

**IN THE COURT OF APPEALS OF IOWA**

No. 3-915 / 13-0423  
Filed November 6, 2013

**Upon the Petition of  
JESSICA HANSEN,**  
Petitioner-Appellant,

**And Concerning  
BRANDON KOCH,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, John D. Telleen,  
Judge.

Jessica Hansen appeals the district court order establishing custody,  
physical care, and visitation. **AFFIRMED.**

Eric Puryear, Davenport, for appellant.

Patricia Zamora of Zamora, Taylor & Frederick, Davenport, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

Jessica Hansen appeals the district court order establishing custody, physical care, and visitation. She argues the district court should have granted her physical care of the children. We affirm.

**I. Background Facts and Proceedings**

Jessica Hansen and Brandon Koch are the parents of two children, ages nine and six. The couple never married. Hansen, Koch, and the children have lived in five different states over the past decade. Presently the children live with Koch and his parents in Iowa, while Hansen lives with her boyfriend in North Dakota.

The parties have had a difficult and contentious relationship. The children have lacked stability due to their parent's nomadic lifestyle. The parties have worked primarily in the adult entertainment industry and both have convictions for prostitution. Hansen and Koch co-parented the children until 2010 when a disagreement, while living in a motel in Denver, Colorado, caused their final separation. Following a verbal altercation, Hansen moved the children to her mother's home in Clinton, Iowa, despite past allegations that she did not have a good childhood in the same home; her mother and her mother's current husband were alcoholics; and people who spent time in the home may have been sexual predators. Shortly thereafter, Hansen gave her mother guardianship of the children and Hansen moved to Colorado, leaving the children behind.

Koch soon returned to Iowa and was allowed to move the children to his parents' home in Davenport.<sup>1</sup> Shortly after this move police returned the children to Hansen's mother because of the guardianship. By all accounts the scene was traumatic for the children. Before long, Hansen changed her mind again and allowed the children to return to Koch. During this time the children saw little of their mother.

In June 2011, Hansen began traveling to Davenport on occasion to visit the children. During one of those visits, a dispute between the parties caused Hansen to leave with the children. Koch contacted law enforcement who issued an Amber Alert. Hansen was apprehended by law enforcement and arrested on outstanding warrants. The children were returned to Koch. During trial, Hansen explained this incident was the result of having discovered several disturbing things in Koch's home, including soiled diapers on the floor and the children's toys in garbage bags. The district court did not find Hansen's explanation to be credible. On September 26, 2011, following this incident and an unsuccessful domestic abuse petition filed by Koch, the district court granted temporary custody of the children to Koch with liberal visitation granted to Hansen.

Since temporary custody was established, Hansen moved to North Dakota, where she resides with her boyfriend who supports her financially. She has been employed in more conventional industries but attributes her regular unemployment to the time it takes her to travel to see the children. The district

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<sup>1</sup> For reasons not entirely clear, Koch is not listed on the birth certificates of either child and needed the permission of Hansen to take custody of the children or enroll them in school. This also created a climate where Hansen could retake custody of the children and remove them from the stability provided by their father and his family.

court found Hansen's boyfriend to be an individual who would have a positive influence on the children. Hansen is preparing for her general educational development test and has future employment goals.

Koch continues to be employed in security at an adult entertainment establishment. He appears to be committed to the wellbeing of the children and his life has stabilized significantly. He testified to his daily routine, with and without the children. By all appearances the children have blossomed both socially and academically in their father's care.

The district court made a number of specific credibility findings all of which are unfavorable to Hansen. The court found Hansen made a number of allegations about the condition of the children and their current home, none of which were found to be substantially true and some the court found to be exaggerated. The court also found Hansen had engaged in conduct intended to strain the relationship between the children, their father, and his family. Finally, the court found Hansen had failed to take full advantage of visitation, often going months without seeing her children.

## **II. Standard of Review**

We review custody issues de novo. *In re Marriage of Hynick*, 727 N.W.2d 575, 577 (Iowa 2007). We are not bound by the decisions made by the district court, however we give them weight, particularly with respect to issues of credibility. *Id.*

### III. Discussion

The district court ordered joint legal custody<sup>2</sup> of the children but granted Koch physical care.<sup>3</sup> Due to the geographic separation of the parties, an award of joint physical care was unworkable.

When considering physical care of children, our overriding concern is the best interests of the children. *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). Our best interests analysis is governed by the factors set out in Iowa Code section 598.41(3) (2011), as well as those identified by our supreme court in *In re Marriage of Winter*, 223 N.W.2d 165, 166–67 (Iowa 1974).

We will not recount those factors at length, however upon a review of all relevant considerations we agree with the district court that the best interests of the children are served by placement with their father. The children have flourished in their father's care and are establishing important and lasting bonds with family. Since residing with Koch, the children have finally achieved a measure of stability previously lacking in their lives, are succeeding in school, and have continued to have a strong bond with their father. Koch has cared for the children throughout their lives, with the exception of short but all too frequent periods of time when they were removed from their father's care by their mother.

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<sup>2</sup> Joint legal custody provides both parents with equal custodial rights including equal participation in important decisions regarding the children's medical care, education, religious instruction, etc. Iowa Code § 598.1 (3) (2013).

<sup>3</sup> The district court awarded Koch "primary physical care," which is not a term defined in Chapter 598 of the Code. Physical care is defined as the "right and responsibility to maintain a home for the minor [children] and provide for the routine care of the [children]." Iowa Code § 598.1 (7). Where the district court has awarded primary physical care, we interpret the order as awarding physical care, with visitation awarded to the other parent.

Though we agree with the district court that Hansen loves the children and wants what is best for them, we share the district court's concern that Hansen's present stability is premised upon the success of her current relationship, absent which a nomadic and unstable lifestyle may resume.<sup>4</sup> Koch represents the children's best opportunity for stability and healthy growth in the future.

**AFFIRMED.**

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<sup>4</sup> We find the credibility determinations made by the district court to be persuasive. They are of particular importance when attempting to determine the best interests of the children.