

IN THE COURT OF APPEALS OF IOWA

No. 1-461 / 10-1497
Filed September 8, 2011

COLE HICKS,
Petitioner-Appellee,

vs.

AMANDA FOULKS,
Respondent-Appellant.

Appeal from the Iowa District Court for Clay County, Patrick M. Carr,
Judge.

A mother appeals from a district court order awarding physical care.

AFFIRMED.

Sean J. Barry of Montgomery, Barry, Bovee & Barry, Spencer, for
appellant.

Jack B. Bjornstad of Bjornstad Law Office, Spirit Lake, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Mullins, JJ.

VOGEL, P.J.

Amanda Foulks appeals from a district court ruling that placed physical care of the parties' children with their father, Cole Hicks. Because we agree with the district court's ruling that the placement of the children with Cole will promote a more stable environment and allow for greater success as the children mature, we affirm.

I. Background Facts and Proceedings

Amanda and Cole are the parents of a daughter, born in January 2008, and a son, born in August 2009. The parties were never married, but lived together from February 2008 until December 2008. The parties have lived apart since that time.

This proceeding was first brought by Cole on December 31, 2008, to establish paternity and custody of the parties' daughter. On March 16, 2009, the district court issued an order granting temporary physical care to Amanda. Trial was held on October 28, 2009. Cole tendered a motion for leave to amend to concurrently place in issue custody of the parties' three month old son, which was not resisted by Amanda. On March 3, 2010, Cole moved to reopen the record in order to supplement it with newly discovered, material evidence. That evidence included two criminal records concerning Amanda, two affidavits provided by Cole, a third-party affidavit, and an affidavit from Amanda. In August 2010, the district court issued a decree, which included awarding joint legal custody of the children to both parties with physical care to Cole. Amanda appeals.

II. Standard of Review

Our review of this matter in equity is de novo. Iowa R. App. P. 6.907; *McKee v. Dicus*, 785 N.W.2d 733, 736 (Iowa Ct. App. 2010). Determinations regarding the physical care of a child are made by considering the best interests of the child. *In re Marriage of Decker*, 666 N.W.2d 175, 177 (Iowa Ct. App. 2003). The critical inquiry in choosing a physical care giver is which parent “can administer most effectively to the long-term best interests of the children and place them in an environment that will foster healthy physical and emotional lives.” *In re Marriage of Walton*, 577 N.W.2d 869, 871 (Iowa Ct. App. 1998).

Factors considered by the court include:

1. The characteristics of each child, including age, maturity, mental and physical health.
2. The emotional, social, moral, material, and educational needs of the child.
3. The characteristics of each parent, including age, character, stability, mental and physical health.
4. The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the child.
5. The interpersonal relationship between the child and each parent.
6. The interpersonal relationship between the child and its siblings.
7. The effect on the child of continuing or disrupting an existing custodial status.
8. The nature of each proposed environment, including stability and wholesomeness.
9. The preference of the child, if the child is of sufficient age and maturity.
10. The report and recommendation of the attorney for the child or other independent investigator.
11. Available alternatives.
12. Any other relevant matter the evidence in a particular case may disclose.

See *In re Marriage of Winter*, 223 N.W.2d 165, 166–67 (Iowa 1974); see also Iowa Code § 598.41(3) (2007) (enumerating ten similar factors for courts to consider when crafting a custody arrangement between parties). Further, the analysis utilized by the courts in determining child custody is identical for parties dissolving a marriage, and those parties that were never married. *Jacobson v. Gradin*, 490 N.W.2d 79, 80 (Iowa Ct. App. 1992).

Although we are not bound by the district court’s findings, we give them deference because the district court had the opportunity to observe “the demeanor of the parties and evaluate them as custodians,” to judge the credibility of the witnesses, and to gauge the weight of the evidence. *Walton*, 577 N.W.2d at 871; *In re Marriage of Ihle*, 577 N.W.2d 64, 69 (Iowa Ct. App. 1998).

III. Physical Care

While it is evident that both parties love their children deeply and we do not deny Amanda has a close maternal bond with the children, we agree with the district court’s award of physical care to Cole. The ultimate objective is to place the children in an environment that will “foster healthy physical and emotional lives.” *Walton*, 577 N.W.2d at 871.

Amanda asserts she should have been awarded physical care as she was the primary caregiver of the children until the time of the district court decree and will give the children a better chance to succeed because of her ability to communicate with Cole and his family, as well as her ability to place the interests of her children ahead of her own. The record and the district court’s ruling reflect otherwise. While Amanda exhibits great love for her children, her ability to set

aside her differences with Cole in order to promote a nurturing and stable environment for her children is troublesome. The trial court specifically noted that although “angry exchanges between persons involved in custody disputes are usually a two-sided affair, the convincing weight of the evidence suggests that [Amanda] is usually the instigator of these continuing disputes.” Moreover, the district court recognized that Cole’s extended family is “motivated and capable of providing [Cole] with support and assistance should he be granted primary physical care,” and further noted that it was “favorably impressed” with Cole’s mother and father. Because the district court was able to observe the demeanor and judge the credibility of Amanda, Cole, and the other witnesses at trial, to evaluate the parties’ ability to raise the children, and to gauge the weight of the evidence presented at trial, we defer to the findings of the district court. See *Walton*, 577 N.W.2d at 871 (giving deference to the district court’s findings because the district court had the “opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians); *Ihle*, 577 N.W.2d at 69 (deferring to the district court’s findings on the credibility of the witnesses and the weight of the evidence). The district court artfully detailed its reasoning and we affirm.

AFFIRMED.