

**IN THE COURT OF APPEALS OF IOWA**

No. 6-385 / 05-1669

Filed June 28, 2006

**JEDRIC CORDELL MILLER,**  
Petitioner-Appellant,

**vs.**

**CASI ANN LONG,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Johnson County, Thomas Horan,  
Judge.

A father appeals from a district court ruling placing a child's physical care  
with the mother. **AFFIRMED.**

Patricia C. Kamath of Kamath Law Office, Iowa City, for appellant.

Jay T. Schweitzer of Schweitzer & Wink, Columbus Junction, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

**MILLER, J.**

Jedric Cordell Miller appeals from the district court ruling that provided for the custody, physical care, visitation, and child support of Justys Cordell Miller, the child of Jedric and Casi Ann Long. Specifically, Jedric appeals the court's decision to place Justys's physical care with Casi. We affirm the district court.

**I. Background Facts and Proceedings.**

Justys was born in May 2000. Casi was eighteen years old and about to graduate from high school. Jedric was twenty-four years old, had graduated from high school, and was employed variously as a landscaper, mechanic, and construction worker earning between \$14 and \$15 per hour. The parties were not married when Justys was born, and have since married other people.

Jedric was always very involved in Justys's life. For approximately the first eighteen months after Justys's birth, Casi and Justys lived with Casi's mother and stepfather. During the first few months Jedric visited Justys often at Casi's home, and when Justys was old enough Jedric began caring for Justys in his home overnight. While the parties appeared to agree that such overnight visits occurred at least a few times each week, they disputed whether Casi also spent the night on some or most of those occasions. Although Jedric did not provide financial support for Justys during this time, he did purchase clothing, diapers, formula, and other supplies.

In July 2000 Casi obtained a job with MCI, and eventually she and Justys moved into an apartment. Casi left her position at MCI in November 2001 in order to attend beauty school. Casi attended beauty school for approximately

ten months. Thereafter she held several jobs, and she and Justys lived in several different locations.

Beginning in 2002, Jedric began providing a significant amount of Justys's care. Jedric and Casi eventually agreed that Jedric would have care of Justys every weekend. Jedric also began voluntarily paying Casi support of \$200 per month. He made eight such payments between July 2002 and February 2003. A formal support obligation was established in December 2003, through the Child Support Recovery Unit, which required Jedric to pay Casi \$238 per month in child support. Jedric is current on this support obligation.

In September 2004, Jedric filed a petition to establish custody, physical care, visitation, and child support. The petition came on for hearing before the district court in August 2005. By the time of trial, both parties had married, and were currently employed.

Jedric was married to Jessica Issen. The couple began dating in 2002 and married in 2004. Jedric was employed full-time as a construction worker. Jessica was pursuing an education degree, and working at a local bar and grill.

Casi became involved with Adam Kephart in 2003, and the two married in 2004. Kephart has a three-year-old daughter from a prior relationship, and he and Casi have a son, Chase, born in January 2005. In addition to caring for her children and her home with Kephart, Casi worked as a cheerleading coach. Kephart was employed as a machine operator for Goodyear, and performed custom work on automobiles and motorcycles.

In a somewhat limited ruling, the district court found it was in Justys's best interest to be placed in Casi's physical care because Casi had established a

superior ability to minister to Justys's needs. The court based this determination on findings that Casi had always been Justys's primary caretaker, and had always allowed and encouraged maximum visitation between Jedric and Justys. Although not expressly stated as a basis for its physical care decision, the court also noted the preference that siblings not be separated.<sup>1</sup>

Jedric appeals. He asserts the court erred in placing responsibility for Justys's physical care with Casi. Jedric contends that he is the party better able to support Justys's relationship with the non-custodial parent, and that he is significantly more mature and stable than Casi. He also contends the district court gave undue weight to Casi's gender.

## **II. Scope and Standard of Review.**

Our review in this matter is de novo. Iowa R. App. P. 6.4; *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa Ct. App. 1995). Although not bound by the district court's fact findings we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g).

