**IN THE COURT OF APPEALS OF IOWA**

No. 8-569 / 07-1797
Filed August 27, 2008

**IN RE THE MARRIAGE OF JAMIE LYNN WILDEBOER AND DANIEL GLENN WILDEBOER**

**Upon the Petition of**

**JAMIE LYNN WILDEBOER,**
Petitioner-Appellant,

**And Concerning**

**DANIEL GLENN WILDEBOER,**
Respondent-Appellee.

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

Jamie Lynn Wildeboer appeals from the decree dissolving her marriage to Daniel Glenn Wildeboer. **AFFIRMED.**

Douglas L. Tindal, Washington, for appellant.

Mary Lynn Wolfe of Wolfe Law Office, Iowa City, for appellee.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

**SACKETT, C.J.**

Jamie Lynn Wildeboer appeals from the decree dissolving her marriage to Daniel Glenn Wildeboer. She contends that she, not Daniel, should have been awarded primary physical care of their daughter, who was born in the spring of 1999. We affirm.

**SCOPE OF REVIEW.** Our review is de novo. *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). This court must examine the entire record and adjudicate anew the issues properly presented. *In re Marriage of Bonnette*, 492 N.W.2d 717, 720 (Iowa Ct. App. 1992). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Kunkel*, 546 N.W.2d 634, 635 (Iowa Ct. App. 1996). We base our decision primarily on the particular circumstances of the parties before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

The interests of the children are the primary consideration. *See Vrban*, 359 N.W.2d at 424. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3) (2007), in *Weidner*, 338 N.W.2d at 355-56, and in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The issue is which parent will do better in raising the child; gender is irrelevant, and neither parent has a greater burden than the other in attempting to gain custody in a dissolution proceeding. *In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa Ct. App. 1991); *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa Ct. App. 1985). We give consideration to each parent's role in child raising prior

to a separation in fixing primary physical care. *See In re Marriage of Love*, 511 N.W.2d 648, 650 (Iowa Ct. App. 1993); *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa Ct. App. 1992). Though we do not award custody based on hours of service for past care, we attempt to determine which parent will, in the future, provide an environment where the child is most likely to thrive. *In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993).

The critical issue is which parent will do the better job of raising the children over the long term. *See Weidner*, 338 N.W.2d at 359; *Winter*, 223 N.W.2d at 166; *Ullerich*, 367 N.W.2d at 299. The parent who has the ability to do the better job of raising the child or children during their minority is the parent who should be granted custody. *See Vrban*, 359 N.W.2d at 424.

**BACKGROUND.** Jamie, born in 1970, and Daniel, born in 1973, entered into this marriage in September of 2005. They were married to each other prior thereto and that marriage was dissolved in the spring of 2005. The petition seeking dissolution of this marriage was filed in January of 2007. During the marriage the parties lived in Wellman, Iowa, where Daniel continues to live. Their daughter, whose custody is at issue, was eight years old at the time of the dissolution hearing.

Daniel was married before his marriages to Jamie. Three children were born to that marriage and the middle child, a daughter, fifteen, is in his primary care. She and the child at issue have resided in the same household for nearly eight years and they have a close relationship. The other two children are in his prior wife's primary care. Daniel's first wife testified. She and Daniel have a

good relationship. She testified that after her home flooded Daniel and Jamie had the three children in their home and they both were good parents. Daniel currently is in a relationship with a woman who has two children. She also testified at trial.

Jamie was married twice before her marriages to Daniel. She has a son from one of these marriages who was fourteen at the time of trial. He resides with his father in Texas. Jamie testified she has a good relationship with the child's father. She sees the child several times a year. Jamie testified she is currently in a relationship with a man who is a captain in the army. He has a daughter who lives with her mother in another state. Jamie lives with him in Rock Island, Illinois, and he is guaranteed to be in that location for two years. They plan to marry and Jamie will move with him when he is transferred. He did not testify.

Both parties are college graduates and until a few days before trial, both were employees of the National Guard. Jamie resigned her position just before trial although she continued to drill with the National Guard one weekend a month. At the time of trial Daniel was still employed with the National Guard.

