IN THE COURT OF APPEALS OF IOWA

No. 0-282 / 99-1783
Filed May 31, 2000

IN RE THE MARRIAGE OF RANDY L. SMITH AND LEAH N. SMITH

Upon the Petition of
RANDY L. SMITH,
Petitioner-Appellee,

And Concerning
LEAH N. SMITH, n/k/a LEAH N. MUTCH,
Respondent-Appellant.

FILED
MAY 3 1 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Ralph F. McCartney, Judge.

The respondent appeals a district court ruling denying her application for modification of custody of their minor child. **REVERSED AND REMANDED.**

C.W. McManigal and J. Mathew Anderson of Laird, Heiny, McManigal, Winga, Duffy & Stambaugh, P.L.C., Mason City, for appellant.

Roger L. Sutton of Sutton Law Office, Charles City, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

STREIT, P.J.

When parents ask the courts to determine which parent should have primary physical care of a child, our primary goal is to place the child in the environment most likely to bring him to healthy physical, mental, and social maturity. Leah Smith alleges the trial court fell short of this goal in awarding her ex-husband, Randy, primary physical care of their son. After reviewing the record and weighing all appropriate factors, we reverse the trial court and remand for determination of child support and visitation.

I. Background Facts & Proceedings.

Randy and Leah Smith married in 1991 and had one child, Schuyler, born August 9, 1991. The marriage was dissolved by decree in 1996 whereupon the parties stipulated to shared primary physical care of Schuyler. This arrangement proceeded without major disagreement until April of 1999 when Leah and her new husband decided to move from Mason City to Beaverton, Oregon, and wanted Schuyler to go with them. In response, Randy sought to enjoin Leah from taking Schuyler and sought modification of the dissolution decree.

In October of 1999 the trial court found there had been a substantial change of circumstances rendering the shared custody arrangement untenable. The court concluded it was in Schuyler's best interests to remain in Mason City with his father and awarded Randy primary physical care.

Leah appeals, challenging the primary care determination.

II. Standard of Review.

We review primary physical care determinations de novo. Iowa R. App. P. 4; *see In re Marriage of Miller,* 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings, but give them deference because it had an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians. *In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997).

III. Primary Physical Care.

In determining primary physical care, the child's best interests are our governing consideration. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa App. 1996). Determining which parent will do better in raising the child is the critical issue. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). The objective is to place the child in the environment most likely to bring him to healthy physical, mental, and social maturity. *In re Marriage of Harris*, 499 N.W.2d 329, 332 (Iowa App. 1993).

There are a number of statutorily and judicially recognized factors designed to assist in determining the primary caregiver. *See* Iowa Code § 598.41 (1997); *In re Marriage of Winter*, 223 N.W.2d 165, 166 (Iowa 1974). Those applicable to this case include: (1) the capacity of each parent "to provide for the emotional, social, moral, material, and educational needs of the child"; (2) the stability of each proposed environment, including wholesomeness; (3) the reports and recommendations of an independent professional; and (4) the existence of domestic abuse. *In re Marriage of Winter*, 223 N.W.2d at 166; *In re Marriage of Swenka*, 576 N.W.2d 615, 618 (Iowa App. 1998); Iowa Code §

598.41(3)(j). Each factor, however, does not necessarily impact the decision with equal force. *In re Marriage of Wilson*, 532 N.W.2d at 495. To the contrary, some factors are given greater weight than others, and the weight ultimately assigned to each factor depends on the particular facts of each case. *Id.*

A. Providing for Schuyler's Needs. Children rely on their parents for all of their core needs. A parent's ability and willingness to supply these needs are of utmost importance. With regard to each parent's ability to provide for Schuyler's social, emotional, and educational needs, both parents appear equally capable and overly willing. Leah, however, has demonstrated a greater ability and willingness to provide for Schuyler's material needs. Leah and her new husband both have steady employment in Oregon, and Leah has a steady history of employment. Randy, on the other hand, has been unemployed for eight months and has not worked a steady job since 1995. Due to his economic instability, he is currently over $2000 behind on his child support payments. We do not hint that socio-economic status is a driving force behind custody determinations, but in the present case Randy's refusal to maintain employment in order to provide for his son reflects poorly on his commitment as a parent. Based on these circumstances, it appears Leah is better suited to provide for *all* of Schuyler's core needs.

B. The Proposed Environments. A child's environment is not limited to the four walls of the immediate home. Rather, a child's environment consists of a series of concentric circles, including the immediate family, extended family, the immediate neighborhood, and the larger community. Each of these spheres of

influence does not impact the child's life with equal force, but each sphere does play a role in the healthy maturation of the child.

Leah's decision to move to Oregon will strip Schuyler of the opportunity to be with his father, his extended family, and his established friends. It will also remove him from the only environment he has known. Such a long distance change of locales will invariably place an enormous burden on Schuyler. However, beyond the initial hardship of leaving behinds friends and family, there is nothing about Oregon or Leah's established residence that raises any concern.

Randy's proposed environment does offer the favorable quality of consistency, but also is not without its drawbacks. At the time of trial, the paternal grandmother provided for Schuyler's care after school and during the summers. Although not fully developed in the record, there is some indication that the grandmother's husband had been recently arrested for some type of involvement with controlled substances. This causes obvious alarm, but we cannot begin to decipher the appropriate weight to give such evidence without a proper development of the facts surrounding the alleged arrest. That being the case, we find Randy's proposed environment marginally better.

C. Independent Reports And Recommendations. The parties agreed to submit to an independent home study. The professional conducting the study hesitantly concluded the primary physical care of Schuyler should be awarded to Leah. The evaluator found both parties to be somewhat immature, but found Leah to be making greater progress. He found Randy to be overly emotional, often displaying the extreme end of any one emotion. He concluded Leah's

move to Oregon would have a detrimental affect on her son, but that she remained the most appropriate caregiver.

D. Domestic Abuse. "[V]iolent tendencies of a parent adversely impact on the fitness of that parent to be the primary caretaker of a child." *In re Marriage of Brainard*, 523 N.W.2d 611, 615 (Iowa App. 1994). Children raised in homes touched by domestic abuse are often left with deep scars of anxiety, insecurity, poor self-esteem, academic underachievement, and increased difficulties in forming appropriate interpersonal relationships. *Id.* Randy has been convicted on two occasions of domestic abuse against a live-in girlfriend and at trial attempted to minimize his responsibility for those convictions in testifying:

> Q: Who was the person that you allegedly assaulted?
> A: Sheila Marson, and she fell out of a dumpster and broke her foot trying to get her shirt out of there, so if you call that assault, I mean.

The actual allegation, however, was that Randy punched and kicked this woman and then her shirt somehow ended up in a dumpster where she subsequently fell and broke her foot. His minimization of this event betrays his failure to internalize the severity of his actions and his almost cavalier attitude towards violent behavior. Although Schuyler has not yet witnessed or been the object of Randy's violent behaviors, it poses a serious risk to Schuyler's physical and psychological health.

E. Conclusion. The best interests of Schuyler require placement with his mother. We recognize the trial court had the opportunity to weigh the credibility of the parties, but the facts necessitate a different outcome. When we consider

all the circumstances surrounding these parents, we find Leah can better cater to her son's long-term best interests. The trial court is reversed, and the matter remanded for application of the proper child support guidelines, as well as a determination as to an appropriate visitation schedule.

REVERSED AND REMANDED.