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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-644 / 91-952

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IN RE THE MARRIAGE OF WILLIAM RICHARD CORRICK AND MICHELLE ANN CORRICK

Upon the Petition of
WILLIAM RICHARD CORRICK,

Appellant,

And Concerning
MICHELLE ANN CORRICK,

Appellee.

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

Husband appeals dissolution decree contending the parties' two young children should be placed in his primary physical care. **REVERSED.**

Eric Borseth, Pleasant Hill, for appellant.

John A. Morrissey of Morrissey & Brown, Fairfield, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

William and Michelle Corrick were married in 1985. They have two children, Samantha born in May 1987 and Alex born in May 1989. William holds a bachelor's degree in business management and is employed as a regional manager for a chain of fast food restaurants. His net income is $1722 per month. Michelle has no college degree. She is employed as an insurance agent earning a net income of $929 per month.

William had temporary custody of the children while the divorce was pending. The marriage was dissolved on June 7, 1991. The dissolution decree placed the two children in joint legal custody and in Michelle's primary physical care. The decree granted William visitation on alternating weekends, alternating holidays, and for several weeks in the summer. In addition, the decree directed William to pay Michelle child support of $528.74 per month and divided the parties' property.

William has appealed the dissolution decree. He contends the children should be transferred to his primary physical care. William does not challenge his child support obligation itself, nor does he challenge any of the decree's other economic provisions.

I.

Our review is de novo. Iowa R. App. P. 4. In child custody cases, the best interests of the child is the first and governing consideration. The factors the court

considers in awarding custody are enumerated in Iowa Code section 598.41(3), in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983), and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

William argues the trial court erred by placing physical custody of the children with Michelle. He believes the court based its decision on gender. He feels the following district court finding supports his contention: "Because [Michelle] has shown continued improvement and is deeply concerned and involved with the children at this age, she is deemed to have preference at this time for primary physical care." He contends the use of the word "preference" indicates the court considered a sexual preference due to the young age of the children. See In re Marriage of Meier, 267 N.W.2d 46 (Iowa 1978) (presumption or inference that best interest of children would be served by award of their custody to mother has been abandoned).

We find the trial court did not reach its conclusion based on sexual preference. The court began by noting that either parent would be suitable and then chose Michelle. It seems the court's reason to prefer Michelle was based on her level of involvement with the children. We do not accept William's sexual preference argument, although we do find from the record that it is in the best interest of the children to be placed in William's primary physical custody. We reverse the district court's award of physical care to Michelle.

A child needs a stable and continuing environment. In re Marriage of Carrico, 284 N.W.2d 251 (Iowa 1979). We believe William can best provide the children with stability. The trial court found (and testimony shows) William is even tempered and Michelle is impulsive and inconsistent. Michelle seeks counseling to deal with abuse she suffered as a child. Evidence suggests William was a stable character in the children's lives during Michelle's emotional struggle with her abusive childhood. The only expert who had contact with both parties is Carol Barnes, a social worker. She recommended placement of the children with William, primarily based upon the closeness and stability of his immediate family.

We praise Michelle for confronting and seeking help for her emotional problems. While we are aware of the expert testimony of her counselor stating she is qualified to be a fit custodial parent, we feel placement of the children

with William is in their best interest. See In re Marriage of Weidner, 338 N.W.2d 351, 360 (Iowa 1983). Michelle shall be allowed the same visitation rights as William was awarded under the district court order.

We set Michelle's child support obligation according to the current guidelines of December 31, 1990. See In re Marriage of Ladely, 469 N.W.2d 663, 664 (Iowa 1991). The district court determined her net monthly income to be $929 and that of William to be $1,722. The applicable percentage is 29.7, which requires a monthly child support payment of $275. Michelle shall make payments through the clerk of court. William shall maintain health and accident insurance for both children.

II.

William further argues the trial court erred in failing to provide for mid-week visitation. He states: "Whether or not the Court modifies custody, the non-custodial parent should be granted at least one evening per week." Visitation is set as the minimum amount; we encourage the parties to cooperate. We do not mandate mid-week visitation because it can be unduly disruptive. In re Marriage of Fish, 350 N.W.2d 226, 230-31 (Iowa App. 1984).

III.

William contends the court erred in failing to award the noncustodial parent a dependent income tax deduction. He argues "if Michelle retains primary physical care, [he] should be given both children as a dependent for income tax

purposes. If [he] is given primary custody, Michelle should be given one child as a dependent." We agree that William should receive one deduction for Samantha and Michelle should receive the other for Alex. On our de novo review, we feel this situation is best for both parties. William shall complete all work necessary to provide Michelle with the exemption.

IV.

William last claims the trial court erred in failing to require the custodial parent to provide a minimum of thirty days' notice of his intent to move the children and to keep the noncustodial parent notified of the address and phone number. Both parties have substantial ties to this area of the state. The record suggests the parties cooperate well in visitation and encourage the children to see their other parent. We do not feel this requirement is necessary.

V.

In conclusion, we reverse the trial court and award primary physical care of both children to William.

REVERSED.