

IN THE COURT OF APPEALS OF IOWA

No. 2-779 / 12-0297
Filed October 17, 2012

**IN RE THE MARRIAGE OF TERRY COMSTOCK
AND LEAH COMSTOCK**

**Upon the Petition of
TERRY COMSTOCK,**
Petitioner-Appellee,

**And Concerning
LEAH COMSTOCK,**
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, Jeffrey A. Neary, Judge.

Respondent-Appellant appeals the district court award of joint physical care of children in a dissolution decree. **AFFIRMED.**

John S. Moeller of John S. Moeller, P.C., Sioux City, for appellant.

Brien O'Brien and Teresa A. O'Brien, Sioux City, for appellee.

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

VOGEL, P.J.

Leah Comstock appeals from the decree dissolving her marriage to Terry Comstock. Leah contends that the district court erred in granting the parties joint physical care of their three children. We affirm.

Leah and Terry were married in November 1998. Their marriage resulted in three children, born in 2000, 2002, and 2004. In April 2011, Terry filed a petition for dissolution of marriage.

On January 4, 2012, a hearing was held. On January 25, 2012, the district court entered a decree dissolving the parties' marriage, and granted Leah and Terry joint legal custody and joint physical care of the children. Leah appeals. She maintains joint physical care is not in the children's best interests and that they would be better served if she had physical care. Leah asserts that she had been the children's primary physical caretaker during the marriage and she and Terry cannot communicate effectively to support an award of joint physical care. Terry responds that joint physical care is in the children's best interests and the evidence supports that determination as the parties have traditionally performed equal roles in raising the children and have been able to cooperate regarding the decisions affecting the children.

We review the provisions of a dissolution decree de novo. Iowa R. App. P. 6.907; *In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007). However, we recognize that the district court was able to listen to and observe the parties and witnesses. *In re Marriage of Zebecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we give weight to the factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by

them. Iowa R. App. P. 6.904(3)(g). Our overriding consideration is the best interests of the children. Iowa R. App. P. 6.904(3)(o); *Hansen*, 733 N.W.2d at 695 (stating that in determining whether to award joint physical care or physical care with one parent, the best interests of the children remains the principal consideration).

Evidence introduced at trial demonstrated that both Leah and Terry have been active parents in the lives of their children. The parties generally agree on their approach to day-to-day parenting and have historically been able to cooperate and work together in raising the children. However, the parties' personal lives have been complicated with the stress and changes brought on by the breakdown of the marriage, Terry's new romantic relationship, and Leah's ongoing health concerns. The district court took all the relevant factors into account and addressed each parent's strengths and weaknesses in detail. Further, the district court found that "the conflict [between the parties] is noted . . . but the court observed that the parties have begun to move beyond the conflict gradually and time will permit appropriate trust building and appropriate resolution of past mistrust and conflict." We share the district court's confidence that the parties will cooperate in the future and provide healthy and loving environments for the children.

We defer to the credibility assessments made by the district court and conclude the district court's factual findings were fully supported by the record. Further, the district court's ruling reflects it considered and weighed the appropriate factors in determining the physical care award. Iowa Code § 598.41(3) (2011); *In re Marriage of Winter*, 233 N.W.2d 165, 166–67 (Iowa

1974); see *Hansen*, 733 N.W.2d at 698 (holding that although Iowa Code section 598.41(3) does not directly apply to physical care decisions, “the factors listed [in this code section] as well as other facts and circumstances are relevant in determining whether joint physical care is in the best interest of the child”). Thus, we affirm the district court pursuant to Iowa Court Rule 21.29(1)(a) and (d).

AFFIRMED.