

IN THE COURT OF APPEALS OF IOWA

No. 7-033 / 06-0871

Filed April 11, 2007

**IN RE THE MARRIAGE OF HEATHER ROHM
AND MARK ROHM**

**Upon the Petition of
HEATHER ROHM,**
Petitioner-Appellant,

**And Concerning
MARK ROHM,**
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Mitchell Turner,
Judge.

Heather Rohm appeals the physical care portion of the district court's
dissolution decree. **AFFIRMED.**

Daniel Vondra of Cole, Vondra & Thompson, L.L.P., Iowa City, for
appellant.

Mark Rohm, Coralville, pro se.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Heather Rohm appeals the portion of a dissolution decree granting Mark Rohm physical care of the parties' two children. We affirm.

Heather and Mark had a volatile relationship that began in 1998 and ended with a dissolution decree in 2006. During their relationship and subsequent marriage, the parties had two children: Hailey, born in 1999, and Kaitlyn, born in 2003. The district court awarded Mark physical care of the children. Heather appeals from this portion of the decree. She contends the district court: (1) erred in considering certain hearsay evidence, (2) did not consider her testimony concerning domestic abuse by Mark, (3) applied a "double-standard" in evaluating the evidence, and (4) failed to consider her ability to foster the children's relationship with the other parent. Our review of these issues is de novo. Iowa R. App. P. 6.4.

I. Admission of Exhibit

During the marriage, Heather agreed to serve as foster parent to a thirteen-year-old girl. Heather was acquainted with the child's mother and once had a romantic relationship with the child's father. While the child was in her care, Heather asked the Iowa Department of Human Services for permission to take her to Reno, Nevada, to meet her paternal grandmother. The Department denied the request. Heather ignored this directive and went to Reno with the foster child, the child's father, and Hailey and Kaitlyn.

At the dissolution trial, the district court admitted into evidence an application to have Heather held in contempt for taking the foster child to Reno without the Department's permission. After the district court filed its decree,

Heather moved for a new trial. She asserted: (1) Mark used the exhibit to misrepresent to the court that the Department completed a home study before placing the foster child in her care, (2) based on this misrepresentation, Mark suggested that “no evidence of domestic abuse was found by DHS after a thorough investigation,” and (3) the district court relied on this misrepresentation in granting Mark temporary physical care of the children. The district court rejected this argument.

On appeal, Heather reasserts her challenge to the court’s admission of this exhibit. She contends that the court “considered an unsworn, unverified statement from an assistant Muscatine County attorney, which implied that a ‘complete home study’ had been done on the Rohm family.” In her view, “[t]he district court used the hearsay exhibit in order to bolster its credibility findings with respect to domestic abuse, so the domestic abuse would not create an ‘artificial presumption’ against Mark Rohm.” We are not persuaded by this contention.

First, the exhibit that Heather contends should not have been admitted makes no mention of a “complete home study.” Instead, it refers to the Department’s refusal to allow out-of-state travel and the circumstances following Heather’s violation of that instruction.

Second, neither the district court’s temporary physical care order nor its final decree make mention of a “complete home study.” The temporary order states “the Department of Human Services conducted a full investigation of the Rohm family to ensure the family was a suitable placement for the minor child in the juvenile proceedings.” The temporary order also states that, had domestic

abuse allegations been raised, “the placement would not have been made.” These statements are not based on the exhibit Heather now challenges but on a sworn affidavit filed by an assistant county attorney. That affidavit also makes no mention of a “complete home study.” Instead, the affiant states that the Department conducted “a full investigation of the Rohm family” to ensure the family was a suitable placement. Similarly, the district court’s final decree states the Department “fully investigated the Rohm home in the fall of 2004 prior to agreeing to S.T.’s placement with Heather.”

Finally, a Department employee’s affidavit attached to Heather’s motion for new trial undermines her contention that the district court considered a “complete home study.” The employee attested that no such study was completed. She continued:

Prior to the placement of this child in the home, several phone calls were made to Heather Rohm to establish what, if any, involvement she may wish to have with this child. I had several extensive conversations with Heather Rohm regarding her home and marriage. Finances, home environment, and placement needs were all addressed with Heather and Heather noted no concerns in any area. This worker also had a brief conversation with Mark Rohm about this placement. Mark Rohm reported no concerns in these areas as well.

The affiant also noted that “criminal records and child protective records were accessed for Mark and Heather Rohm. No concerning records were located.” This language supports the district court’s statements that the Department conducted a “full investigation” of Heather’s home.

We conclude the district court did not use the challenged exhibit to inappropriately denigrate Heather’s credibility or inappropriately enhance Mark’s credibility.

II. Alleged History of Domestic Abuse

Our court has recognized that domestic abuse is a factor to be considered in a physical care determination. *In re Marriage of Daniels*, 568 N.W.2d 51, 54-55 (Iowa Ct. App. 1997). Heather maintains the record is replete with evidence of such abuse. We acknowledge that Heather testified to several instances of abuse at the hands of Mark.

