IN THE COURT OF APPEALS OF IOWA

No. 5-116 / 94-1283

IN RE THE MARRIAGE OF NANCY ANN WATSON AND JEFFREY RUSSELL WATSON

Upon the Petition of
NANCY ANN WATSON,

Petitioner-Appellant,

And Concerning
JEFFREY RUSSELL WATSON,

Respondent-Appellee.

FILED
APR 28 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Story County, Gary L. McMinimee, Judge.

Nancy challenges the child custody provisions of the decree dissolving her marriage with Jeffrey. **AFFIRMED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, until withdrawal and then Jeanne K. Johnson, Des Moines, for appellant.

Roger J. Hudson, Steven H. Shindler and Brent A. Cashatt of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellee.

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

HABHAB, J.

Nancy Ann Watson and Jeffrey Russell Watson were married on April 12, 1975. They have three children: Tim, born July 20, 1979; Calley, born July 8, 1985; and Parker, born July 6, 1988.

Nancy was born on March 28, 1955. She has a high school education. After the parties were married and moved to Ames, Nancy began her employment at the Lions Club of Iowa. She began as an office secretary and was promoted to an administrative assistant. She currently has a net monthly income of approximately $1510.

Jeffrey was born on January 14, 1954. In 1979, he received a bachelor of arts degree in speech communications and began work at Iowa State University's public radio station. He then resumed studies at the university, obtaining a teaching certificate in 1984. He currently works as an elementary school teacher, netting approximately $1880 per month. He supplements his income during summer break with painting and mowing, netting approximately $3500 per year.

On June 1, 1993, Nancy filed a petition for dissolution of marriage. The court awarded Jeffrey temporary physical care of the children and required Nancy to pay $480 per month in child support.

The primary issues at trial concerned each party's fitness to parent the children. Nancy claimed that throughout the marriage, she was the primary care giver. She claimed Jeffrey was abusive, both towards her and the children. Jeffrey claimed he was the party required to discipline the children and this was misinterpreted as abuse. He claimed Nancy left him to care for the children several times early in the marriage while she had an extramarital affair. He also claimed Nancy's current relationship with Bill Tjaden, which existed before the parties' separation, has interfered with her ability to properly care for the children.

The district court determined, "Jeffrey has the greater capacity and interest to provide for the emotional, social, moral and educational needs of all of the children." The court found Jeffrey's home environment to be more stable for the children. It also found, however, that because of Tim's opposition to living with Jeffrey and the lack of evidence of a strong bond between Tim and the other children, primary physical care of Tim would be awarded to Nancy. It awarded primary physical care of Calley and Parker to Jeffrey. Nancy appeals.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. *Id.* Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

Nancy contends the district court erred in placing primary physical care of Calley and Parker with Jeffrey. We disagree.

Extensive testimony was given regarding the disciplining of the children, Nancy's extramaritial affairs, and alleged abuse of Nancy and Tim by Jeffrey.

To begin with, we agree with the district court's assessment that the isolated instances, involving Jeffrey grabbing Nancy and pushing Tim, appear to either have been in response to disrespectful conduct on Tim's part, or in response to a situation involving Nancy's parenting practices or that of Bill Tjaden. While we in no way condone such behavior, we believe the district court was correct in viewing such behavior in light of the stressful nature of the dissolution and the testimony given by Jeffrey's colleagues and the children's day care provider.[1]

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[1] Jeffrey's supervisor and colleagues characterized Jeffrey as a nurturing, patient, and respectful positive role model for children. His supervisor, who had the occasion to observe

The parties had many disagreements during their marriage about disciplining the children. It is without dispute their parenting styles differed. Jeffrey uses the time-out method of disciplining and "smiley face" behavior rewarding system. Nancy does not believe in using either of these systems. In fact, she belittled Jeffrey's "smiley face" system in front of the children. Nancy prefers to talk to the children instead. In addition, it appears from the record that she resorts to bribing the children at times. Nancy testified she did not approve of corporal punishment, except she did believe Bill was justified in spanking the children on a couple of occasions.

Much support for the district court's decision can be found in the behavior of the parties during their separation prior to the dissolution proceedings. During the separation, Jeffrey had temporary physical care of Calley and Parker, while Nancy had temporary physical care of Tim.[2] During the separation, Jeffrey encouraged the children's relationship with Nancy. Nancy, on the other hand, failed to inform Jeffrey regarding surgery Tim underwent and failed to discuss with Jeffrey her decision to have Tim repeat the eighth grade. Such behavior, on Nancy's part, shows a disregard for Jeffrey's rights as a noncustodial parent.

We conclude the district court was correct in awarding primary physical care of Calley and Parker to Jeffrey.[3] We concur with the district court's findings that Jeffrey can better provide the children's emotional, social, and educational needs. We further concur with the findings that Jeffrey can better provide the children with

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Jeffrey with his children, stated she had no concerns with Jeffrey's parenting skills. The children's day care provider portrayed Jeffrey as a warm and caring parent.

[2] Jeffrey was actually given temporary physical care of Tim pursuant the temporary custody order, but Tim resided with Nancy during the separation by mutual agreement of the parties.

[3] The appellee agreed, on the record, that because of Tim's present anger, it would be better if he resided with Nancy. Nancy agreed that insofar as Tim's care is concerned, he should remain with her.

greater stability. We affirm the ruling of the district court regarding the primary physical care of the children.

AFFIRMED.