IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 4-552 / 94-724

IN RE THE MARRIAGE OF LANE R. KUEHL AND LORRIE KUEHL

Upon the Petition of
LANE R. KUEHL,

Appellee,

And Concerning
LORRIE KUEHL,

Appellant.

Appeal from the Iowa District Court for Dallas County, Peter A. Keller, Judge.

Lorrie Kuehl appeals from the child custody provision of a dissolution decree. **AFFIRMED.**

Thomas P. Lenihan, Des Moines, for appellant.

William J. Schadle, West Des Moines, for appellee.

Considered by Donielson, C.J., and Habhab and Cady, JJ.

CADY, J.

This is an appeal by Lorrie Kuehl from a decree for dissolution of marriage granting Lane Kuehl primary care of the parties' minor children. On our review, we affirm.

The marriage between Lorrie and Lane Kuehl was dissolved in April 1994. They were married in 1987, but cohabitated for several years prior to their marriage. They have three children. Cody was born June 24, 1984. Mindy was born November 22, 1986. Tanner was born January 26, 1989.

Lane and Lorrie were thirty-one years old at the time of their divorce. Lorrie was unemployed. Lane worked as an equipment operator and earned net monthly wages of $1,521. Lorrie was the primary caretaker of the children prior to and during the marriage.

The relationship between Lorrie and Lane was marked by violence. The abuse was active, and both were perpetrators. Lorrie was convicted of domestic abuse on one occasion, and Lane acknowledged physically abusing Lorrie. The parties separated in January 1993.

Both parties used alcohol and controlled substances during their marriage. Lorrie was arrested for public intoxication in June 1993 and was later convicted of operating a vehicle under the influence following an arrest in June 1993. She subsequently completed an alcohol treatment program and was involved in after care programs at the time of the divorce trial. Lane admitted using

marijuana every other day. He testified he stopped using the drug just prior to trial.

After a school counselor made a report, the Department of Human Services found Lorrie physically abused Cody in September 1993. Lorrie also collected Aid for Dependent Children after she separated from Lane for several months in which she did not have custody of the children. She also fell delinquent on the temporary child support order. Lane, too, violated various provisions of orders entered by the court during the pendency of the dissolution.

Lorrie was living with her mother at the time of trial, and remained unemployed. Lane was living with his girlfriend at the time of trial. They planned to marry. She was employed as a respiratory therapist. The children maintain a good relationship with her. Lane acknowledged he had not filed income tax returns for several years.

Dr. John Tedesco conducted a child custody investigation prior to trial and submitted a report to the court. He made no recommendation, but felt Lorrie showed some instability and emotional turmoil. In addition, he felt the results of the Minnesota Multiphasic Personality Inventory administered to Lorrie revealed the possibility of some psychopathology that could interfere with her parenting ability. The counseling and treatment Lorrie has undertaken during the separation has been helpful to her. She has maintained her sobriety since the driving under the influence arrest, and has an improved self-image.

Dr. Tedesco found Lane exhibited no significant signs of addiction to alcohol or other drugs. He also believed the children had a positive attachment with his girlfriend. It was believed she would be a positive influence on them.

The district court awarded joint legal custody with primary physical care to Lane. Lorrie was granted visitation and directed to pay child support.

Lorrie argues on appeal that the best interests of the children require she be awarded sole custody, or at least primary physical care. She also requests appellate attorney fees, as does Lane.

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

There are no exact and swift rules governing child custody. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). Each case, ultimately, rests on its own particular facts. Id. Although many factors have been articulated, the first and governing tenet remains the best interests of the children. In re Marriage of Will, 489 N.W.2d 394, 397 (Iowa 1992); see also Iowa Code § 598.41 (1993). The critical issue is which parent will do better in raising the child into a healthy, well-adjusted adult. In re Marriage of Dunkerson, 485 N.W.2d 483, 485 (Iowa App. 1992). The gender of the parent is irrelevant. Id. Moreover, the primary caretaker of the children during the

marriage is not assured the same role after the marriage. See In re Marriage of Toedter, 473 N.W.2d 233, 234 (Iowa App. 1991).

We are disturbed by the evidence presented in the case which adversely reflects upon the parenting ability of Lorrie and Lane. In particular, we are troubled by the evidence of physical abuse and violence. We have previously recognized the devastating long-term consequences of spousal abuse on the children of the marriage. See In re Marriage of Brainard, 523 N.W.2d 611, 614-15 (Iowa App. 1994). In this case, however, the abuse was perpetrated by both parties. This hinders our ability to assess its impact on the custody determination. Moreover, both Lorrie and Lane have, for the most part, improved as parents and individuals since their separation. Lane's current relationship appears to be positive and strong. Lorrie has benefited from her counseling.

We acknowledge the important custody decision presented in this case is close. On the balance, however, we agree the best interest of the children will be served by designating Lane as the primary caretaker. He is better able to meet their needs and long-range interests. He has greater stability in his life, and has strong support from family members and others.

We deny the requests for appellate attorney fees.

AFFIRMED.