IN THE COURT OF APPEALS OF IOWA

No. 0-193 / 99-1593
Filed April 28, 2000

IN RE THE MARRIAGE OF WILLIAM JASON PETERS AND SHELLY LYNN PETERS

Upon the Petition of
WILLIAM JASON PETERS,
Appellant,

And Concerning
SHELLY LYNN PETERS,
Appellee.

FILED
APR 2 8 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Fremont County, G. C. Abel, Judge.

The petitioner appeals the child custody provisions of the parties' dissolution decree. **AFFIRMED.**

G. Rawson Stevens, Shenandoah, for appellant.

Jon H. Johnson of Johnson & Graesser, P.C., Sidney, for appellee.

Heard by Vogel, P.J., and Mahan and Miller, JJ.

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VOGEL, P.J.

William Jason Peters (Jason) appeals the child custody provisions of the parties' dissolution decree, granting primary physical custody of the children to Shelly Lynn Peters. We agree with the trial court that Shelly is better able to facilitate the relationship of the children with both parents and affirm.

Background facts. Jason and Shelly were married in November of 1992. There were two children born to the marriage; Jacob, born March 25, 1995, and Alex, born March 24, 1996. During the marriage, Shelly and Jason planned to support each other while obtaining a college degree. Shelly was to attend college first, obtain a job and support the family while Jason attended. They set this plan in motion in the summer of 1997, with Shelly attending a community college for computer programming. During this time, she commuted the sixty mile distance between their home in Farragut and school in Omaha. In December 1998, Shelly obtained a full-time employment position in addition to her full-time school commitments. Jason and Shelly agreed that she would establish an apartment in Omaha for the weekdays and commute home on the weekends. Upon her graduation in May, Jason and the boys planned to join her there and Jason would begin working toward his degree. However, during this time, the marriage relationship deteriorated and Jason filed a petition for dissolution of marriage. The parties agreed Jason would have temporary custody of the children due to the hectic nature of Shelly's school and work schedule, which would subside in May 1999. Shelly had visitations every other weekend with the boys. Unable to agree to a permanent custody arrangement,

the matter proceeded to trial in June of 1999. The trial court ordered Jason and Shelly to have joint legal custody of the boys with Shelly having primary physical care. Jason appeals.

Scope of review. Our review of a custody order is de novo and our primary consideration is the best interests of the children. *In re Marriage of Kleist,* 538 N.W.2d 273, 276 (Iowa 1995); *In re Guardianship of Knell,* 537 N.W.2d 778, 780 (Iowa 1995). In assessing a custody order, we give considerable weight to the judgment of the district court, which has had the benefit of hearing and observing the parties first-hand. *Kleist,* 538 N.W.2d at 278.

The controlling consideration in determining custody is the best interest of the child. Iowa R. App. P. 14(f)(15). There is no inference favoring one party as opposed to the other in deciding which one should have custody. *See In re Marriage of Bowen,* 219 N.W.2d 683, 688 (Iowa 1974). We determine each case on its own facts to decide which parent can administer more effectively to the long-range interests of the child. *In re Marriage of Winter,* 223 N.W.2d 165, 166 (Iowa 1974). The critical issue is determining which parent will do better in raising the child; gender is irrelevant. *See In re Marriage of Ullerich,* 367 N.W.2d 297, 299 (Iowa App. 1985). In so far as is reasonable and in the best interest of the child, the court should make an award of custody which will assure the child 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 child. *See* Iowa Code § 598.41(1). To effectuate

that policy, the court must consider the willingness of each party to allow the child access to the other party. *In re Marriage of Burham,* 283 N.W.2d 269, 276 (Iowa 1979).

Relocation of the children. Granting primary physical custody to Shelly required a physical relocation for the boys to Omaha. Jason asserts the trial court should not have found it was in the best interests of the children to remove them from the farmhouse where they had lived since birth to a small apartment in a new town sixty miles away. In reviewing this contention, we consider not only the environmental stability impacted by moving the children but also the emotional stability offered by each parent. *See* Iowa Code § 598.41; *In re Marriage of Williams,* 589 N.W.2d 759, 762 (Iowa App. 1998). "Minimal changes in physical environment may result in greater emotional stability." *Id.* Our case law places greater importance on the emotional aspects of stability than the physical setting of the child. *Id.* In this case, we agree with the trial court that the primary consideration is not whether the children will be raised on the farm or in the city, but which parent will better foster a relationship with the other parent.

Assuring maximum contact with both parents. In determining primary physical custody of these two very young boys, the trial court found in favor of Shelly, stating she is better able to maximize the contact between the children and Jason. Jason contends the court was wrong in finding that he failed to provide ample contact and communication between Jacob, Alex and Shelly. We agree with the trial court in finding both parents are very capable of providing good physical care for the boys. Both Jason and Shelly, during different periods

of time, have assumed the role of primary caregiver for these children. The trial court found, as do we, that the custody of these children turns on one issue; which parent is better able to foster and support the children's relationship with the non-custodial parent. The trial court strongly based its decision on the credibility of the parties' testimony at trial. Therefore, we give considerable weight to that factor.

In reviewing the record, we have determined that the behavior of both parties, during some rather rocky times, has demonstrated immaturity in decision-making and reactive behaviors toward each other. However, while Shelly's choices have negatively affected the marital relationship, Jason's actions have negatively impacted the children and their relationship with their mother.

Although this court does not question that both Jason and Shelly love their children and can provide for their physical needs, the children also need an emotional environment which will allow and encourage their relationship with both parents. Shelly is better able to do this and maximize contact between the children and Jason. Therefore, the interests of the children are best served by the trial court's decision. Having considered all other issues properly raised on appeal, we affirm.

AFFIRMED.