IN THE COURT OF APPEALS OF IOWA

No. 1999-25 (9-135) / 98-1248
Filed April 30, 1999

IN RE THE MARRIAGE OF GLEN V. NULL AND CARLA L. NULL

Upon the Petition of GLEN V. NULL,

Petitioner-Appellant,

And Concerning CARLA L. NULL,

Respondent-Appellee.

Appeal from the Iowa District Court for Jones County, L. Vern Robinson, Judge.

Glen Null appeals the child custody provisions of the district court's decree dissolving his marriage to Carla Null. **AFFIRMED.**

Matthew G. McQuillen and Marty A. Hagge of Remley, Willems & McQuillen, Anamosa, for appellant.

Douglas D. Herman of Locher, Locher & Strittmatter, Monticello, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

MAHAN, J.

Glen Null appeals the child custody provisions of the decree of dissolution giving Carla Null primary physical care of the parties' children. We affirm.

Glen and Carla Null married in 1985. They have three children: Cassie, born in 1986, Christina, born in 1990, and Jacob, born in 1991. Throughout the marriage the parties lived on the family farm. Glen farms and also works for a lumber yard. Carla worked in retail until Cassie's birth. She then did child care until 1990 when she returned to her old employer. Since 1990 she has entered the management program and now manages the store in New Hampton, over two hours from the family home. In 1996 Carla moved from the family home to Monticello. The parties shared physical custody of the children between October 1996 and October 1997.

Glen filed a petition for dissolution of marriage in 1997. In October 1997 the court awarded Glen temporary physical care of the children during the pendency of the dissolution action. Prior to trial, the parties entered a stipulation as to alimony, property division, visitation, and attorney fees. At the beginning of the dissolution hearing the parties stipulated who would receive the dependency exemptions for tax purposes, leaving only the issues of child support and primary physical care for the court's determination.

The district court made the following findings concerning custody:

> This is a particularly difficult decision insofar as deciding which parent should be the primary caretaker for the three minor children. Both Glen and Carla are hard working, religious, conscientious, and deeply devoted to their children. Carla's maturity, stability, and

> supportive nature for the children tip the scales in her favor. Agreeing to having the children remain at the farm during this last school year and avoid disruption while she settled into New Hampton, shows a selfless and positive attitude toward the children. The court does not hold it against Carla that she was the one that moved from the family home since it was a residence owned by Glen and his parents before him. It was Carla who was instrumental in instilling the importance of religion to Glen and the children. Carla was the "primary caretaker" of the children during their early years and continues to be the rock in their lives. Carla is more sensitive to the children's emotional needs and is slightly more supportive than Glen in fostering strong parent/child relationships. The court has some concern about Glen's consumption of alcohol. He had run-ins with authorities concerning drinking and driving shortly before and after the parties married and he still continues to drink to excess on occasion. There is no question but that Glen would be able to be the primary caretaker for the children because of his strong personality traits and the family assistance he would have. Nevertheless, in the long run, the best interests of the children are to be in Carla's primary care.

In its conclusions of law, the court addressed the criteria from *In re Winters' Marriage*, 223 N.W.2d 165, 166-67 (Iowa 1974), and *In re Marriage of Bowen*, 219 N.W.2d 683, 687-88 (Iowa 1974), in detail, as well as stating it did not consider gender nor the tender years doctrine in awarding custody.

On appeal, Glen raises ten arguments under his claim the court erred in awarding primary physical care to Carla, mostly challenging the weight the court gave to various factors or criteria in determining custody.[1] He claims the court gave either

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[1] Glen challenges the weight given:
1. The significance of the children remaining in the same environment/community.
2. The significance of family members in the community.
3. The parties' job commitments/work schedules.
4. The parties' primary care experience.
5. Carla's moral misconduct.
6. Glen's consumption of alcohol.
7. Carla's departure/absence from the family home.

too much or too little weight to the factors. He also claims the court failed to assess the *Winters* factors properly.[2]

The supreme court summarized the general principles applicable to the issue of custody in *Bowen*:

> Our review is de novo. Although we are not bound by trial court findings we give them weight. The status of children should be quickly fixed and, thereafter, little disturbed. Siblings should usually not be separated. No hard and fast rule governs which parent should have custody. It is not a matter of reward or punishment. The issue is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the children.

