

IN THE COURT OF APPEALS OF IOWA

No. 1-059 / 10-1133
Filed March 7, 2011

**IN RE THE MARRIAGE OF JEREMIAH DANIEL ANDERSON
AND TAI REBECCA ANDERSON**

Upon the Petition of

JEREMIAH DANIEL ANDERSON,
Petitioner-Appellee,

And Concerning

TAI REBECCA ANDERSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Hamilton County, Timothy J. Finn,
Judge.

Appeal from the child custody provisions of the parties' decree of
dissolution of marriage. **AFFIRMED.**

Robb D. Goedicke of Burdette Law Firm, P.C., Clive, for appellant.

Daniel J. Tungesvik of Kruse & Dakin, L.L.P., Boone, for appellee.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

SACKETT, C.J.

Tai R. Anderson appeals from the May 2010 decree dissolving her marriage to Jeremiah D. Anderson. She contends that she, not Jeremiah, should have been awarded “primary custody” of the parties’ three children. We affirm.

I. SCOPE OF REVIEW.

We review dissolution cases de novo. *In re Marriage of Cooper*, 769 N.W.2d 582, 585 (Iowa 2009); *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006). We are not bound by the district court’s factual findings but give weight to them. See *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). We also look to the district court’s credibility assessments and note here that the long-serving, experienced trial judge made the following observation about Tai’s credibility:

For her part, Tai appears to be a competent parent although she suffers from significant and substantial character defects. Without being overly critical, the Court feels compelled to observe that she is probably one of the most dishonest persons this Court has ever seen testify. She lied about virtually everything. After observing her and hearing the testimony for two days, the Court finds her credibility is virtually nil. There are so many examples of her inability or unwillingness to tell the truth, this decision would be substantially and unduly lengthened if the Court were to list all of them.

The court then went on to find five specific areas where Tai’s credibility was seriously challenged, then made it clear that the court did not consider lack of honesty in a parent the sole factor it was required to consider in making an award of custody, but did find it a significant factor to consider in determining the environment in which the children would be raised. On our review of the record we find, as did the district court, that Tai’s credibility was seriously challenged.

II. BACKGROUND.

The parties married in 2005. They are parents of two sons born in 2004 and 2006, and a daughter born in 2008. They separated in August of 2009 and a petition for dissolution of the marriage was filed in September of the same year. Both parties asked that the children be placed in their joint legal custody. Each party asked to be the primary physical custodian. By agreement the parties shared care of the children during the pendency of the proceedings without major problems, which we commend them for doing.

The matter came on for trial on March 10, 2010. At that time Jeremiah was working for the Union Pacific Railroad, a job he held during the course of the marriage, and was also a member of the Iowa National Guard. At the time of the hearing he had asked for a hardship discharge. He was living in Stratford, Iowa, where the parties had lived during their time together. Tai was living in a gentleman's home in Ankeny, Iowa, and working as a childcare provider.

On May 10, 2010, the district court entered a decree placing the children in the parties' joint legal custody and awarding primary physical care to Jeremiah finding among other things that, "Jeremiah represents a significantly stronger and more stable parent and environment in which to raise the children than Tai." The district court also addressed a number of other issues not challenged on appeal including property division, child support, and alimony.

III. PRIMARY PHYSICAL CARE.

Tai contends she has been the primary care giver and because Jeremiah will utilize his parents for help in raising the children, the district court decision

awarding Jeremiah physical custody was tantamount to giving the grandparents rights not allowed under the law. She also contends she has been the primary custodian and it is in the children's best interest that she be named primary care giver.

The district court, in making the custodial decision, concluded:

[I]t is in the best long term interest of the children that they be placed in the joint legal custody of Jeremiah and Tai, but that the primary physical care, custody, and control should be placed with their father Jeremiah. There are a number of reasons the Court come to this conclusion. First of all, Jeremiah has demonstrated a willingness to work to provide adequate income to support his family. Secondly, Jeremiah appears substantially more emotionally stable than Tai. Thirdly Jeremiah has a strong family structure nearby to assist him in caring for the children. Fourth the children are very close to their grandparents and are bonded to them. Fifth while neither party has demonstrated much financial responsibility, the Court is of the opinion that when it comes to basic decisions concerning the care of the children, the circumstances in which they are exposed or placed, and on issues such as honesty, Jeremiah represents a significantly stronger and more stable parent and environment in which to raise the children than Tai.

Tai . . . borders on being a pathological liar. She lied to a number of people concerning her position at the Army National Guard. She continues to testify under oath that she is not in a romantic relationship with the man with whom she lives. Her testimony is not credible. . . . Although her behavior is problematic, it is not sufficiently detrimental to the children to deny her a joint legal custody arrangement, but as between Tai and Jeremiah, Jeremiah is clearly the more fit parent to raise the children to be somewhat healthy, well-adjusted adults.

