

IN THE COURT OF APPEALS OF IOWA

No. 6-576 / 05-1951
Filed August 23, 2006

**IN RE THE MARRIAGE OF TINA MARIE KROPP
AND GARY LEE KROPP**

**Upon the Petition of
TINA MARIE KROPP,**
Petitioner-Appellant,

**And Concerning
GARY LEE KROPP,**
Respondent-Appellee.

Appeal from the Iowa District Court for Webster County, Joel E. Swanson
Judge.

A mother appeals from the physical care provisions of the decree
dissolving the parties' marriage. **AFFIRMED.**

Marcy Lundberg, Blake Parker Law Office, Fort Dodge, for appellant.

Gary Kropp, Fort Madison, pro se.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Tina Marie Kropp appeals from the physical care provisions of the decree dissolving her marriage to Gary Lee Kropp that granted physical care of one of the parties' children to Gary. We affirm.

I. Background Facts & Proceedings

Tina and Gary were first married in 1990. They are the parents of two children: Alisha, born in 1990, and Kayla, born in 1994. The family initially maintained their marital residence in Fort Madison, Iowa. Tina and Gary separated in September 2000, and Tina moved with Alisha and Kayla to Fort Dodge. The parties' first marriage was dissolved in 2001. The dissolution decree granted Tina primary physical care of both children and awarded Gary visitation rights.

Gary was deployed to Iraq in March 2004. In September 2004 Alisha moved from Fort Dodge to Fort Madison to stay with her paternal grandmother after she had problems in middle school. Gary returned from Iraq in November 2004, and the parties remarried the following month. During the early part of 2005, Tina and Kayla moved back to Fort Madison.

On March 22, 2005, there was an altercation between Gary and Tina in their home. Criminal domestic abuse charges were filed against Gary and Tina, and the couple spent the night in jail.¹ As a result of the altercation, the Iowa Department of Human Services made a founded assessment of child abuse against both Gary and Tina. The couple separated again following the

¹ Neither party was convicted of domestic abuse. The charges against Gary were resolved when he pled guilty to a lesser charge of disorderly conduct, and Tina was found not guilty of domestic assault.

altercation. Tina returned to Fort Dodge with Alisha, and Kayla remained living with her grandmother in Fort Madison.

Tina filed a petition to dissolve the parties' second marriage on March 28, 2005. The district court entered a temporary order granting Tina physical care of Alisha and Gary physical care of Kayla. Following trial, the court filed a decree of dissolution granting the parties joint legal custody of the children and granting Tina physical care of Alisha and Gary physical care of Kayla.²

Tina now appeals from the physical care provisions of the decree that granted physical care of Kayla to Gary. She contends the district court erred in failing to consider Gary's domestic violence in making the determination of primary physical care. She also claims the court erred in finding Kayla's best interests would be served by placing primary physical care with her father.

II. Scope & Standard of Review

We review dissolution of marriage proceedings de novo. Iowa R. App. P. 6.4; *In re Marriage of Wagner*, 604 N.W.2d 605, 608 (Iowa 2000). We examine the entire record and adjudicate rights anew on the issues properly presented. *In re Marriage of Geil*, 509 N.W.2d 738, 740 (Iowa 1993). Although we are not bound by the district court's factual findings, we give them weight, especially when assessing the credibility of witnesses. Iowa R. App. P. 6.14(6)(g).

III. Discussion

When we determine physical care, our primary consideration is the best interests of the children. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa

² Tina also cares for her niece, Victoria Johnson, who was age twelve at the time the second dissolution decree was filed.

1999). When we consider which physical care arrangement is in the children's best interests, we consider the factors set forth in Iowa Code section 598.41(3) (2005), as well as the factors identified in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974).³ The critical issue is which parent will do better in raising the children; gender is irrelevant, and neither parent should have a greater burden than the other. *In re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa Ct. App. 1996). Our primary objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *In re Marriage of Harris*, 499 N.W.2d 329, 332 (Iowa Ct. App. 1993). Generally, siblings should be separated only for compelling reasons. *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993).

