

**IN THE COURT OF APPEALS OF IOWA**

No. 6-447 / 05-0654  
Filed July 26, 2006

**ADAM MORAINÉ,**  
Petitioner-Appellee,

vs.

**BRIDGETTE FOGWELL,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovróm,  
Judge.

A mother appeals the district court decision placing physical care of the  
parties' child with the father. **AFFIRMED.**

Kent A. Balduchi of Balduchi Law Office, P.C., Des Moines, for appellant.

Cathleen J. Siebrecht of Siebrecht & Siebrecht Law Firm, Des Moines, for  
appellee.

Considered by Sackett, C.J., and Miller, J., and Robinson, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206  
(2005).

**ROBINSON, S.J.*****I. Background Facts & Proceedings***

Adam Moraine and Bridgette Fogwell are the parents of Abigail, who was born in June 2003. In December 2003 Adam filed an application seeking to establish paternity, custody, visitation and support. The parties agreed to joint legal custody, but disputed the issue of physical care.

At the time of the paternity hearing Adam was twenty-four years old. He has a high school degree and is employed at Quik Trip, where he earns about \$28,000 per year. Adam has resided with his grandmother his entire life, and her house is adequate for Abigail. Adam engages in volunteer and philanthropic work in his spare time.

Bridgette was twenty-one years old at the time of the paternity hearing. She also has a high school degree. Bridgette works part-time at Burger King, full-time at Wal-Mart, and attends classes at Des Moines Area Community College. She earns about \$16,000 per year. Bridgette lives with her boyfriend, Justin Wickett, and had a child, Alexia, with him in October 2004. Justin's daughter, Vanessa, also lives with the couple in their two-bedroom apartment.

Justin is married to another woman, but was seeking a divorce. He and his wife sought State assistance on Vanessa's behalf, although she was not living with them at the time. Justin subsequently pled guilty to fraudulent practices and was placed on probation. As a condition of his probation he is to secure employment, but he remains jobless. In September 2004 Justin had a drug test which was positive for marijuana. His probation officer recommended a

substance abuse treatment program, which he has not completed. Justin admitted that during an argument with his wife he brandished a knife. Justin was Abigail's daycare provider while Bridgette was at work during the day.

A custody evaluation was conducted by William N. Pearce, which recommended that Abigail be placed with Adam. Pearce stated:

Often, custody cases are difficult to assess as to which is the better, or in many cases which is the least poor, parent. In this matter, however, I have seldom engaged in an investigation which led me to a more clear conclusion. I am highly confident that the important decisions and most of the care should be provided by the father.

Pearce found Adam was exceptionally responsible and stable. He opined Bridgette was disorganized, immature, and had made poor decisions, such as having a child with Justin while he was married to someone else.

The district court determined Abigail should be placed in Adam's physical care. The court stated "he is the more stable parent, and has been very responsible in caring for Abigail and in providing for her financially." The court granted Bridgette liberal visitation, and ordered her to pay child support. Bridgette appeals.

## ***II. Standard of Review***

Our standard of review in this equitable action is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999). We give weight to the district court's findings of fact, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

### **III. Merits**

Bridgette contends that Abigail should have been placed in her physical care. She claims the district court should have given more weight to the fact that she had been Abigail's primary caretaker throughout her life. She states that she has demonstrated she can care for Abigail's needs. Bridgette also asserts the court should not have separated Abigail from her half-sister, Alexia, because the sisters have developed a reciprocal bond. Furthermore, Bridgette claims Adam has been hostile toward her in the past, and this shows he would not support her relationship with Abigail.

The criteria governing physical care are the same whether the parents have been married to each other or not. *Lambert v. Everist*, 418 N.W.2d 40, 42 (Iowa 1988); *Jacobson v. Gradin*, 490 N.W.2d 79, 80 (Iowa Ct. App. 1992). We consider the factors set out in Iowa Code section 598.41(3) (2005) and *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The goal of the courts is to place the child in the environment most likely to result in healthy physical, mental and social maturity. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). Our primary consideration is the best interest of the child. Iowa R. App. P. 6.14(6)(o); *Lambert*, 418 N.W.2d at 42.

In assessing who should be a child's physical caretaker, we consider whether one parent has historically been the primary care giver, although this factor is not controlling. *In re Marriage of Decker*, 666 N.W.2d 175, 178 (Iowa Ct. App. 2003). Generally, there is a preference for keeping siblings together. *In re Marriage of Smiley*, 518 N.W.2d 376, 380 (Iowa 1994); *In re Marriage of*

*Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). This principle has also been recognized as having application to half-siblings. *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994). These considerations are given due weight; however, the court must consider all relevant factors in determining which parent is better able to provide for the long-term best interests of the child. See *In re Marriage of Kunkel*, 546 N.W.2d 634, 636 (Iowa Ct. App. 1996).

The court noted that Abigail had spent considerable time with Adam under the existing visitation schedule, and so transferring physical care to Adam, with Bridgette having visitation, should not be unnecessarily upsetting. Although generally siblings should not be separated, we note that Alexis was only a few months old, and the siblings did not live together for long. Abigail will be able to be with her sister during visitation. Finally, the district court considered Adam's past hostile and argumentative behavior with Bridgette. The court found this behavior had improved since the parties' visitation schedule had been set in a temporary order. The court additionally ordered Adam to complete a parenting class.

The district court considered all of these factors, and determined Abigail should be placed in the physical care of Adam. We concur in the district court's assessment of the parties' strengths and weaknesses. The evidence shows Adam is a very stable and responsible individual. On the other hand, Bridgette's relationship with Justin is problematic for many reasons, including his unemployment, criminal history, and drug use. On our de novo review, we agree

with the district court's conclusion that Abigail should be placed in Adam's physical care. We affirm the decision of the district court.

**AFFIRMED.**