Bowen, 219 N.W.2d at 687-88. In assessing a custody order, we give considerable weight to the judgment of the district court which has had the benefit of hearing and

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8. The parties' religiousness.
9. The parties' abilities to promote relationships with the other spouse/family.

[2] The factors include:

1. The characteristics of each child, including age, maturity, mental and physical health.
2. The emotional, social, moral, material, and educational needs of the child.
3. The characteristics of each parent, including age, character, stability, mental and physical health.
4. The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the child.
5. The interpersonal relationship between the child and each parent.
6. The interpersonal relationship between the child and its siblings.
7. The effect on the child of continuing or disrupting an existing custodial status.
8. The nature of each proposed environment, including its stability and wholesomeness.
9. The preference of the child, if the child is of sufficient age and maturity.
10. The report and recommendation of the attorney for the child or other independent investigator.
11. Available alternatives.
12. Any other relevant matter the evidence in a particular case may disclose.

In re Winter's Marriage, 223 N.W.2d 165, 166-67 (Iowa 1974).

observing the parties firsthand. *In re Marriage of Ford*, 563 N.W.2d 629, 630-31 (Iowa 1997). The critical issue to determine is which parent will do the better job in raising the children. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995); *In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa App. 1994).

The trial court recognized the difficulty in making the primary physical care determination under the circumstances of this case. Both parties argue the factors considered by the court should favor them. Glen asserts the stability of remaining in the same community with extended family and with his flexible work schedule favors awarding primary physical care to him. We disagree. The children have been making connections and friends while in New Hampton with Carla. Both Glen and Carla have some flexibility in their schedules, but from the record we find Carla uses her flexibility and free time to benefit the children more than Glen does. The primary involvement of the extended family has been through Carla's actions, except when based on Glen's unavailability. We conclude these factors favor Carla.

We find both parties are capable of providing for the needs of the children. We find, however, after evaluating the statutory and case law factors, the circumstances of this case favor Carla as primary physical care giver. Her past actions concerning the children speak louder than the possibilities of problems raised by Glen. Our decision also is supported by the weight we give to the findings of the trial court, which had the opportunity to hear and observe the witnesses firsthand.

AFFIRMED.

No. 98-1248. [1999-25 (9-135)] IN RE MARRIAGE OF NULL

Appeal from the Iowa District Court for Jones County, L. Vern Robinson, Judge. **AFFIRMED.** Considered by Sackett, C.J., and Streit and Mahan, JJ. Opinion by Mahan, J. *(5 pages $2.00)*

Glen and Carla Null married in 1985. They have three children: Cassie, born in 1986, Christina, born in 1990, and Jacob, born in 1991. Glen farms and also works for a lumber yard. Carla manages a retail store in New Hampton, over two hours from the family home. In 1996 Carla moved from the family home. The parties shared physical custody of the children between October 1996 and October 1997. Glen filed a petition for dissolution of marriage in 1997. At the beginning of the dissolution hearing, the parties' stipulation resolved all issues except child support and primary physical care. The court placed the children with Carla. Glen raises ten arguments under his claim the court erred in awarding primary physical care to Carla, mostly challenging the weight the court gave to various factors or criteria in determining custody. ***OPINION HOLDS:*** We find the circumstances of this case favor Carla as primary physical care giver. Her past actions concerning the children speak louder than the possibilities of problems raised by Glen. Our decision also is supported by the weight we give to the findings of the trial court, which had the opportunity to hear and observe the witnesses firsthand.