

**IN THE COURT OF APPEALS OF IOWA**

No. 3-566 / 13-0158

Filed July 10, 2013

**IN RE THE MARRIAGE OF DARRYL A. ANANT  
AND ZAINAB S. ANANT**

**Upon the Petition of  
DARRYL A. ANANT,**  
Petitioner-Appellant,

**And Concerning  
ZAINAB S. ANANT, n/k/a Zainab S. Abbas,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

Darryl Anant appeals the physical care provision of the decree dissolving his marriage to Zainab Abbas. **AFFIRMED.**

John J. Wood and Kate B. Mitchell of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant.

Luke D. Guthrie of Roberts, Stevens, Prendergast & Guthrie, P.L.L.C., Waterloo, for appellee.

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

**DOYLE, P.J.**

Darryl Anant and Zainab Abbas were married in November 2006. They have two children, born in 2008 and 2011. Darryl and the children are United States citizens. Zainab is a Canadian citizen. The parties separated in March 2012.

Trial on the petition for dissolution of marriage was held in November 2012. By that time, Zainab had moved back to Canada to seek employment, and the children had remained in the U.S. in Darryl's care. Both parties appeared and testified at the trial. The district court granted the parties joint custody, and it determined the children should be placed in the physical care of Zainab, subject to liberal visitation by Darryl. Darryl now appeals, arguing the district court erred in awarding Zainab physical care of the children.

We review dissolution of marriage cases de novo. Iowa R. App. P. 6.907; *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011). We decide the issues raised anew, but we do so with the realization that the district court possessed the advantage of listening to and observing firsthand the parties and witnesses. *In re Marriage of Zabecki*, 389 N.W.2d 396, 398 (Iowa 1986). Consequently, we credit the factual findings of the district court, especially as to the demeanor and believability of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Fennelly*, 737 N.W.2d 97, 100 (Iowa 2007).

In child custody cases, the first and governing consideration is the best interests of the children. Iowa Code § 598.41(3) (2011). "Physical care" involves the right and responsibility to maintain a home for the minor children and provide for routine care of the children. See *In re Marriage of Hansen*, 733 N.W.2d 683,

690 (Iowa 2007). In determining whether to award physical care with one parent, the district court is guided by the factors enumerated in section 598.41(3), as well as other nonexclusive factors enumerated in *Hansen*, 733 N.W.2d at 696-99, and *In re Marriage of Winter*, 233 N.W.2d 165, 166-67 (Iowa 1974). See *Hansen*, 733 N.W.2d at 698. Although consideration is given in any custody dispute to allowing the children to remain with a parent who has been the primary caretaker, see *id.* at 696, the fact that a parent was the primary caretaker of the child prior to separation does not assure an award of physical care. See *In re Marriage of Toedter*, 473 N.W.2d 233, 234 (Iowa Ct. App. 1991). Rather, the ultimate objective of a physical care determination is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999); *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). As each family is unique, the decision is primarily based on the particular circumstances of each case. *Hansen*, 733 N.W.2d at 699.

In the instant case, it is clear both parties love and care for their children, and both parents are willing and able to serve as care providers for the children. The focus, therefore, is on whether the interests of the children are better served by placement in Zainab's physical care and providing Darryl with visitation. Where the children would flourish in the care of either parent, the choice of physical care necessarily turns on narrow and limited grounds. In close cases, we give careful consideration to the district court's findings. *In re Marriage of Wilson*, 532 N.W.2d 493, 495-96 (Iowa Ct. App. 1995).

We find this to be one of those cases. Upon our de novo review of the record and considering the factors pertinent to physical care, we find no reason to disturb the district court's placement of the children in the physical care of Zainab. Implicit in the court's decree is the court's finding, as the trier of fact, that Zainab was more credible than Darryl. To be sure, the record reflects that both parents have at times made injudicious choices, and we need not regurgitate them here, because the court's decree clearly establishes it not only recognized these choices by the parents, it took them into consideration in its physical care placement determination. The court also considered Darryl's primary care of the children after Zainab's move, as well as Zainab's historical care of the children, and the consequences of placing the children with Zainab in Canada. Each parent presented evidence they were more willing to support the children's relationship with the other parent. Nevertheless, it was the district court that possessed the advantage of listening to and observing firsthand the parties and witnesses, and it determined Zainab was the one more likely to foster the children's relationship with Darryl, and not the other way around. We have thoroughly reviewed the record, and we simply cannot find the district court erred in its factual findings leading to its ultimate conclusion that it was in the best interests of these children that they be placed with Zainab. Accordingly, we affirm the physical care decision of the district court. Costs on appeal are assessed to Darryl.

**AFFIRMED.**

Mullins, J., concurs; Danilson, J., dissents.

**DANILSON, J. (dissenting)**

I respectfully dissent. During the marriage, Zainab commonly threatened to leave Darryl and take the children to Canada or the Middle East. She also threatened that Darryl would never see the children again. Zainab did leave for Canada with the children, although the parties dispute whether Darryl was given any notice. Before leaving and in separating from Darryl, she wrote a check on Darryl's bank account. With this backdrop, the district court found fault in Darryl's pursuing an ex parte emergency custody order and reporting Zainab's apparent commission of forgery to law enforcement. Although the forgery offense had repercussions on Zainab's re-entry into the United States, it was Zainab who should have considered these repercussions before writing the check. Darryl was the victim of the apparent crime and was in fear he would never see his children again.

To her credit, Zainab did return with the children several days after leaving for Canada. Within a month of Zainab's return, the parties agreed to a temporary shared physical care arrangement. However, after two months, she moved to Canada leaving the children in Darryl's care for approximately four months before the trial. The children are American citizens and have never resided in Canada. They were provided good care by Darryl in Zainab's absence. During the time the children were in Darryl's exclusive care, he permitted Zainab daily contact with the children by telephone or Skype.

The district court also found fault in Darryl's actions just days before the trial. Darryl limited Zainab's visitation with the children to a one-hour visit under Darryl's close supervision. Better judgment may have permitted Zainab more

time. However, these limitations seem fairly reasonable in light of Zainab's prior threats, her leaving for Canada with the children, her apparent commission of forgery in furtherance of absconding the country, and her abdicating her responsibilities under the temporary shared physical care award.

If Zainab believed the children would be in good care under Darryl's supervision for several months, there is no reason why we should not equally rely upon Darryl's parental abilities. Because Darryl has demonstrated stability, provided good care of the children in Zainab's absence, and permitted daily contact between Zainab and the children, I would modify the decree to award Darryl physical care of the two children.