**ANALYSIS.** Jamie focuses her case on the contention that she was the primary caretaker and can provide the child with the more stable home. She argues that the fact her future husband will move frequently and she will move with him does not mean that the child would not be in a stable environment. She further contends the district court gave too much credence to the child's bonding with her half-sister who lives in Daniel's home. Jamie also contends the court put

too much weight on the fact that she smokes cigarettes. We will address these arguments in order but before we do so we address an issue that causes us concern.

Neither party has exhibited stability in relationships. There was little time between their breakup and their establishing households with members of the opposite sex. When a parent, as both parties did here, seeks to establish a home with another adult, that adult's background and his or her relationship with the children becomes a significant factor in a custody dispute. *In re Marriage of Malloy*, 687 N.W.2d 110, 113 (Iowa Ct. App. 2004); *In re Marriage of Decker*, 666 N.W.2d 175, 179 (Iowa Ct. App. 2003). There are two reasons for this: (1) because of the place the companion will have in the child or children's lives, and (2) not less significantly, because the type of relationship the parent has sought to establish and the manner he or she has established it is an indication of where that parent's priority for his or her children is in his or her life. *Decker*, 666 N.W.2d at 179.

The woman Daniel currently has a relationship with and who also cares for the children in his home, testified. The district court had an opportunity to listen to her testimony, assess her credibility, and learn from her the position she sees having in the life of the child at issue. Jamie's future marriage partner, who she testified supervises the child at times failed to testify, making it difficult if not impossible to determine what relationship he will have with the child and what commitment he has to assisting with the child's care. The record reveals little

about him other than Jamie's testimony that he is a captain in the army and has a child by a prior marriage.

We proceed to Jamie's arguments. We agree with her that a child should have stability and that leaving a child with a primary care parent provides stability. However, we are unable to accept Jamie's argument that she has been the primary custodian of the child. The record reflects that both parties have worked outside the home during the marriage and they each have assumed responsibility for the care of their daughter. Jamie may have had less hours away from home at times than did Daniel, but she also had long absences for training when Daniel had sole responsibility for the child. They engaged in joint parenting and neither clearly assumed the position of primary care parent. In addition, the child's half-sister who lives in Daniel's home has assumed substantial responsibility for her care.

We agree with Jamie's argument that she should not be denied custody because of the mobility the family will have because of her future husband's military career. However, we believe, as did the district court, that Daniel will provide more stability. The child will be allowed to attend the same school and will be able to continue a relationship with her half-siblings as will be discussed further below.

Jamie next contends the district court gave too much weight to the presence of the child's half-sister in Daniel's home. In *In Marriage of Orte*, 389 N.W.2d 373, 374 (Iowa 1986), the Iowa Supreme Court said:

> We have expressed a strong interest in keeping children of broken homes together. *See, e.g., In re Marriage of Jones*, 309 N.W.2d

> 457, 461 (Iowa 1981); *Doan Thi Hoang Anh v. Nelson*, 245 N.W.2d 511, 517 (Iowa 1976). In order for a court to depart from this general rule, it must appear that separation "may better promote the long-range interests of children." *Jones*, 309 N.W.2d at 461. We believe these general principles should govern awards of physical care in cases of half siblings as well as others.

*Orte*, 389 N.W.2d at 374.

As discussed above, the child's half-sister has been an integral part of her life since her infancy. They have a strong bond. The child's other two half-siblings live about an hour and a half from her father's home. Jamie's son lives in Texas and she has infrequent visits with him. The child at issue will have a greater chance to have and maintain a relationship with her father's other children if she is in his care. Jamie's limited contact with her son will not allow the child to have the same type of relationship with him. We consider this as did the district court.

Jamie also argues that the district court placed too much weight on the fact that she smoked cigarettes as does her fiancé, and argues while Daniel does not smoke, he chews. Daniel argues this does not expose his daughter to second-hand smoke. Extensive studies show second-hand smoke in a home is detrimental to the health of the home's occupants. Furthermore, the child has struggled with asthma in the past. This is an issue that the trial judge correctly gave some weight to as do we.

There are shortcomings to Daniel's ability to parent. We have considered Jamie's other challenges to Daniel's deficiencies as a parent as we consider his additional challenges to her deficiencies. A discussion of them here would serve

no useful purpose. Either parent has the ability to offer the child a safe and secure home and neither parent denies this.

Giving the required deference to the district court, we affirm.

We award no appellate attorney fees. Costs on appeal are taxed to Jamie.

**AFFIRMED.**