

**IN THE COURT OF APPEALS OF IOWA**

No. 6-507 / 06-0177  
Filed August 23, 2006

**IN RE THE MARRIAGE OF LYNNE CHRISTINE WISE  
AND BRIAN MARTIN WISE**

**Upon the Petition of**

**LYNNE CHRISTINE WISE,**  
Petitioner-Appellee,

**And Concerning**

**BRIAN MARTIN WISE,**  
Respondent-Appellant.

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

Brian Wise appeals from the district court's order allocating physical care to Lynne Wise. **AFFIRMED.**

Steven J. Holwerda of Selby, Updegraff, Smith & Holwerda, Newton, for appellant.

Michael W. Mahaffey of Mahaffey Law Office, Montezuma, for appellee.

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

**HECHT, J.**

**I. Factual Background.**

Brian Martin Wise and Lynne Christine Wise were married on August 29, 2001. One child, Scott David Wise, was born of the marriage.

The parties separated three times after Scott's birth on September 3, 2002. In November 2003 and again in April 2004, Brian took Scott to California, while Lynne remained in Iowa. Both times, Scott and Brian returned to Iowa when reconciliation was attempted. The third and final separation of the parties occurred in the summer of 2004.

Scott has lived apart from both of his parents at times during his short life. From November 2004 to June 2005, which was subsequent to the parties' final separation, neither party saw or had physical contact with Scott. Scott lived with Brian's parents, who were Scott's primary caregivers. Lynne called Scott approximately six times during this eight-month period when Scott was residing in California. During the same period, Brian talked to Scott three or four times per week and sent packages.

During the parties' first two separations, Scott lived with Brian, and Lynne did not stay in close contact with her son, despite the fact that during part of the time she lived in the same community. Even when Scott was living with Lynne's own parents in Iowa, Lynne only saw Scott "once in awhile." Lynne concedes she has not maximized her opportunities to spend time with Scott. She neither contests Brian's assertion that she failed to maintain frequent contact with Scott

during the separations nor offers any clear explanation for the infrequency of her contacts.

At best, Brian is indifferent in promoting contacts between Lynne and Scott. There is evidence in the record suggesting that Brian prevented Lynne from seeing Scott while the dissolution action was pending, in direct violation of a temporary order of the court. He also concealed from Lynne his intention to move Scott out of Iowa permanently in November of 2004. Brian acknowledged during the trial his present intent to relocate to California, Wisconsin, or Minnesota in the near future. He also expressed his understanding of the likelihood that if he relocates to any of those locations as the provider of Scott's physical care, Lynne's ability to be an active parent will be diminished. Brian candidly conceded on cross-examination that he does not really care whether Lynne maintains a relationship with Scott. Brian claims his reluctance to promote contact between Lynne and Scott is founded on a suspicion that Lynne or her boyfriend, James Price, abused Scott. Although the Department of Human Services found Brian's allegations of abuse unfounded, Brian testified that he hopes to move away from Lynne to prevent his son from "being hurt."

After assessing the strengths and weaknesses of both parents and the best interests of Scott, the district court ordered joint legal custody and allocated Scott's physical care to Lynne. Brian appeals, contending the district court erred in granting physical care to Lynne.

## **II. Scope of Review.**

Our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). “In situations where both parents would prove effective caretakers, we believe the district court’s findings on physical care are entitled to particular weight.” *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993); see also *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa Ct. App. 1996). We give weight to the district court’s findings as a result of the district court’s ability to observe the parties’ demeanors and, hence, its better position to evaluate them as custodians. *Id.*

## **III. Discussion.**

When making child custody decisions, our “first and governing consideration” is the best interest of children. Iowa R. App. P. 6.14(6)(o); *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). Our objective is to place Scott in the environment most likely to bring him to healthy physical, mental, and social maturity. *Id.* In considering what custody arrangement is in Scott’s best interest, we consider statutory factors. Iowa Code § 598.41(3) (2003). These statutory factors and the factors identified in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974), are appropriately considered in determining the allocation of physical care. *In re Marriage of Will*, 489 N.W.2d 394, 398 (Iowa 1992).

The district court correctly noted that this is a close case. Lynne’s unexplained failure to maintain more frequent and regular contact with Scott

while he was in Iowa and California is troubling, as is Brian's attitude toward Lynne's continued contact with Scott. After giving due deference to the district court's physical care decision in this close case, we conclude Brian's unwillingness to encourage maximum continuing contact between Lynne and Scott tips the scales in favor of Lynne. The district court was in a better position to assess the credibility of the parties and evaluate Lynne and Brian as providers of Scott's physical care. We find no reason to disturb the district court's physical care decision and, therefore, affirm it.

**AFFIRMED.**