IN THE COURT OF APPEALS OF IOWA

No. 0-187 / 99-1333
Filed May 10, 2000

IN RE THE MARRIAGE OF LAURIE JO FOLEY AND JOSEPH LAWRENCE FOLEY

Upon the Petition of
LAURIE JO FOLEY,
Petitioner-Appellee,

And Concerning
JOSEPH LAWRENCE FOLEY,
Respondent-Appellant.

FILED
MAY 10 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

Joseph Foley appeals from the order modifying the parties' dissolution decree, contending the district court erred in awarding Laurie Foley primary physical care of their daughter and in failing to order her to pay child support. **AFFIRMED.**

Karla M. Wolff, Cedar Rapids, for appellant.

Martha L. Mertz of Mick & Mertz, Knoxville, and Michael P. Brice, Oskaloosa, for appellee.

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

000102



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 her to healthy physical, mental, and social maturity. Joseph Foley alleges the trial court fell short of this goal in awarding his ex-wife, Laurie, primary physical care of their daughter. After reviewing the record and weighing all appropriate factors, we affirm the trial court's decision to award Laurie primary physical care.

I. Background Facts & Proceedings.

Joseph and Laurie Foley married in 1990 and had one child, Rachael, born August 2, 1993. The marriage was dissolved by decree in 1997 whereupon the parties stipulated to the shared legal custody and primary physical care of Rachael. This arrangement proceeded without major disagreement until early January 1999 when Laurie took Rachael and moved from Cedar Rapids to Keswick with her boyfriend. Laurie then denied contact between father and child for nearly a month.

On January 11, 1999, Laurie filed a petition to modify the dissolution decree in Keokuk County District Court alleging a substantial change in circumstances due to her move. Joseph sought a contempt proceeding for Laurie's interference with the shared physical care arrangement and filed his own petition to modify the decree in Linn County District Court. Prior to the initiation of the contempt proceedings, however, the parties agreed the petition to modify should be heard in Linn County, Laurie agreed to give Joseph thirty days plus

visitation to make up for the time she denied contact, and the contempt proceedings were continued.

In July of 1999 the trial court found there had been a substantial change of circumstances rendering the shared physical care arrangement untenable. The court concluded Laurie could better administer to Rachael's needs and awarded her primary physical care.

Joseph 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 her 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 child's continued contact with a sibling; (3) the ability of each parent to support the other parent's relationship with the child; (4) one parent's denial of visitation without cause; and (5) the parent with greater primary physical care experience. *In re Marriage of Winter*, 223 N.W.2d at 166 (parent capacity); *In re Marriage of Swenka*, 576 N.W.2d 615, 618 (Iowa App. 1998) (sibling contact); Iowa Code § 598.41 (support other's relationship); *In re Marriage of Daniels*, 568 N.W.2d 51, 56 (Iowa App. 1997) (denial of visitations); *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa 1995) (primary caretaker). 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.*

At this point we could delve into a lengthy analysis, carefully dissecting each of the aforementioned factors, their applicability to the present case, and their relative weight; but we have already performed this task and find it to be somewhat of a precarious balance. Although Joseph bore more of the primary care duties after the separation and is by all accounts a loving and nurturing father, Laurie is an equally strong and supportive parent, absent her one exercise of poor judgment. Thus, a simple calculation of which parent has more positives or negatives cannot in this situation implicitly connote which environment will best

bring Rachael to healthy physical, mental, and social maturity. Rather, we must look squarely at the child. Based on the record before us, it appears Rachael has thrived while with her mother in Keswick. She has made significant headway in school, has become more mature, and her present environment seems to stimulate her personal growth. When we consider her progress coupled with the bond she has developed with her half-brother, we find it difficult to upset the trial court's decision. Although we are reluctant to grant a trial court much deference when it fails to detail the reasoning behind its determination, we will attribute some modest deference to this trial court as it had the opportunity to not only hear the specific words encompassed in the witnesses' testimony but see the emotion, sincerity, and body language underlying those words. As such, we affirm the district court's award of primary physical care to Laurie.

AFFIRMED.