Tai contends that if we look at the Iowa Code 598.41(3) (2009), the statutory guidelines for determining what custody situation is better for the children, we will determine she should have primary care. She argues strongly that Jeremiah is not a suitable custodian because he requires support from his parents to care for the children and his employment keeps him away from the children once or twice a week. She also argues he asked for visits every

weekend if she were awarded custody but proposed different visitation for her, contending this shows his intentions to prevent her active contact with the children and favors his parents over her rights as the biological mother. She recognized he completed the Children in the Middle Class but argues because he only completed it a week before trial, this indicates he did not consider it a priority, and this is indicative of his character. She contends he did not actively care for the children prior to and since the separation and correctly argues she was the custodial parent while he, a member of the National Guard, was deployed for over a year. She contends we should not consider the fact she took a voluntary position at Camp Dodge, leaving the children with a child care provider, because it was the only way she could get away from Jeremiah's controlling parents. She also contends we should consider evidence of Jeremiah's physical abuse. She contends we should give weight to the fact Jeremiah was discharged from the Army Reserve because of his relationship with her while she was still married. She argues the district court should not have considered the relationship she was having with another man without causally linking it to harm to the children. She contends the district court failed to give adequate consideration to the fact Jeremiah admitted slapping the children on the mouth when they used inappropriate language, and he admitted swearing around the children.

She further contends the court should consider that as a result of Jeremiah's military deployment, he was diagnosed with borderline PTSD, is taking medication, continues to have problems sleeping at night, and sees a

counselor once a week. She argues because his deployment ended sometime ago, these facts suggest he has an underlying ongoing mental health issue more problematic than borderline PTSD. She further contends the district court blatantly overlooked the fact he shot the family dog in what she contends was within the children's hearing, and his guns were removed from the family home.

She further contends Jeremiah cannot be said to be a good parent because he testified he considered a trip to Wal-Mart as an educational experience, and despite the fact he works for the railroad, he failed to take the child to Thomas the Train because his mother had already done that.

She finally argues her dishonesty with the children's paternal family will not harm the children, and she is the one to nurture them in an environment where they can thrive without threat of physical or mental abuse.

IV. GRANDPARENT INVOLVEMENT.

Jeremiah's parents live in Stratford. From the time the oldest child was born the grandparents were involved with Jeremiah and Tai's children. As the district court found, the grandparents have a strong bond with the children and the children have a strong bond with the grandparents. The grandparents have been instrumental in the children's care. Requests for grandparent assistance came from both parents. Jeremiah's parents spent considerable time with Tai and the children while Jeremiah was deployed and while Jeremiah was away from home because of the responsibilities of his job. They have continued to be available to assist with the children during the parties' separation and testified they will continue to assist Jeremiah with the children although he will also have

to employ child care. Tai on the other hand has limited involvement with her family.

The Iowa courts have recognized the availability a grandparent to assist with child care can be a positive factor for a parent seeking custody. See *In re Marriage of Welbes*, 327 N.W.2d 756, 758 (Iowa 1982); *Melchiori v. Kooi*, 644 N.W.2d 365, 369 (Iowa Ct. App. 2002); *In re Purscell*, 544 N.W.2d 466, 469 (Iowa Ct. App. 1991). The availability of the paternal grandparents to assist Jeremiah is a factor in his favor. Tai and Jeremiah have both utilized the paternal grandparents for childcare and fostered the relationship between the children and these grandparents. There is a bond between the children and their paternal grandparents and the children will be served by the bond being maintained.

Tai has also brought into her life a man who has had and probably will have contact with her children. While she has denied she has a relationship with him and contended she only rents space in his home, the record does not support her position. The man did not testify. Tai calls him her “sexy baby” on her Facebook page. The record reveals little about him except that he is married and one or more of the children have complained about his treatment of them. In making a custody assessment we consider the background and relationship with the children of a person a parent has brought into their home. See *In re Marriage of Decker*, 666 N.W.2d 175, 179 (Iowa Ct. App. 1993). There is nothing in the record to show the new man in Tai’s life would benefit her children.

We do not find Tai's other arguments on appeal tip the scales in her favor. We reject her contention we should not use against her the basically uncontroverted evidence she held a forty-hours-a-week unpaid position that required her to drive one hundred miles a day and to leave her children in childcare because she needed to get away from the situation in Stratford. The family is on the brink of bankruptcy. And while both parties have made bad financial decisions, Tai clearly has not considered the financial impact on her children in committing to the volunteer work.

The decision to shoot the dog was made after the dog bit someone. Jeremiah admitted the children may have heard the shot and the manner in which he handled this isolated incident may not have been in the children's interest but we cannot say it made him an unacceptable father.

Several witnesses called by Jeremiah, including a former childcare provider, testified Jeremiah seemed involved in his children's life and they had positive reactions to him. We find no reasons to reverse the district court's decision, for on our de novo review we believe, as did the district court, that the children will be better served in their father's physical care.

V. ATTORNEY FEES.

Jeremiah requests that he be awarded appellate attorney fees. "An award of appellate attorney fees is not a matter of right, but rests within our discretion." *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party requesting fees was required to defend the district court's

decision on appeal. *Id.* Tai has not been successful in her appeal. Jeremiah has greater earnings than does Tai. We deny Jeremiah's request for attorney fees and any other request. Costs on appeal are taxed to Tai.

AFFIRMED.