

**IN THE COURT OF APPEALS OF IOWA**

No. 6-875 / 06-0612  
Filed December 13, 2006

**LEONARD KUELPER,**  
Plaintiff-Appellant,

**vs.**

**DENISE MAY,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Clinton County, David H. Sivright,  
Jr., Judge.

Leonard Kuelper appeals from the district court order granting Denise May  
primary physical care of their children. **AFFIRMED.**

Mark R. Lawson of Mark R. Lawson, P.C., Maquoketa, for appellant.

Denise May, Clinton, pro se.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**EISENHAUER, J.**

Leonard Kuelper appeals from the district court order granting Denise May primary physical care of their children. He contends the district court erred in employing the wrong standard of proof in determining custody issues. He also contends the court erred in granting May primary physical care.

In this proceeding in equity, we review the trial court's decision de novo. Iowa R. App. P. 6.4. We give weight to, but are not bound by, the trial court's findings of fact. Iowa R. App. P. 6.14(6)(g).

Kuelper and May began their relationship in October of 1992. It lasted ten years and produced two children; Lindsey, born in 1994, and Matthew, born in 1998. The parties lived together "on and off" throughout this time. May has been the children's primary caretaker since their birth.

The parties' relationship ended because Kuelper "neglected his family." Following their split, Kuelper dedicated himself to becoming a better father. Kuelper and May enjoyed a cooperative relationship until 2005, when May announced her intention to move with the children to Wyoming to be with her boyfriend, Merlyn Tucker.

On May 6, 2005, Kuelper filed a petition for custody of the children and a writ of injunction seeking to enjoin May's proposed move to Wyoming. A hearing on the custody issue was held in February 2006. On March 14, 2006, the district court granted the parties joint legal custody and granted May primary physical care.

Kuelper first contends on appeal that the district court erred in employing the wrong standard of proof when determining custody of the children. He

argues the court held him to a higher standard, requiring him to show “compelling evidence” to overcome May’s role as primary caretaker. Although the role of primary caretaker is an important consideration of the court, the primary caretaker will not necessarily be granted primary physical care. *In re Marriage of Burkle*, 525 N.W.2d 439 (Iowa Ct. App. 1994). Rather, our primary consideration is the best interests of the children. Iowa R. App. P. 6.14(6)(o). The court’s 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 Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). Because our review is de novo, we will apply this standard on appeal.

We conclude it is in the best interest of the children that May be granted primary physical care. May has been primary caretaker of the children all of their lives, while Kuelper had not assumed as active a role in their lives until four years ago. The parties have not lived together for four years and the children have always lived with their mother. Kuelper did not seek primary physical care of the children until after May announced her plans to move to Wyoming. Only then did Kuelper find fault in May’s parenting. He reported Tucker to the Department of Human Services for physically abusing Matthew. The charge was not confirmed. The court is also troubled by the following incident, summarized by the trial court:

[May] states [Kuelper] offered to let her move to Wyoming if she agreed to a reduction of his child support, established in an action commenced by Iowa’s Child Support Recovery Unit in an earlier action. He stated he could not afford to hire an attorney to seek custody. [Kuelper] did not refute this testimony. Later, however, he hired an attorney and commenced this action. [May] had not responded to his suggestion.

We conclude May is better able to minister to the children's needs. Accordingly, we affirm the district court's order granting May primary physical care of the children.

**AFFIRMED.**

Sackett, C.J., concurs specially without opinion.