

IN THE COURT OF APPEALS OF IOWA

No. 6-140 / 05-1500

Filed April 26, 2006

**IN RE THE MARRIAGE OF KEVIN ROBERT GOULD
AND ABIGAIL ELIZABETH GOULD**

**Upon the Petition of
KEVIN ROBERT GOULD,**
Petitioner-Appellant,

**And Concerning
ABIGAIL ELIZABETH GOULD,**
Respondent-Appellee.

Appeal from the Iowa District Court for Washington County, James Q.
Blomgren, Judge.

Kevin Gould appeals the district court's award of primary care in his
dissolution proceeding. **AFFIRMED.**

Michael Mollman of Mollman Law Office, Cedar Rapids, for appellant.

Daniel Kitchen of Tindal & Kitchen, P.L.C., Washington, for appellee.

Heard by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.

Kevin Gould appeals the district court's award of primary care in his dissolution proceeding. He argues the district court erred in awarding Abigail Gould primary care of their two daughters. We affirm.

I. Background Facts and Proceedings

Kevin and Abigail were married in 1997. They have two daughters, born December 10, 1997, and February 14, 2000, respectively. During the first four years of their marriage, Kevin served in the United States Navy. The couple lived in Virginia and Maryland while Kevin was in the service. When he was deployed, Abigail and the children lived with or near the couple's relatives in Brighton, Iowa.

When Kevin was discharged from the Navy in 2001, the couple moved back to Iowa. They lived with Kevin's parents while Kevin worked to renovate the second level of his father's funeral home into an apartment for the family. Abigail began working at Wal-Mart. Kevin also began attending college, where he performed well. He earned his bachelor's degree in May 2005. Sometime during this period, Abigail left her job at Wal-Mart for a bank teller position with Federation Bank. She was terminated from that job in November 2004. She admits she committed serious mistakes that resulted in her termination.

Kevin filed for dissolution in June 2004. In September 2004 the district court ordered that temporary and legal custody be placed jointly in both parties. Trial was held on July 13, 2005. On July 28, 2005, the district court entered its ruling granting Abigail primary physical care of both children. Kevin filed a motion to reconsider. The court denied Kevin's motion on August 29, 2005.

Kevin filed an application for additional findings of fact, citing the fact that Abigail had been convicted of supplying alcohol to a minor. The district court denied his application on September 8, 2005.

II. Standard of Review

We review dissolution decrees de novo. Iowa R. App. P. 6.4; *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50 (Iowa 1999). Therefore, we evaluate the entire record and adjudicate anew issues properly presented on appeal. *Knickerbocker*, 601 N.W.2d at 51. Though we are not bound by the district court's factual findings, we give weight to its credibility determinations. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999).

Our guideline for reviewing custody awards is the best interests of the children. Iowa R. App. P. 6.14(6)(o); *Murphy*, 592 N.W.2d at 683. Our goal is to place the children "in the environment most likely to bring them to a healthy physical, mental, and social maturity." *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa Ct. App. 1998). To help us determine which parent would be the better primary caretaker, we evaluate several factors. See Iowa Code § 598.41 (2005). The weight we assign to each factor depends upon the particular facts of the case. *Williams*, 589 N.W.2d at 761. The gender of the parent is irrelevant, and neither parent should bear more of a burden than the other. *Id.*

III. Merits

Kevin presents two major arguments to show he is the better primary caregiver. First, he argues Abigail's personality and judgment render her unfit to be a parent. He points specifically to two incidents. The first involves one of

Abigail's friends allegedly hitting one of the children with a baton. The second is Abigail's conviction for supplying alcohol to a minor.

There is little evidence to support Kevin's position with regard to the first incident. Kevin could only provide one witness who believed the children were struck. Both Abigail and the alleged perpetrator deny the incident occurred. Finally, Kevin could find no bruising or other injury to the children. The second incident occurred when Abigail had several friends over to her apartment to play games. Police arrived due to a loud music complaint, and found two minors in the apartment. One of the minors admitted to police she had been drinking. When administered a breathalyzer test, however, the test did not indicate the presence of alcohol. Abigail claimed she did not know one minor was drinking, and did not know the other minor was not twenty-one. The children were not present. We agree that the incident reflects poor judgment by Abigail. However, we defer to the district court's determination of her credibility on both incidents.

In his second argument, Kevin alleges Abigail's unemployment and mismanagement of money render her unfit to be the children's primary caregiver. Kevin emphasizes his military service, education, and application for law enforcement work to show he can better provide for the children. He admits that none of her actions in her employment have been criminal, but claims that Abigail is incapable of handling finances or maintaining employment. He relates that Abigail was placed on probation during her job at Wal-Mart for incorrectly handling a cashier check. He also repeats that Abigail was terminated from her job at the bank for what she characterizes as serious mistakes. He points out that she has been unable to maintain more than seven months of employment

since she was terminated at the bank. He also claims she spends money irresponsibly.

Kevin, however, was also looking for employment at the time of trial. He testified he had completed part of the application process required for various state law enforcement positions. He claimed he was certain he would be hired, but had no job offers as of the time of trial. Kevin also testified he was planning to move to Des Moines and marry his fiancé in June 2006. Currently, however, the children live in Washington with Abigail. Both sets of grandparents also live in Washington and provide an active support system for the children. Further, Kevin admits that Abigail was the children's primary caretaker. Due to his deployment in the Navy, he was relatively absent during the beginning of their lives. Once the couple moved back to Iowa, he admits he concentrated on his studies and his career. We note this not to fault him for his service or his education, but to acknowledge Abigail has been the children's primary caretaker. Therefore, we conclude that, although this is a close case, we defer to the findings and decision of the district court. The district court's ruling is affirmed.

Abigail requests appellate attorney fees. An award of attorney fees is within the court's discretion. *In re Marriage of Scheppele*, 524 N.W.2d 678, 680 (Iowa 1994). The award should be reasonable and fair and based on the parties' respective abilities to pay. *Id.* Because this case was a close one, and Abigail failed to request a specific amount, we decline to award fees here.

AFFIRMED.