. *Id.*

Split physical care occurs when each parent has physical care of at least one child. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). There is a

presumption that siblings should not be separated. *Id.* Split physical care is generally opposed because it deprives siblings of the benefit of constant association with one another. *Id.* at 398. Circumstances may arise, however, that demonstrate that separation may better promote the long-term best interests of each child. *Id.* Good and compelling reasons must exist for a departure from the presumption. *Id.* Factors to consider include the caretaking abilities of each parent, the difference in age between the children, whether the children would have been together if split physical care was not ordered, the relationship between the children, and the likelihood one of the parents or children would turn the other children against the other parent. *Id.*

A split physical care arrangement is appropriate in this case. While they were still living together, Troy and Georgina each spent a significant amount of time caring for Gabrielle because their respective work days began and ended at considerably different times. Then, from February 1999 until the district court entered the dissolution decree in November 1999, Troy was Gabrielle's primary caretaker pursuant to a temporary custody order. "Temporary orders awarding physical custody create no presumption that [a] parent is the preferred parent in a final custody decision." *In re Marriage of Swenka*, 576 N.W.2d 615, 617 (Iowa Ct. App. 1998). Here, however, allowing Troy to maintain his role as Gabrielle's primary caretaker after the parties' dissolution is in Gabrielle's best interests. Troy has already proven he can provide appropriate care for his oldest daughter. More significantly, he appears better suited than Georgina to provide her with long-term stability given Georgina's struggles with depression accompanied by periodic suicidal

ideation. *See In re Marriage of Wilhelm*, 491 N.W.2d 171, 172 (Iowa Ct. App. 1992). Troy should continue as Gabrielle's primary caretaker.

While Troy is currently the better caretaker for Gabrielle, it does not necessarily follow that he is also the better caretaker for Gracelyn. *See Will*, 489 N.W.2d at 398. Georgina has been Gracelyn's primary caretaker since Gracelyn was born in July 1999. At that time, Troy and Georgina were no longer living together. Indeed, after Gracelyn was born, Troy apparently did not attempt to establish a regular visitation schedule with his youngest daughter until after the first two days of the parties' trial had been completed in September 1999.[1] Allowing him to assume the role of Gracelyn's primary caretaker under such circumstances would be contrary to her best interests. Georgina should continue as Gracelyn's primary caretaker.

A split physical care arrangement is less troublesome in this case than it may be in many others. First, Gabrielle and Gracelyn never established a significant sibling relationship before the November 1999 dissolution given their respective ages at that time--they have never even shared the same primary caretaker. Second, Gabrielle and Gracelyn are together for roughly two days every week given the visitation provisions of the dissolution decree. *See In re Marriage of Pundt*, 547 N.W.2d 243, 246 (Iowa Ct. App. 1996). We affirm the district court. We have considered all the issues and arguments Troy and Georgina have presented—including those regarding visitation—whether discussed in detail or not and find them to be without merit.

AFFIRMED.

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[1] The trial took place over three days in the fall of 1999: September 8, September 9, and October 20. Troy sent letters requesting visitation on September 15 and September 28.