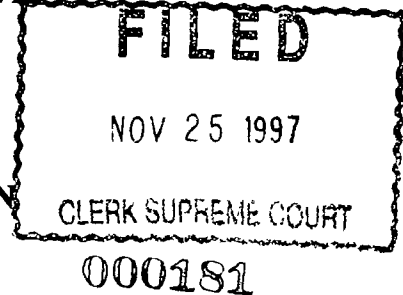


IN THE COURT OF APPEALS OF IOWA

No. 7-491 / 97-0503

**IN RE THE MARRIAGE OF ELIZABETH M. JOHNSON
AND BRIAN N. JOHNSON**



Upon the Petition of
ELIZABETH M. JOHNSON,
Appellant,

And Concerning
BRIAN N. JOHNSON,
Appellee.

Appeal from the Iowa District Court for Lee County, Robert Bates, Judge.

Petitioner appeals from the custodial provisions of the dissolution decree.

AFFIRMED.

M. Carl McMurray, Keokuk, for appellant.

Steven E. Ort of Bell, Hansen, Ort & Cornell, P.C., New London, for appellee.

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

HUITINK, J. 000182

Elizabeth (Beth) Johnson appeals from the physical care provisions of the decree dissolving her marriage to Brian Johnson.

I. Background Facts and Proceedings.

Beth and Brian were married in 1989. They have one child, Jeremy, age seven. By agreement, Jeremy resided in Beth's temporary physical care pending final resolution of the parties' disputed custodial provisions.

After a three-day trial, including testimony from the parties and fourteen witnesses, the district court awarded Beth and Brian joint custody of Jeremy. Brian was awarded physical care subject to Beth's liberal visitation rights. In reaching its decision, the court observed:

Brian's ability to resolve problems and make decisions places him as the stronger parent between the two. Beth's inability or failure to communicate with the other parent in important decisions to the other parent questions her ability as a parent. Although a close and difficult decision, Brian has shown by a preponderance of the evidence he is best able to minister to the best interests of his son.

On appeal Beth contends Jeremy's best interests require an award of physical care to her. Brian argues the district court's custodial decision should be affirmed.

II. Scope of Review.

We review this case de novo. Iowa R. App. P. 4. 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). We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14(f)(7).

In a disputed custody case, the critical issue is not which parent possesses the greater right to the child, rather the controlling consideration must be the best interests of the child. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This decision requires selection of a custodial parent who can minister more effectively to the long-range best interests of the child. The objective should always be to place the child in the environment most likely to bring them to healthy physical, mental and social maturity. *See In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). The court should also consider the characteristics and needs of each child, the characteristics of the parents, the capacity and desire of each parent to provide for the needs of the child, the relationship of the child with each parent, the nature of each proposed environment and the effect of continuing or changing an existing custodial status. *Id.*

There is no presumption in favor of the mother or the father. *See In re Marriage of Brown*, 219 N.W.2d 683, 688 (Iowa 1974). Greater primary care experience is one of the many factors the court considers but it does not ensure an award of physical care. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995). Insofar as is reasonable and in the best interests of the child, the court should make an award of custody which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents and which will encourage the parents to share the rights and responsibilities of raising the child. *See*

Iowa Code § 598.41(1)(1995). To effectuate that policy, the court must consider the willingness of each party to allow the child access to the other party. *In re Marriage of Burham*, 283 N.W.2d 269, 276 (Iowa 1979).

We, like the district court find this is a close and difficult decision. Both parents are committed to Jeremy's welfare and each offers many favorable parental attributes. Our review of the record nevertheless confirms the district court's assessment of the parties' respective custodial skills. Evidence of Brian's superior ability to communicate with Beth on issues of mutual parental concern distinguish him as the preferred physical caretaker. Awarding Brian physical care increases the probability that the shared parenting objectives inherent in a joint custody award will be accomplished.

In reaching this decision, we do not intend to ignore or minimize Beth's primary care experience or her parental contribution. As a joint custodian, Beth has the right to continuing physical and emotional contact with Jeremy and is entitled to share the rights and responsibilities of raising him. Iowa Code § 598.41. These rights and responsibilities include decisions affecting Jeremy's legal status, medical care, education, extracurricular activities, and religious instruction. Iowa Code § 598.41(5); *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). Beth's faithful exercise of these rights will insure Jeremy the continued benefit of her parenting experience.

We also note the district court's trial perspective provided a better opportunity to measure the sincerity of the parties' claimed respect for and appreciation of their joint custodial obligations. In a close case such as this, the district court's assessment of the parties' commitment to joint custody is entitled to considerable deference. *In re Marriage of Forest*, 201 N.W.2d 728, 730 (Iowa 1972).

AFFIRMED.