

IN THE COURT OF APPEALS OF IOWA

No. 3-072 / 12-1228
Filed March 13, 2013

**IN RE THE MARRIAGE OF SHELBY LYN MCDOWELL
AND CHRISTIAN PAUL MCDOWELL**

**Upon the Petition of
SHELBY LYN MCDOWELL,**
Petitioner-Appellee/Cross-Appellant,

**And Concerning
CHRISTIAN PAUL MCDOWELL,**
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, James M.
Richardson, Judge.

A husband appeals the physical care provision of a dissolution decree.

AFFIRMED.

Norman L. Springer Jr. of McGinn, McGinn, Springer & Noethe, Council
Bluffs, for appellant.

Joseph G. Basque of Iowa Legal Aid, Council Bluffs, for appellee.

Heard by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

Christian (Chris) McDowell appeals the physical care provision of a dissolution decree. He contends the district court acted inequitably in granting Shelby McDowell physical care of their twins.

I. Background Facts and Proceedings

Chris and Shelby McDowell married in 2007. During the marriage, four children lived with the couple in Council Bluffs, Iowa: Chris's son from a prior relationship, another boy for whom Chris was temporary guardian, and twins, born to Shelby and Chris in 2009.

Through most of the marriage, Chris was the primary wage-earner and Shelby was the primary caretaker of all four children. Shelby also attended classes at a local community college and worked part-time as a phlebotomist.

Chris and Shelby had a volatile relationship and, after four years of marriage, Shelby sought a dissolution. The district court entered a temporary order granting Shelby physical care of the twins subject to reasonable visitation, including visits every Tuesday and Thursday evening and every other weekend.

Following trial, the district court found that Shelby was the children's primary caretaker and Chris "lack[ed] the skills and time to be the primary caretaker of" the twins in addition to the two older boys. The court further found that Chris had "temper and anger issues" and the parents did not communicate effectively, rendering joint physical care unfeasible. Finally, the court found that Shelby intended to continue her education in Lincoln, Nebraska, with the ultimate goal of obtaining a bachelor's degree in nursing. The court granted Shelby physical care of the children, subject to liberal visitation rights, including but not

limited to visits every other weekend and on one weekday. Chris appealed, and Shelby cross-appealed, but raises no argument on cross-appeal.

II. Analysis

The primary consideration in physical care determinations is the best interests of the children. *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007). Our review of the record is de novo. *In re Marriage of Cupples*, 531 N.W.2d 656, 657 (Iowa Ct. App. 1995).

Chris asserts that the children's best interests required placement of the twins with him because (1) he "was very involved in the care of the children" on weekday evenings and on the weekends, (2) Shelby's decision to move to Lincoln would deprive the children of regular contact with their extended family in Council Bluffs, and (3) the twins shared a close relationship with the older boys in his care.

On the first issue, the record supports Chris's assertion that he assisted in the care of the children on nights and weekends. Shelby conceded this fact, as did Shelby's sister. But his contributions to the children's care do not take away from the fact that, historically, Shelby was the primary caregiver. This factor, therefore, does not assist Chris.

As for Shelby's planned move to Lincoln, Shelby cogently explained why the Lincoln program, sixty-five miles away from Council Bluffs, was better than programs closer to home. She pointed out that one of the local programs required the same amount of schooling as the Lincoln program but would only afford her an associate's degree rather than a bachelor's degree. Another program had two campuses, one in Omaha and one in Hastings, and she was

only accepted to the Hastings campus, which was farther away than Lincoln. In short, Shelby's anticipated move was not a selfish pursuit, as Chris contended, but part of a carefully-conceived plan to further her career and make a more comfortable life for the twins.

This brings us to the relationship between the twins and the boys in Chris's care. Chris correctly points out that "[s]iblings in dissolution actions should be separated only for compelling reasons" and this rule has been extended to half-siblings. See *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993). Assuming without deciding that the boy over whom Chris acted as guardian also fell within the ambit of this rule, we are nonetheless persuaded that it was more critical to keep the twins with their loving and capable historical caregiver than with the other children. See *In re Marriage of Brauer*, 511 N.W.2d 645, 647 (Iowa Ct. App. 1993). Significantly, Chris expressed a commitment to having the older children present during his visits with the twins, thereby allowing the twins to maintain a relationship with them.

We conclude the district court acted equitably in granting Shelby physical care of the twins.

AFFIRMED.