First, Heather stated she sought and obtained a consensual protective order. According to Heather this order was necessary because Mark “was making threatening phone calls” and “shoved [her] down to the ground.” Heather conceded that she later had the order dropped.

Second, Heather testified that Mark mentally abused her shortly before their marriage. She stated she began having second thoughts about marrying Mark and raised her misgivings with him. According to Heather, Mark responded by threatening to kill her if she did not go through with the marriage and by threatening to take Hailey with him.

A third incident occurred in the parties’ home. Heather testified Mark “busted open the door and broke the lock” to the bedroom, picked her up and threw her onto the bed, and punched and choked her. As a result, she broke her toe. Mark conceded that Heather broke her toe but disputed the balance of the testimony.

Finally, Heather testified she obtained a protective order against Mark from a Nevada court. She stated she requested this order because she feared what Mark would do when she returned to Iowa. At the time the order was obtained, custody proceedings were pending in Iowa. The Nevada court was not

initially apprised of these proceedings. When the court learned of them, the court vacated other orders but maintained the protective order.

This evidence of domestic abuse, while compelling at first blush, was substantially disputed by Mark and was found not believable by the district court.

The court stated:

Until these proceedings began, even Heather never alleged that her broken toe was the result of domestic abuse. At best, Heather described the incident to her own family members as being accidental. At worst, Heather described the incident to Mark's sister, Lisa, as being one where she was the aggressor and broke her toe when she attempted to kick Mark and missed. The allegations which form the basis of the Consent No Contact Order in October of 2001 (over four years prior to the marriage) are similarly not credible. Finally, the Court specifically finds that the No Contact Order which Heather obtained in the state of Nevada was based upon inaccurate information (at best) provided by Heather. The Iowa Department of Human Services investigated the Rohm family in the fall of 2004. Heather mentioned nothing of Mark's allegedly abusive nature. Heather will not be allowed to artificially create a presumption against Mark receiving custody of the children in this matter on that basis.

We give weight to these credibility findings, as the court had the opportunity to see the witnesses and assess their demeanor. See Iowa R. App. P. 6.14(6)(g); *In re Marriage of Hynick*, 727 N.W.2d 575, 577 (Iowa 2007); *In re Marriage of Urban*, 359 N.W.2d 420, 423 (Iowa 1984).

We recognize that the district court did not discuss several other incidents of claimed abuse, including the threat to kill Heather shortly before their marriage, an incident during which Mark admitted to biting Heather's finger, and an incident, cited by Heather's mother, during which Mark slapped Heather. However, we are still left with the district court's finding that Heather raised the domestic abuse evidence to gain an advantage in the custody dispute. In light of

this finding, we conclude that the domestic abuse factor does not require modification of the district court's decision to award Mark physical care of the children.

III. Double-Standard

Heather contends the district court used a double-standard in evaluating the evidence, particularly as it related to the parties' romantic relationships. She suggests the court minimized Mark's relationships with other women but magnified her relationship with the foster child's father. To the contrary, the district court specifically found that "both parties acted badly and in an immature fashion during substantial portions of the parties' marriage." We concur in this assessment.

IV. Ability to Foster Relationship

One of the statutory factors to consider in determining which parent should exercise physical care is who will better support the other parent's relationship with the child. Iowa Code § 598.41(3)(e) (2005); *In re Marriage of Wedemeyer*, 475 N.W.2d 657, 659 (Iowa Ct. App. 1991). Heather contends she demonstrated a superior ability to foster this type of relationship. The district court disagreed, for the following reasons:

[T]he Court specifically finds that while both parties testified that they would encourage the children's relationship with the other party if they were granted primary physical care, the Court does not believe that Heather has, in the past, nor would she in the future encourage Mark's relationship with the girls if she were accorded primary physical care. Mark has demonstrated that he is more likely to encourage the children to have a healthy relationship with their mother and her extended family. Additionally, Heather's complete disregard of court orders and/or manipulations of the various court systems to try to achieve her ends is very troubling and casts significant doubt on her overall credibility.

The record supports this assessment. Mark stated he was given no advance notice of Heather's trip to Reno. When he learned that his daughters had been removed from the State, he attempted to reach Heather, but was only given the number of her foster child's father. Mark ultimately traveled to Reno to recover the children.

Heather's decision to leave the State with, at best, minimal notice to Mark speaks poorly of her ability to advance the children's relationship with their father. In contrast, after Mark returned to Iowa with the children, he immediately arranged for a meeting with their maternal grandparents. It is true that he later refused to list Heather as a contact on Hailey's student enrollment card. However, this incident was overshadowed by his decision to afford Heather regular visits with the children, even during periods of estrangement.

This decision inured to the benefit of the children. Despite the tensions between the parents, Mark testified: "My kids are so stable now, it's unreal." We conclude the district court acted equitably in granting Mark physical care of the children.

AFFIRMED.