FILED
MAY 25 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-202 / 92-1548

IN RE THE MARRIAGE OF AMANDA LYNN PROPP AND DANIEL DEAN PROPP

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Upon the Petition of
AMANDA LYNN PROPP,
Petitioner-Appellee,

And Concerning
DANIEL DEAN PROPP,
Respondent-Appellant.

Appeal from the Iowa District Court for Fremont County, J. C. Irvin, Judge.

Daniel Dean Propp appeals from orders of the district court in the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Stephen L. Rosman of Finerty & Rosman, Council Bluffs, for appellant.

Drew H. Kouris, Council Bluffs, for appellee.

Heard by Oxberger, C.J., and Donielson, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

OXBERGER, C.J. 000480

Amanda and Daniel Propp were married when she was sixteen years old and he was twenty years old. Daniel works full-time at Vogel Popcorn. Amanda is unemployed. Amanda lives with the children in their trailer home and Daniel lives in a three-bedroom apartment. At the time of trial Amanda was twenty-two years old and Daniel was twenty-six years old. Their minor children, Seth and Jerrod, were five and four years old respectively. Amanda filed for divorce in 1991.

After trial, the district court granted joint custody with primary physical care of the two children to Amanda. The district court ordered Daniel to pay $342.50 per month based upon Amanda's net monthly income of $667 and Daniel's net monthly income of $1041.

Daniel appeals.

In this equity action, our scope of review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them.

I. **Child Custody.**

Daniel contends the district court incorrectly awarded physical care of the parties' two children to Amanda. He claims she has had extramarital sexual relationships in the presence of the children. He claims her conduct has amounted to "moral misconduct." Daniel also contends

Amanda failed to adequately supervise the children, allowing them to play in traffic.

In child custody cases, the best interests of the child is the first and governing consideration. 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, 355-56 (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). In order to insure continuity in the children's lives, we consider allowing the children to remain with the parent who has been the primary caretaker.

The record is replete with testimony indicating Amanda was the primary care provider of Seth and Jerrod. Amanda purchased the children's food, clothing, and other necessities. She arranged and transported them to doctor and dentist appointments, child care, and school. Amanda managed the household and completed the household chores. Aside from testimony of Daniel and his

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family, no testimony indicated Amanda failed to adequately supervise the children. The trial court evaluated, inter alia, witness credibility and concluded Amanda should be awarded primary physical care of the children. We give weight to those findings and, when considering the remainder of the record, affirm the trial court award of physical care of the children to Amanda.

II. Child Support.

Daniel also contends the district court incorrectly included his overtime pay when computing his child support obligation. Amanda argues, pursuant to In re Marriage of Brown, 487 N.W.2d 331 (Iowa 1991), overtime which is consistent should be included.

We agree with Amanda's reliance on Brown and hold it to be applicable in this case. However, the district court added excessive overtime to Daniel's salary. Daniel testified he earned between five and sixteen hours of overtime during half the pay periods. We take the mean number of overtime hours per month, 10.5, and add that amount to Daniel's monthly salary. We add the amount only to the total monthly salary and not to each pay period in order to add overtime to half the pay periods. Thus, we determine Daniel's income as follows:

6.26 (hourly wage)
x 170.5 (160 hours per month plus 10.5 overtime)
1067.33 (gross monthly income)

- 33.10 (federal tax)

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- 36.42 (state tax)
- 82.31 (FICA)
- 120.00 (health insurance)

795.50 (net monthly income)

Accordingly, we determine Daniel's monthly salary for the purposes of computing child support to be $795.50. Based on the uniform guidelines, Daniel must pay 32.5 percent, or $259.00, in monthly child support.

AFFIRMED AS MODIFIED.