FILED
AUG 06 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-322 / 92-1761

IN RE THE MARRIAGE OF CONNIE M. WOLF AND EUGENE T. WOLF 000635

Upon the Petition of
**CONNIE M. WOLF,**

Appellant,

And Concerning
**EUGENE T. WOLF,**

Appellee.

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Appeal from the Iowa District Court for Winnebago County, Bryan H. McKinley, Judge.

Connie M. Wolf appeals the district court's custody provisions in the parties' dissolution decree. **AFFIRMED.**

Steven R. Bakke of Bakke Law Office, Forest City, for appellant.

William Hoekstra of Legal Services Corporation of Iowa, Mason City, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

Connie and Eugene Wolf were married in 1986. They had cohabited since 1979. The parties have one child, Jacob, born on July 16, 1983.

At the time of the dissolution, Connie was thirty-five years of age. She has custody of two children from a previous marriage. Since 1991, she has worked at Winnebago Industries of Forest City. Eugene was fifty-two years of age. He has four children from a previous marriage, including Jacob's half sister, Lisa Kraus. Eugene has been a long distance truck driver for thirty-four years. Both parents dropped out of school in the tenth grade.

Connie filed her petition for dissolution in April of 1991. Before trial, in September 1991, Jacob was hospitalized after a suicide attempt.

At trial, the central issue was whether Connie or Lisa Kraus, Jacob's half sister, and her husband, Tom, should have physical custody of Jacob. Jacob was nine years old at the time of the dissolution. Eugene testified he could not have physical custody of Jacob due to the nature of his job which frequently kept him away from home.

Dr. Jordan, a clinical psychologist, testified a strong bond exists between Connie and Jacob. The doctor testified Jacob was upset about living with Lisa and Tom Kraus. Jacob showed consequent behavioral problems such as crawling under a chair and assuming a fetal position. Dr. Jordan believed denying Connie custody would be another

loss to Jacob who was already suffering from the death of a friend and the absence of his father in the home. In addition, Dawn Moore of the Iowa Department of Human Services (DHS) testified she saw no reason to remove Jacob from Connie's home.

Connie presented evidence indicating she was the person who called the hospital after Jacob's suicide attempt. She also entered him in the recommended treatment program and contacted school officials about his problems. Connie testified she took part in conferences and counseling and helped Jacob, who was falling behind in school.

Eugene presented evidence indicating Connie is not a suitable parent. Her home was described as "chaotic" and one where negative communication predominated, including screaming, yelling, crying, and excessive profanity. There was testimony Jacob's behavior in the home included playing with knives, aggression, defiance, bedwetting, temper tantrums, and a suicide attempt.

Eugene also presented evidence showing Connie is unable to control her two older children, one of whom, Amy, had just returned from foster care. Connie experiences serious behavioral problems with Amy. Eugene believed the older children created a bad example for Jacob.

Dr. Mark Peltan, a clinical psychologist, conducted the court-ordered psychological evaluation of Jacob. Michele Willis, a caseworker for Lutheran Social Services, performed home studies of the residences of Connie and

Krauses. Dr. Peltan and Willis recommended placement of Jacob with Lisa and Tom Kraus whom they believe have strong parental attitudes and techniques as well as a stable home.

The district court awarded custody of Jacob to Lisa and Tom Kraus, subject to reasonable visitation by the natural parents, as agreed upon by all the parties. The court, however, established certain minimums. Connie Wolf appeals on the issue of custody only.

Our review is de novo. Iowa R. App. P. 4. In child custody cases our primary consideration is the best interests of the child. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). Although we are not bound by the fact findings of the trial court, we do give them weight, especially when considering the credibility of the witnesses. Iowa R. App. P. 14(f)(7). Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. In re Marriage of Bartlett, 427 N.W.2d 876, 877 (Iowa App. 1988) (citing Lambert v. Everist, 418 N.W.2d 40, 42 (Iowa 1988)).

Connie contends the district court erred in awarding custody of Jacob to his half sister and brother-in-law.

There is a presumptive preference for parental custody. In re Mann, 293 N.W.2d 185, 190 (Iowa 1980). Nonparents, however, may be granted custody when neither parent is a suitable custodian or when the only parent seeking custody is deemed unsuitable to be custodian. In

re Marriage of Hunnell, 398 N.W.2d 877, 878-79 (Iowa 1987) (citations omitted). The Iowa Supreme Court has held even though a parent is fit to have custody, she may be denied custody if it is against the best interests of the child. In re Mann, 293 N.W.2d at 186 (citing In re Marriage of Smith, 269 N.W.2d 406, 408 (Iowa 1978)).

The record indicates clearly it is in Jacob's best interests to award his custody to Lisa and Tom Kraus. A child needs a stable and continuing environment. In re Marriage of Carrico, 284 N.W.2d 251, 254 (Iowa 1979). Jacob has learning and behavioral problems as well as serious emotional problems which caused him to attempt suicide. He needs a home environment where he can deal with his problems and begin progress. Connie is unable to provide this type of environment for Jacob.

Connie's daughter, Amy, has moved in and out of foster care due to serious behavioral problems. Her older son, Tom, is authoritative. There was concern expressed over his relationship with Jacob. Both children use excessive profanity and threatening language when speaking to Jacob. In addition, Connie's live-in boyfriend, Duane Derr, sustained serious head injuries in a work accident in July 1992. He has significant problems with concentration, attention, thought organization, and comprehension processes. These facts are not conducive to a stable and nurturing environment for Jacob to deal with his problems.

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Connie is not a suitable role model for Jacob. She is unable to control her other children. The record also indicates Connie has trouble disciplining Jacob without yelling or some other form of negative communication. Her reliance on "street smarts" in parenting results in decisions which are not in Jacob's best interests. She does not take an active role in Jacob's school activities which is necessary due to his learning and emotional problems.

Evidence shows Connie is unable to support Eugene's relationship with Jacob. She continues to have a hostile attitude towards Eugene. During the home study at her home, Connie expressed her desire to deprive Eugene of all contact with Jacob. Connie has stated she would snatch Jacob if Eugene was awarded custody. Connie conveys her hostility towards Eugene to Jacob on a continual basis. Her conduct is a serious reflection of her fitness as the custodial parent, especially in light of Jacob's severe emotional problems. See In re Marriage of Bartlett, 427 N.W.2d at 878 (citations omitted).

Lisa and Tom Kraus are suitable role models for Jacob. Their home environment will provide Jacob with the security and stability he needs. The home study of the Kraus home indicated Lisa and Tom have sound parenting skills. Michele Willis testified both Lisa and Tom have the patience needed to deal with a special needs child like Jacob. Lisa has worked as a teacher's aide for children in

special education for the past ten years. Her knowledge in dealing with special needs children makes her uniquely qualified to deal with and assist Jacob.

Lisa and Tom have two children of their own, ages eight and three at the time of Wolfs' dissolution. Lisa and Tom teach their two children appropriate behavior. During the home study at the Kraus's home, Jacob did not yell, fight, or use profanity. There was a marked difference in his interaction with Krauses as compared to his interaction with Connie during the home study at her residence.

We find Lisa and Tom Kraus can better serve Jacob's long-term best interests. Lisa and Tom have shown the desire to provide Jacob with a loving and stable home. They can give him the attention he needs, and they are willing to play an active role in Jacob's educational, behavioral, and emotional development. We hold it is in Jacob's best interest to be placed with Lisa and Tom Kraus. We affirm the district court's custody decision.

Costs of this appeal are taxed to Connie Wolf.

**AFFIRMED.**