FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-373 / 92-296

IN RE THE MARRIAGE OF MICHAEL WESLEY IDDINGS AND GAYLE ANN IDDINGS

Upon the Petition of

MICHAEL WESLEY IDDINGS,

Appellant,

And Concerning

GAYLE ANN IDDINGS,

Appellee.

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Appeal from the Iowa District Court for Marion County, J. W. Jordan, Judge.

The husband appeals a district court dissolution decree granting primary physical care of two minor children to the wife. In addition, the husband claims that the district court erred in failing to require the wife to reimburse him for back child support. **AFFIRMED.**

Timothy W. Greene of Borseth & Greene Law Office, Pleasant Hill, for appellant.

Ronald F. Walker of Hardin & Walker, Knoxville, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

Michael and Gayle Iddings were married in August 1986. They have two children: Megan, born in December 1987, and Melanie, born in July 1989.

Michael has completed high school and has attended two years of college. He is currently employed at his father's drywall business, where he earns approximately $20,000 a year gross.

Gayle has completed high school. She has worked in a restaurant and is currently employed as a manual laborer in a manufacturing process. As a child, Gayle was sexually abused by her father. She is currently not receiving counseling, but has received counseling in the past. She intends to resume counseling when she can afford to do so.

On November 27, 1990, Michael filed a petition for dissolution. Accompanying the petition was an application for both temporary custody and a writ of injunction to keep Gayle from taking the children from his custody. The writ was granted, and on March 22, 1991, the district court issued a temporary order giving temporary custody of the children to Michael. Gayle was given visitation rights. The court deferred the setting of child support until the time of trial.

On August 13, 1991, Gayle filed a second application for temporary custody. On September 13, 1991, the district court awarded temporary physical custody to Gayle, with visitation rights to Michael. Michael was also ordered to

pay temporary child support in the amount of $76.74 per week.

On February 6, 1992, the district court filed its ruling and decree for the dissolution. The court gave only minimal weight to a home study which recommended primary physical care be placed with Michael. In the home study, the investigator had interviewed the parties on only two separate occasions. As the interviews with Michael were not held when Michael was with his children, the investigator was unable to make any observations about Michael's interaction with his children. The court found, although Gayle had not fully dealt with the trauma of the sexual abuse, she appeared to be making progress. The court awarded the parties joint legal custody of the children, with physical custody to Gayle. The court also determined Gayle did not owe Michael any back child support.

Michael appeals, challenging the district court's custody decision and refusal to award back child support.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). On our review, we affirm the decision of the district court.

I. Child Custody. Michael first challenges the district court's custody decision which granted physical custody of the children to Gayle.

In child custody cases, the first and governing consideration is the best interests of the child. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3), in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983), and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

Michael asserts he should be given physical custody of the children because of his employment, family support, emotional stability and his previous care of the children. He asserts Gayle has been unwilling to receive counseling for the abuse she suffered as a child. He argues Gayle is unstable and points to several incidents involving Gayle's conduct. We find many of his allegations regarding Gayle to be unsubstantiated.

Like the district court, we question the validity of the home study which was conducted for this case. We note the comments of the district court:

> The investigation consisted of interviewing each of the parties on two separate occasions and taking notes during his interview. The interviews with Michael were not with the children involved . . . . The investigation also included repeated statements from references the parties had given him with no demonstration of corroboration.

The investigator who performed this home study had only conducted five such studies in eight years. We will not rely upon this study in making our decision.

The record indicates both Michael and Gayle have emotional problems. Michael is passive-agressive in his role as a father and Gayle has not fully dealt with the abuse she suffered as a child. These problems were aggravated by the emotional stress in their marriage. However, we agree with the district court's observation that, since the separation, "both [(Michael and Gayle)] have gotten their act together better."

Overall, the record supports the finding that the long-range best interests of Megan and Melanie would be better served if Gayle were the physical custodian. During the marriage, Gayle had the primary responsibility for taking care of the home and the children. Gayle currently has a strong support base of friends, family and church. Since the separation, she has been able to both pay her bills as they become due and provide the girls with a comfortable, two-bedroom apartment on a relatively limited income.

These factors demonstrate a concerted effort of Gayle to become a better, more effective parent.

We do not agree Gayle's emotional stability is of great concern. Gayle has worked through her emotional problems to the best of her abilities. There is no evidence that Gayle "refuses" to deal with her emotional problems. She has read several self-help books and has successfully completed a parenting class. Gayle testified she has been unable to receive further counseling because she does not have medical insurance available for such expensive treatment. We will not base our decision on this factor.

While Michael has strong family ties and a comfortable job working with his father's business, these factors do not necessarily demonstrate it would be in the children's best interests to be placed with their father. The house in which the children were living with their father was not in good or safe condition. In addition, Michael has had serious financial problems which have been alleviated only by the financial assistance of his parents. Finally, the allegations Michael lodged against Gayle demonstrate bitterness and hostility on Michael's part towards Gayle. This negative attitude, which may ultimately affect the children, is a factor which should be considered in a custody determination. See In re Marriage of Lacaeyse, 461 N.W.2d 475, 477 (Iowa App. 1990).

Upon review of the record, both parents appear to be capable of parenting Megan and Melanie. However, the best

interests of the children will be better served with Gayle as the physical custodian. We affirm the decision of the district court.

II. Child Support. Michael also contends the district court erred in refusing to award back child support.

We do not find Iowa Code section 598.21 (1991) to be controlling. Under Iowa Code section 598.11 (1991), the district court may order either party to pay a sum of money for the support and maintenance of the children. In making such temporary orders, the court shall take into consideration the pecuniary condition of the parties. Iowa Code § 598.14 (1991).

There is ample evidence that, at the time of the separation, Michael's income was twice that of Gayle's. Furthermore, when Michael asked Gayle to leave, she was forced to stay with friends for almost two weeks, having no place of her own. Gayle also left many of her belongings at the house with Michael. After considering Gayle's position in light of the parties' relative income levels at the time of the separation, we find the district court did not err in refusing to award back child support.

The costs of this appeal are taxed to Michael.

For all the reasons stated, we affirm the district court.

AFFIRMED.