

IN THE COURT OF APPEALS OF IOWA

No. 8-614 / 07-2030
Filed August 27, 2008

IN RE THE MARRIAGE OF JOHN BOSTWICK AND ANN BOSTWICK

**Upon the Petition of
JOHN BOSTWICK,**
Petitioner-Appellee,

**And Concerning
ANN BOSTWICK,**
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Kellyann Lekar, Judge.

Ann Bostwick appeals challenging the visitation provision of the decree dissolving her 1979 marriage to John Bostwick. **AFFIRMED.**

Terry D. Parsons of Olsen & Parsons Law Firm, Cedar Falls, for appellant.
David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee.

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

SACKETT, C.J.

Ann Bostwick appeals challenging the visitation provision of the decree dissolving her 1979 marriage to John Bostwick. She contends the district court's order fixing John's visitation with their two children, a daughter born in 1997, and a son born in 1995, does not adequately meet the needs of the children. We believe it does and affirm the district court.

SCOPE OF REVIEW. We review de novo. Iowa R. App. P. 6.4. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g). Yet, we are not bound by these determinations. *Id.* The interests of these children are the primary consideration. *In re Marriage of Crotty*, 584 N.W.2d 714, 717 (Iowa Ct. App. 1998); *see also In re Marriage of Urban*, 359 N.W.2d 420, 424 (Iowa 1984); *Neubauer v. Newcomb*, 423 N.W.2d 26, 27 (Iowa Ct. App. 1988). We give consideration to each parent's role in child raising prior to a separation. *See, e.g., 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).

BACKGROUND. The parties agreed prior to trial on all issues except visitation and child support.¹ They agreed they would have joint legal custody and Ann would have primary physical care.²

¹ Support is not an issue on appeal.

The parties adopted both of the children. Their son was adopted as a toddler and is disabled as a result of burns suffered while in his biological parents' care. He requires special attention with continuing physical and emotional issues. Their daughter, adopted as an infant, was defined as an easy child to parent. The children enjoy a close relationship with each other. Since the children have been in the Bostwick home, Ann has worked as a school nurse and John as a firefighter. Ann works school hours. John works twenty-four hour shifts which start and end at eight a.m. His schedule rotates on a nine day cycle. The days he works change each week but his schedule is fixed in advance. His schedule results in his being free from employment obligations for four consecutive days at least twice each month.

Both parties are good and dedicated parents and the children were used to their parents' schedules as both parents were involved in the care of the children and most particularly with the care of the medical needs of their son. They both are strict disciplinarians and we find these children have fared well in both parents' care. However, it appears they both find the children easier to deal with since their separation.

John asked for visitation on the four days in his rotation he is not required to work. Ann believed that John should have less visitation and his visitation should be limited. She asks he have three weekends per nine week cycle from Friday after school on his long weekends and from Saturday at noon on his short weekends until Sunday evening at five p.m., and one other weekend when John

² The parties also have two older children who are emancipated.

has part of the weekend off, he would have the children with him on his day off. She further would have him take midweek visits on Tuesday and Wednesdays when he is not working from the time school is out until seven p.m. on Tuesdays and from the time school is out on Wednesday until church classes at five p.m., and during school breaks, the Tuesdays and Wednesdays when he does not work would be overnight visits.

After hearing the parties' and their witnesses' testimony the district court came to the conclusion that the schedule proposed by John provided the children greater predictability and stability than the complicated and more infrequent schedule proposed by Ann. The court then found that John should have visitation on a schedule that corresponds with his days off from the Cedar Falls Fire Department and specifically found:

This visitation schedule shall begin when the children are released from school on the first day that [John] is off of work (that is, the day that [John] is released from work at 8:00 a.m.). This visitation shall end at 7:00 p.m. on the evening before [John] is scheduled to return to work. During the summer or school breaks, this visitation will begin at 10:00 a.m. on the first day that [John] is off of work. The Court finds this visitation will be the least disruptive to the school morning routines of the two minor children.

ANALYSIS. It has been agreed that Ann have primary physical care. The parent awarded physical care is required to support the other parent's relationship with the child. Iowa Code § 598.41(5)(b) (2007); *In re Marriage of Hansen*, 733 N.W.2d 683, 700 (Iowa 2007).

Ann contends the district court decision results in the parties having joint or shared physical care. John contends what he has been given is liberal visitation that takes into account his unusual work schedule. We agree that the

trial court gave John liberal visitation which we believe, as the trial court did, is called for here. The parties both were hands-on parents during their time together in the marriage.³ They both are interested in the children and the children's events. They appear have mutual respect for each other, both testifying the other is a good parent and admitting they share similar discipline styles. In addition, we are impressed with their ability to negotiate the difficult issue of primary physical care and the division of assets and come to an agreement. Through liberal visitation and the exercise of joint legal custody, the children can realize the benefits of John's continued involvement in their lives. See *Hansen*, 733 N.W.2d at 701-02 (awarding noncustodial parent liberal visitation for various reasons including the parent's devotion to the children and the children's need for the parent's guidance and support).

Ann seeks an award of appellate attorneys fees. We award no appellate attorney fees. Costs on appeal are taxed to Ann.

AFFIRMED.

³ We recognize that during the separation period preceding the dissolution John had less involvement with the children than he did during the marriage. However, he left Ann in possession of the family home and lived with friends for a period making visitation difficult.