

IN THE COURT OF APPEALS OF IOWA

No. 9-438 / 08-1404
Filed July 2, 2009

IN RE THE MARRIAGE OF KEVIN ANDREA REEDER AND TAMI LEIGH REEDER

**Upon the Petition of
KEVIN ANDREA REEDER,**
Petitioner-Appellee,

**And Concerning
TAMI LEIGH REEDER,**
Respondent-Appellant.

Appeal from the Iowa District Court for Floyd County, James M. Drew,
Judge.

Tami Leigh Reeder appeals from the decree dissolving her marriage to
Kevin Andrea Reeder. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

David H. Skilton of Cronin, Skilton & Skilton, Nashua, for appellee.

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

SACKETT, C.J.

Tami Leigh Reeder appeals from the decree dissolving her marriage to Kevin Andrea Reeder. She contends that she, not Kevin, should have received primary physical care of the parties' twins who were born in June of 2002. We affirm.

SCOPE OF REVIEW. We review de novo. Iowa R. App. P. 6.4; *In re Marriage of Riggert*, 537 N.W.2d 789, 791 (Iowa Ct. App. 1995); *In re Marriage of Harris*, 499 N.W.2d 329, 330 (Iowa Ct. App. 1993). 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). We are not bound by these determinations. *Id.* 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). We approach this issue from a gender-neutral position avoiding sexual stereotypes. *In re Marriage of Pratt*, 489 N.W.2d 56, 58 (Iowa Ct. App. 1992); see also *In re Marriage of Bethke*, 484 N.W.2d 604, 608 (Iowa Ct. App. 1992).

BACKGROUND. The parties were married in March of 2001. At the time of their marriage both were in the United States Army. Kevin was discharged from the army about a month later. Tami continues to serve her country gallantly and has progressed in rank since the time of the marriage. Since the children were born Kevin has provided the substantially greater share of their care as Tami has been required to be away from the family for extended periods. Tami has provided the greater share of the family support as she has been the primary and at times only wage earner.

In August of 2006 Tami went to Iraq and Kevin moved with the children to Iowa. Tami returned from Iraq in December of 2007. Kevin filed this action. A temporary custody hearing was held in March of 2008 and physical care of the children was to remain with Kevin pending trial.

The case came on for trial in July of 2008. The district found that Kevin had been the primary caretaker of the children since their birth and Tami was the breadwinner. The court recognized that Tami's responsibilities with her job have made it impossible for her to care for the children as Kevin has, noting Tami is required to work regular shifts and is gone for extended periods performing duties in other countries. The court also found the children thriving in their current environment. The court noted that the children's school teachers had only positive things to say about the children and Kevin, friends and neighbors consider the children happy and well-adjusted, and there is no contradictory evidence. We have reviewed this evidence and agree with the district court's conclusions.

The court reasoned Kevin's historical role as the primary caretaker and the children's thriving in his care is more than sufficient to justify placing the children with him. The court also recognized certain concerns and complaints Tami has about Kevin. The court noted she had concerns about Kevin's drinking and temper, but the court found the evidence did not support either accusation. The court found Tami an impressive person and recognized that she loves her children and would do an excellent job of caring for them, but that the facts of the case and the legal principles line up in Kevin's favor.

The court gave Tami liberal visitation time and ordered that she pay child support of \$997 a month, maintain health insurance for the children, and pay the required share of medical expenses not covered by insurance.

PHYSICAL CARE. Clearly Kevin has been the primary care parent.¹ He has had sole custody of them for extended periods of time when Tami was absent from the state or country where he lived with the children. Kevin cared for the children while the couple lived together and Tami worked outside the home and he did not. The children have a good relationship with him. The testimony of the twins' kindergarten teachers indicated that the children are doing well, Kevin is interested in their school work, and he has appeared for school conferences. Testimony of a neighbor and of a friend of the family opined that Kevin is a good parent and has a good relationship with the children.

The fact that a parent was the primary caretaker of the child prior to separation does not assure an award of physical care. *In re Marriage of Toedter*, 473 N.W.2d 233, 234 (Iowa Ct. App. 1991). However, consideration is given in any custody dispute to allowing the child to remain with a parent who has been the primary caretaker. *In re Marriage of Hansen*, 733 N.W.2d 683, 696 (Iowa 2007) (noting "stability and continuity of care giving are important factors that must be considered in custody and care decisions"). "[T]he successful care giving by one spouse in the past is a strong predictor that future care of the children will be of the same quality." *Id.* at 697. The court in *Hansen* awarded the mother physical care after considering several facts including her role as

¹ In cases where the parents live together and both work outside the home, determining a primary care parent is not as clear cut as it is here.

primary caretaker. *Id.* at 701. The court also indicated this concept encompasses an “approximation rule.” *Id.* at 697. This rule provides that the care giving of parents in the post-divorce world should be in rough proportion to that which predated the dissolution. *Id.* at 697-98.

We affirm the district court’s well-reasoned decision to award physical care to Kevin. This will allow the children to remain with the parent who has been their primary care provider since birth.

ATTORNEY FEES AND COSTS. Both parties request appellate attorney fees. Tami was unsuccessful in this appeal and has a greater ability to pay fees than does Kevin. We order that she pay \$1500 of Kevin’s attorney fees and the costs of this appeal.

AFFIRMED.