FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-289 / 88-1544

IN RE THE MARRIAGE OF DAWN SHAWCROSS AND KEVIN SHAWCROSS

Upon the Petition of

DAWN SHAWCROSS,

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Appellee,

And Concerning

KEVIN SHAWCROSS,

Appellant.

Appeal from the Iowa District Court for Dubuque County, James C. Bauch, Judge.

Respondent appeals the final order regarding child custody entered by the district court. **AFFIRMED.**

Mark S. Beckman of Pfeiler & Beckman Law Offices, Dubuque, for appellant.

Paula M. Stenlund of Naughton, Stenlund & Reilly, Dubuque, for appellee.

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

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SCHLEGEL, J.

Respondent appeals the final order regarding child custody entered by the district court. The order awarded joint legal custody of the minor children to the parties and granted primary physical care to petitioner. We affirm.

Respondent claims the court erred in placing physical care of the child with petitioner. He states that Dawn engaged in moral misconduct by having various extramarital affairs and that she had an abortion as the result of one of her affairs. Kevin places doubt on Dawn's veracity. Kevin contends that Dawn may not provide the children with a stable life style. Kevin argues that he can better provide for the long-range best interests of the children.

Petitioner Dawn Shawcross and respondent Kevin Shawcross were married on October 3, 1980. They have three children: Devin Jean Shawcross, born March 5, 1982; Kevin Alan Shawcross, born April 10, 1983; and Megan Christen Shawcross, born May 5, 1986. Dawn was thirty-one years old at the time of trial. She works at the Dubuque Greyhound Track. Dawn and the children moved to the Dubuque area in May 1987 after Kevin asked them to leave the parties' house in San Antonio, Texas. Kevin was thirty-six years old at the time of trial. He owns an automotive electrical business in San Antonio. The parties had a stormy marriage which included incidents of physical violence.

A dissolution action for these parties is pending in Texas. The district court here determined that Iowa was the proper jurisdiction for the determination of child custody. Thus, custody was the sole issue before the court. The court noted that Dawn was the primary caretaker of the children and that since the separation she had more than adequately met the needs of the children. The court found that it was in the best interests of the children to continue the placement of physical care with Dawn because the children had an established system of friends, a stable home, and a good school system. The parties were awarded joint legal custody, with Dawn having primary physical care of the children. Kevin was given visitation rights.

Our review in this matter is de novo. In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974); Iowa R. App. P. 14(f)(15). 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) and 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 "first and governing consideration," 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). 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).

Appellant contends he can better minister to the long-term best interests of the children. In order to prove this assertion, appellant points out several past instances of moral misconduct, untruthfulness and mental instability by the appellee. Perhaps these past actions by the appellee could have been enough to sway this court had the appellant been a model parent. However, the record is clear that for every problem appellee had, the appellant had a similar one. Both parties had affairs, both had ignored the best interests of the children to serve their own personal feelings, and neither of them is a model of mental stability. The trial court correctly found that the children had been in a stable environment in Dubuque for some time. The mother was making significant progress toward solving her problems and was even admitted by appellant to be a loving parent. Appellant had forced the appellee and the children to leave their home in Texas.

Appellee successfully made this move with little money and three children in tow. She found them a home in Dubuque and they should be allowed to stay there. The witnesses who testified as to appellee's ability as a parent were diverse and trustworthy. The appellee's past actions were not commendable by any means, but were not exceptional compared to the actions of the appellant. The trial court awarded joint custody and liberal visitation rights to the appellant after finding that both parents were suitable custodians. However, the trial court correctly made the determination that the children were better off presently, and in the long run, by being left in Dubuque where they had a stable home and school system.

AFFIRMED.