

IN THE COURT OF APPEALS OF IOWA

No. 6-490 / 96-0200

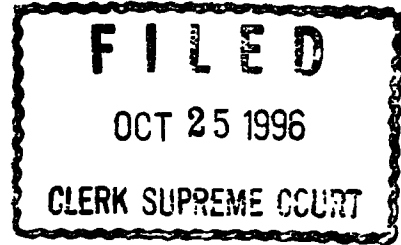
**IN RE THE MARRIAGE OF NANCY
ARTHUR WARREN AND FRED WARREN**

**Upon the Petition of
NANCY ARTHUR WARREN,**

Petitioner-Appellee,

**And Concerning
FRED WARREN,**

Respondent-Appellant.



Appeal from the Iowa District Court for Bremer County, Jon Stuart Scoles,
Judge.

Fred Warren appeals from various provisions of the parties' dissolution decree.

AFFIRMED.

Richard K. Betterton of Snow, Knock, Sevcik & Betterton, Cedar Falls, for
appellant.

David A. Roth of Gallagher, Langlas & Gallagher, P.C., Waterloo, for
appellee.

Heard by Sackett, C.J., and Habhab and Vogel, JJ.

SACKETT, C.J.

Respondent-appellant Fred Warren appeals from the decree dissolving his fifteen-year marriage to petitioner-appellee Nancy Arthur Warren. Fred contends he, not Nancy, should have been awarded primary care of the youngest of their three children. He further contends the award of alimony and attorney fees to Nancy was not equitable. He contends the trial court did not correctly fix the child support obligation. We affirm.

Fred and Nancy were married in 1980. They have three children: Jonathan, born in 1980; Amanda, born in 1982; and Hugh, born in 1988.

Fred has been employed outside the home during the marriage. He currently is employed as a mechanical engineer with Schumacher Elevator and has an annual salary of nearly \$53,000. Nancy stayed in the home initially to care for the home and the children. She operated a craft business out of the home for a few years. Currently, Nancy is employed by a real estate company and has an annual salary of nearly \$10,000.

In November 1994, Nancy filed for a dissolution of the marriage. She subsequently left the family home with the three children. In April 1995, the trial court entered temporary custody and support orders. The physical care of the three children was placed with Nancy. Fred was ordered to pay child support of \$1127 monthly. Jonathan moved back with his father in August 1995, but the temporary support and custody orders were not modified.

The marriage was dissolved in December 1995. Jonathan's primary physical care was awarded to Fred. The primary physical care of Amanda and Hugh was awarded to Nancy. Fred and Nancy had agreed to the placement of the older children. At trial, they each contended Hugh should be placed in their physical care.

The trial court found Fred should pay Nancy \$909 a month child support for Amanda and Hugh, and Nancy should pay Fred \$181 a month child support for Jonathan. The net result was that the court ordered Fred to pay Nancy monthly child support of \$728 beginning January 1, 1996. A property division was made. Fred was ordered to pay Nancy \$300 a month as rehabilitative alimony for three years and \$3000 towards Nancy's attorney fees. Both Nancy and Fred request attorney fees on appeal.

We review 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).

Fred's first contention is that he should have primary physical care of Hugh. Nancy assumed primary physical care of Hugh during the early years of marriage. The evidence shows that in recent years both parties have had substantial involvement in his life and love and care for him. The question is which parent shows the better ability to provide for his needs and guidance now that the marriage is being dissolved.

Fred argues that considerable weight should be given to the fact Nancy left the marriage to live with another man and they sleep in the same bedroom, even though they are not married, and Hugh is aware of the arrangement.

There is testimony both parents have used illegal drugs. There is no evidence either currently uses drugs. The older children both have a close relationship with Hugh. Hugh will be well taken care of in either home.

We consider the factors of Iowa Code section 598.41(3) and applicable case law. *See In re Marriage of Harris*, 499 N.W.2d 329, 330 (Iowa App. 1993). The critical issue is which parent will do the better job of raising Hugh. *See In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). We find no reason to disagree with the trial court and affirm the award of physical care.

Fred next contends Nancy should not have been awarded rehabilitative alimony. Fred contends Nancy's needs are not as substantial because she is cohabitating with another man who financially supplies some of her needs. He advances we should consider this cohabitation in assessing the alimony issues. He further points to evidence they intend to marry.

We consider property division and alimony together in evaluating their individual sufficiency. *In re Marriage of Dahl*, 418 N.W.2d 358, 359 (Iowa App. 1987); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). Nancy received little property. Her income is substantially less than Fred's. We affirm the alimony award.

Fred next challenges the trial court ruling requiring him to pay Nancy support for Jonathan from the date of the decree to January 1, 1996, even though he had been paying Nancy child support for Jonathan while Jonathan lived with him during the four months prior to the entry of the dissolution decree. The decree was dated December 29, 1995. We decline to modify the decree on this issue.

We award attorney fees on this appeal to Nancy in the amount of \$500.

AFFIRMED.