## **III. Physical Care.**

When deciding issues of physical care, the controlling consideration is always the best interest of the child. Iowa R. App. P. 6.14(6)(o); *In re Marriage of Swenka*, 576 N.W.2d 615, 616 (Iowa Ct. App. 1998). The objective is to place Justys in the environment most likely to bring him to healthy physical, mental and social maturity. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). The critical issue in determining a child's best interests is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a

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<sup>1</sup> The court further found that joint physical care would not be in Justys's best interest. However, an award of joint physical care is not at issue in this appeal.

greater burden than the other. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). The court considers a number of factors, including the child's needs and characteristics, the parents' abilities to meet the child's needs, the relationship of the child with each parent, the nature of each proposed home environment, and the effect of continuing or disrupting the child's current status. See Iowa Code § 598.41 (2003); *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974); see also *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994) (noting criteria apply regardless of the parents' marital status). With these principles in mind, we conclude the district court did not err in placing Justys's physical care with Casi.

We are faced with the fortunate situation of two dedicated, loving, involved, and capable parents. Contrary to the parties' suggestions, we do not believe either has demonstrated a superior ability to foster Justys's relationship with or to communicate more effectively with the other parent. In addition, while Jedric focuses on Casi's past instability, the record demonstrates that she has matured considerably, and that as of the time of trial was as capable as Jedric of providing Justys a stable home environment. In cases such as this, where the child would flourish in the care of either parent, the choice of primary caregiver necessarily turns on limited and narrow grounds.

Although it is not the singular factor in determining which placement would best serve the child's interests, we give significant consideration to placing a child with the primary caregiver. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa Ct. App. 1995). Here, the court was presented with conflicting evidence on the question of which parent had served in that role. By finding that Casi had

always been Justys's primary caregiver, the court implicitly found Casi's evidence on this question to be more credible than Jedric's.

Giving due weight to the court's credibility assessment, we concur in its determination that Casi was Justys's primary caregiver. While it is clear that Jedric provided a significant amount of Justys's physical care, the record indicates that it was Casi who provided Justys with his primary home for the majority of his life, and had the primary control over issues such as medical and dental care. This factor supports placing Justys with Casi.

In addition, the courts seek to keep siblings, even half-siblings, together whenever possible. *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993); *Yarolem*, 529 N.W.2d at 298. While it bears only marginal weight under the circumstances of this case, given the young age of the children involved, awarding Casi physical care will allow Justys and Chase to be raised together. Accordingly, this factor provides some additional support for the district court's physical care decision.

Jedric also asserts the court's physical care decision was fueled by an undue focus on Casi's gender. However, he points to nothing in the decree that indicates the decision was in any way influenced by the court's desire to keep a child of tender years with his mother, or a belief that Casi would do a better job raising Justys simply because she is a woman. Rather, Jedric assumes such improper motivation because he believes there is no other plausible explanation for the court's decision. We see no evidence the district court improperly considered Casi's gender in making its physical care determination. However, even if such an error had occurred, it would have no impact on our decision to

affirm the physical care decision, given our de novo review of the record before the district court.

As we have already noted, we find that both Jedric and Casi are capable, loving, and involved parents. Each has the support of a loving spouse who has developed a positive and nurturing relationship with Justys. Both can provide Justys a stable home, and we believe they will be able to continue working together to assure that their son has maximum continuing contact with each of his parents. However, placement with Casi offers the added benefit of allowing Justys to remain with his primary caregiver. Of considerably less significance in this case, although still worthy of consideration, is the fact that placement with Casi allows Justys to be raised in the same home as his half brother. We accordingly affirm the district court's physical care decision.

We therefore turn to Casi's request for an award of appellate attorney fees. Such an award is discretionary and is determined by assessing the needs of the requesting party, the opposing party's ability to pay, and whether the requesting party was forced to defend the appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). After considering the foregoing factors, we award Casi \$750 in appellate attorney fees.

**AFFIRMED.**