FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-378 / 89-161

IN RE THE MARRIAGE OF DEBRA LYNN STEPANEK and DENNIS TODD STEPANEK

Upon the Petition of

DEBRA LYNN STEPANEK,

Appellant,

And Concerning

DENNIS TODD STEPANEK,

Appellee.

Appeal from the Iowa District Court for Linn County, Paul J. Kilburg.

Petitioner appeals the decree of dissolution entered for the parties in district court. **AFFIRMED.**

Amanda Potterfield and Jerry Zimmerman of the Joe Johnston Law Firm, P.C., Cedar Rapids, for appellant.

Robert Nelson, Cedar Rapids, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J. 193

Appellant, Debra Lynn Stepanek, appeals the district court's decision awarding primary care of the parties' two minor children to appellee. She claims the trial court erred as the ruling was not in the best interests of the children. We affirm.

Debra and appellee, Dennis Todd Stepanek, were married on April 25, 1981, after an eighteen-month courtship. They had two sons: Chad, born August 5, 1981; and Jarrod, born January 16, 1985. Dennis has a son from a previous marriage.

Debra is a high school graduate. She is a licensed day care provider and normally takes care of four children in her home. She also works as a food server at the Sea Galley Restaurant. Debra and Dennis were together until January 1988 when she and the boys moved into an apartment. She is presently living in a mobile home with Michael DenBeste. They are engaged to be married. When Debra left Dennis, the court placed temporary custody of the boys with her.

Dennis is a high school graduate with no subsequent formal education. He drove a truck for ten years, then quit to be able to spend more time with the boys. He currently works for P.D.F. Corporation, assembling and disassembling heavy equipment. He continues to live in a home he bought in 1977, during his first marriage.

The district court awarded joint legal custody of the children, with Dennis being given physical care. The court found Dennis exhibits a personal life style of consistency and stability, while Debra's use of illegal drugs and alcohol is detrimental to both her ability to care for the boys on a daily basis as well as their impressionable attitude toward these substances. We agree.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). In re Marriage of Fish, 350 N.W.2d 226, 228 (Iowa App. 1984).

In resolving a question of primary physical care, our first and governing consideration is the best interests of the children. Iowa R. App. P. 14(f)(15). We must determine which parent can minister more effectively to the children's long-term interests. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982).

We agree with the trial court's finding Dennis has shown a constant and sincere interest in the lives and activities of his boys. The court concluded, although an incident occurred where Dennis pushed Debra, injuring her, this was an isolated incident caused by the turmoil right before the separation.

The court considered the close relationship between the boys and Dennis's son from his first marriage, a significant factor in its evaluation. It also noted Dennis lived in the same house since 1977. Except for the separation, the boys would be living in the same house they've been in since birth. The stability of home and neighborhood was also cited as significant.

But what tipped the scales is Debra's lifestyle. Although Debra described her drug use as occasional, she admitted using drugs since she was 17 years old. The court said it could not conclude her cessation of drug use at the time of trial was permanent, rather than a temporary respite. Debra's testimony includes statements which indicate she doesn't necessarily see anything wrong with the use of illegal substances--"it's how you use it, I think." She lives with, and plans to marry, a man (Michael) who has used illegal substances in the past and was arrested for drunk driving in 1987. Although Michael is on probation, he continues to drink alcohol. He has violated his probation by driving the boys without a driver's license and by driving to and from work without a work permit.

Although Dennis admitted he had smoked marijuana during the marriage, the trial court concluded he only did so for a short time and since then has come to strongly disdane the use of drugs.

We agree with the trial court, in considering the evidence as a whole, it is in the best interests of the minor children both parents be awarded joint custody with physical care in Dennis.

AFFIRMED.