IN THE COURT OF APPEALS OF IOWA

No. 8-120 / 97-1558

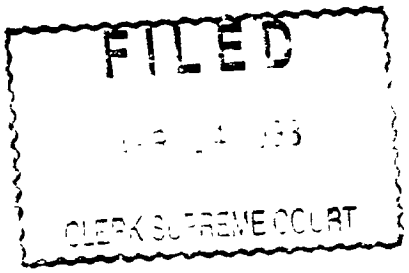
IN RE THE MARRIAGE OF CHRISTIE ANN MITCHELL AND BRENT JOHN MITCHELL

Upon the Petition of
CHRISTIE ANN MITCHELL,

Appellee,

And Concerning
BRENT JOHN MITCHELL,

Appellant.



Appeal from the Iowa District Court for Fayette County, Margaret L. Lingreen, Judge.

Brent John Mitchell appeals the child custody provisions of the parties' dissolution decree. **AFFIRMED.**

Richard P. TeKippe of TeKippe & Huegel, New Hampton, for appellant.

Gary J. Boveia of Boveia Law Firm, Waverly, for appellee.

Heard by Cady, C.J., and Huitink, and Streit, JJ.

CADY, C. J.

Brent Mitchell appeals the child custody provision of the district court's dissolution decree. He claims the trial court erred by awarding physical care of the parties' three minor children to his former wife, Christie. He also contends the trial court erred by awarding the family home to Christie and requiring him to pay child support. We affirm the district court.

Brent and Christie married on September 19, 1992, following approximately two years of cohabitation. They have three children: Zachary, born February 22, 1991, Blake, born June 9, 1992, and Nicholas, born February 5, 1994. The parties divorced on June 30, 1997.

Both Brent and Christie graduated from high school. Christie entered the Air Force following high school for approximately two and a half years. After leaving the Air Force, Christie worked for Beatrice Cheese. At the time of trial she was working the 11:00 p.m. to 7:00 a.m. shift.

Brent worked on his family farm with his brother following high school. At the time of trial he worked full time for Lynch Livestock in addition to continuing the farm work.

Prior to the dissolution, Christie began a relationship with James Miller. After leaving work, she would often spend time with him. Brent or a babysitter would care for the children while she was with Miller. In May 1996, after the parties separated, Christie left the family home with the children to live with Miller. She later returned

to the family home after the district court directed the children remain at the family residence and not be exposed to extramarital cohabitation.

Prior to the dissolution, Brent kept a journal describing his relationship with Christie and the children. The journal and his testimony indicate he was attempting to accommodate Christie by helping with household chores and by leaving the residence when she requested.

Brent exhibited some abusive conduct towards Christie. He admitted grabbing and pushing her. On one occasion, he also left the children unattended for a short time.

On appeal Brent challenges the district court's award of primary physical care, award of the family home, and his child support requirement.

I. Standard of Review

We review this equitable matter de novo. Iowa R. App. P. 4. This requires us to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). At the same time, we recognize the value in listening to and observing the parties and witnesses. Iowa R. App. P. 14(f)(7). Consequently, we give weight to the findings of the trial court, although they are not binding. *Id.*

II. Physical Care

In resolving child custody issues, the best interests of the children is the first and governing consideration. *See In re Marriage of Fynaardt*, 545 N.W.2d 890, 892

(Iowa App. 1996). The factors considered by the court in awarding custody are enumerated in Iowa Code section 598.41. *See* Iowa Code § 598.41 (1995). The critical issue in determining the best interests of the children is which parent will do better in raising the child. *See In re Marriage of Pundt*, 547 N.W.2d 243, 245 (Iowa App. 1996). Gender is irrelevant in a custody determination and neither parent has a greater burden in attempting to gain custody. *See Fynaardt*, 545 N.W.2d at 892-93. The objective should always be to place the children in the environment most likely to bring them healthy physical, mental, and social maturity. *See In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974).

On our de novo review of the evidence, we agree the district court correctly designated Christie as the primary caretaker of the children. We acknowledge Christie's relationship with Miller weighs against her claim for primary care, as well as her decision to move into Miller's residence with the children following the separation. Yet, care must be exercised in judging a parent based on activities which take place during a particular time frame of a marriage, such as the separation or breakup of the relationship. Instead, a better understanding of a parent can be found by viewing the total circumstances, and putting post-separation events in perspective.

In this case, both parents have participated in raising their children and both are capable of providing a good, stable home for them. Consequently, we feel compelled to give weight to the trial court's ability to listen to and observe the parties. *See In re Marriage of Ford*, 563 N.W.2d 629, 633-34 (Iowa 1997). Although Christie

began a relationship with Miller prior to the dissolution, the record indicates she has been a good mother to her children. She has been active in procuring health care for the children as well as attending to their daily needs. While Brent can also meet the children's needs, there was evidence, including domestic abuse, adverse to his claim for primary care. The decision is close, but we find the weight of the evidence tipped slightly in favor of Christie. We are also mindful of the trial court's ability to observe the parties and decline to disturb the district court's determination of physical care.

Brent also asserts he should receive the family home in order to care for the children and Christie should pay child support. In light of our decision concerning primary physical care, we affirm the district court's award of the family home as well as Brent's child support obligation.

AFFIRMED.