Tina first claims the court erred in failing to give adequate consideration to Gary's domestic violence when making its physical care determination. As we

³ We consider the following factors from *In re Marriage of Winter*, 223 N.W.2d at 166-67, when making physical care determinations:

1. The characteristics of each child, including age, maturity, mental and physical health.
2. The emotional, social, moral, material, and educational needs of the child.
3. The characteristics of each parent, including age, character, stability, mental and physical health.
4. The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the child.
5. The interpersonal relationship between the child and each parent.
6. The interpersonal relationship between the child and its siblings.
7. The effect on the child of continuing or disrupting an existing custodial status.
8. The nature of each proposed environment, including its stability and wholesomeness.
9. The preference of the child, if the child is of sufficient age and maturity.
10. The report and recommendation of the attorney for the child or other independent investigator.
11. Available alternatives.
12. Any other relevant matter the evidence in a particular case may disclose.

have said before, domestic abuse is in every respect dramatically opposed to a child's best interests. See *In re Marriage of Daniels*, 568 N.W.2d 51, 55 (Iowa Ct. App. 1997).

The focus of Tina's argument on appeal concerns the altercation between Tina and Gary which occurred March 22, 2005. The court made specific reference to this incident in its decree. The court noted that the incident occurred in front of the children and resulted in the incarceration of both parties. The court also recognized that domestic abuse is a factor in determining the custodial parent. Although the court did not specifically discuss the impact the altercation had on the issue of establishing physical care, it is apparent the court ultimately concluded the incident was not a basis for summarily excluding either party from consideration as the children's primary physical caretaker. Upon our de novo review of the record, we reach the same conclusion.

Tina next claims the court erred in finding Kayla's best interests would be served in placing primary physical care with Gary. Kayla has lived with Gary since June 2005. The court noted Kayla wished to remain living in Fort Madison with her father. A child's preferences, while not controlling, are relevant and cannot be ignored. *In re Marriage of Ellerbroek*, 377 N.W.2d 257, 258 (Iowa Ct. App. 1985). When we give weight to a child's preferences, we consider many factors, including the child's age and educational level, the strength of the preference, the intellectual and emotional makeup of the child, relationships with family members, the reasons for the decision, the advisability of recognizing the preference, and the fact that we cannot be aware of all the factors that influence the child's decision. *Id.* at 258-59. In light of the foregoing, we believe Kayla's

preference is entitled to some weight. The record indicates that at the time of trial, Kayla was an eleven-year-old who had settled into a comfortable routine living with her father in Fort Madison. The court found Kayla clearly expressed a preference for remaining in Fort Madison with her father. Although Kayla was somewhat critical of her mother, the record indicates she loves Tina and wishes to maintain contact with her.

The court also observed that Gary maintained a close relationship with his mother, Carol Kropp, and Kayla had spent extensive time with her paternal grandmother. The court found Carol to be “a stabilizing influence in Kayla’s life” and determined “it would be detrimental to continue to change schools, change residence, [and] change family dynamics.” The court found the children had “settled in to a comfortable pattern and do not appear willing to continue further adjustments.” It noted the testimony of Alisha and Kayla did not indicate that they missed living with each other, and there was no compelling evidence suggesting either Gary or Tina attempted to discredit each other’s parenting ability. Although the parties’ relationship has been rocky throughout their two marriages, it is apparent that both Gary and Tina love their children and are committed to their wellbeing.

Upon our de novo review of the record, we find no reason to disagree with the district court's decision to place physical care of Alisha with Tina and physical care of Kayla with Gary. Like the district court, we believe this physical care arrangement is in the children’s best interests. In reaching this conclusion, we recognize the court had the parties before it, was able to observe their

demeanor, and was in a better position to evaluate them as caregivers than we are. See *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993).

IV. Conclusion

We affirm the district court's decision to grant joint custody with physical care of Alisha with Tina and physical care of Kayla with Gary.

AFFIRMED.