

IN THE COURT OF APPEALS OF IOWA

No. 7-664 / 07-0428
Filed October 12, 2007

**IN RE THE MARRIAGE OF STACEY LYNN KITTO
AND JEFFREY ALAN KITTO**

**Upon the Petition of
STACEY LYNN KITTO,**
Petitioner-Appellant,

**And Concerning
JEFFREY ALAN KITTO,**
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

A wife appeals the provision of the parties' dissolution decree placing
physical care of the parties' child with the husband. **AFFIRMED.**

John S. Moeller of O'Brien, Galvin & Moeller, Sioux City, for appellant.

Francis L. Goodwin of Baron, Sar, Goodwin, Gill & Lohr, Sioux City, for
appellee.

Considered by Sackett, C.J., and Zimmer, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

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

Jeffrey (Jeff) and Stacey Kitto were married in the spring of 2002, being the parents of Sophia, born on December 19, 2001. They resided in Sioux City, until September 2004, when they opted to move in with Jeff's parents on a farm near Ida Grove because of financial pressures.

Six months later, Stacey, with Sophia, moved to Homer, Nebraska, to her mother's home. She found employment at Qwest in Sioux City, with hours from 8:00 a.m to 5:00 p.m., Monday through Friday. Jeff had the child every weekend. In July 2005, Stacey's daytime caretaker quit. As formal pre-school was not affordable, Jeffrey and Stacey agreed to place Sophia with his parents. Stacey parented Sophia on weekends.

In the interim, Jeff met Tera. They started residing together about mid-2005 in Schaller, where she is the bookkeeper and Jeff, a driver, for the same trucking company. Tera has a daughter, Autumn, about two years older than Sophia. Sophia came to live with her father. She attends a public school but a block distant. At the time of trial, Tera was pregnant with Jeff, now twenty-seven, being the expectant father. Stacey, also twenty-seven, continues to reside and work in Sioux City. Since May 2006, she lives with a male co-worker, who is fifty-nine years of age.

Stacey filed a petition for dissolution of marriage on May 3, 2006. A temporary order, dated June 30, 2006, placed Sophia in the physical care of Jeff, with the proviso that he not consume alcohol, with liberal visitation to Stacey.

The district court entered a dissolution decree for the parties on January 31, 2007. The court placed Sophia in the joint legal custody of the parties, with Jeff having physical care. The court found it would be disruptive to Sophia to remove her from the family environment where she was currently residing. Sophia was bonded with Autumn, and was integrated into her school and neighborhood. Stacey was granted visitation on alternating weekends, alternating holidays, and four weeks during the summer. Stacey appeals.

II. Standard of Review

In this equitable action, our review is de novo. Iowa R. App. P. 6.4. “In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them.” Iowa R. App. P. 6.14(6)(g).

III. Merits

The only issue before the court was the physical care of Sophia. Stacey contends she was the principal caregiver, until she left Ida Grove; that Jeff imbibes too much and too often; that Jeff suffers from a checkered youth; that Sophia is sometimes unkempt and reeks of smoke; there is superior medical and dental care available in Sioux City; Jeff delegates Sophia’s principal care to Tera and his parents; that Tera conspires to usurp Stacey of her maternal role; that she has superior parenting abilities; that she has made arrangements at a nearby day care center for Sophia’s care when she is working; and, Sophia’s best interest is to award her the physical care.

The primary consideration in physical care determinations is the best interest of the child. Iowa R. App. P. 6.14(6)(o); *In re Marriage of Hansen*, 733 N.W.2d 683, 697 (Iowa 1999). We consider the factors found in Iowa Code section 598.41(3) (Supp. 2005). We consider which parent will be more likely to bring the child to a healthy physical, mental, and social maturity. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). “[T]he successful caregiving by one spouse in the past is a strong predictor that future care of the children will be of the same quality.” *Hansen*, 733 N.W.2d at 697.

The district court made no findings regarding Stacey’s claims that Jeff’s consumption of alcohol would interfere with his care of the child. Stacey failed to file a post-trial motion under Iowa Rule of Civil Procedure 1.904(2) requesting expanded findings on this issue. Suffice it to say that Jeff has followed the temporary custodial order by avoiding its use. It is no longer a problem for him, and, not one, in any event, that stymies his parenting duties. He has not used drugs since he was eighteen. His parents attested to a welcome and complete turn-around in his life and goals, since his teenage years.

Jeff has bonded with his daughter and has displayed his love by tending to her needs and priorities. Though Stacey was the principal caretaker in her earlier years, Jeff has assumed that role, taking over from his parents. He, with Tera, have improved Sophia’s table manners and hygiene. The elementary principal avows that Sophia is doing well, arrives well groomed, and displays good manners. Sophia and Autumn are the best of friends and spend quality time together. Tera and Jeff appear to have a solid, long-term relationship.

Jeff appears capable of providing emotional and environmental stability to Sophia. Allowing Sophia to remain with Jeff, near her paternal grandparents, in the same school, and with her friends, will add continuity to her life. See *In Re Marriage of Moorhead*, 224 N.W.2d 242, 244 (Iowa 1974).

Looking at Sophia's best interests, we agree with the district court's conclusion that Sophia should remain in her present placement. The Schaller setting yields a stable and safe environment. Sophia has bonded with Tera and Autumn. We concur in the court's statement, "the child's best opportunity to thrive and become a well-adjusted adult is if she remains in the physical care of [Jeffrey]." On our de novo review, we agree Sophia should be placed in the physical care of her father, Jeffrey Kitto.

We affirm the decision of the district court.

AFFIRMED.