

**IN THE COURT OF APPEALS OF IOWA**

No. 8-730 / 08-0472  
Filed November 13, 2008

**IN RE THE MARRIAGE OF ROBERT WILLIAM RANSOM AND HEATHER  
RANSOM**

**Upon the Petition of  
ROBERT WILLIAM RANSOM,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning  
HEATHER RANSOM,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Wapello County, Joel D. Yates,  
Judge.

Heather Ransom appeals the physical care provisions of the district  
court's decree dissolving her marriage to Robert Ransom. **AFFIRMED AS  
MODIFIED AND REMANDED.**

Michael O. Carpenter of Webber, Gaumer & Emanuel, P.C., Ottumwa, for  
appellant.

Steven Gardner of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P.,  
Ottumwa, for appellee.

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

**MILLER, J.**

Heather Ransom appeals the physical care provisions of the district court's decree dissolving her marriage to Robert Ransom. She claims the court erred in granting Robert's request for joint physical care of their child instead of placing responsibility for her physical care with Heather. We affirm as modified and remand.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

Heather and Robert were married in August 2000. They have one child together, Addison, born in January 2004. The parties separated in February 2007 and Robert filed a petition for dissolution of marriage on May 3, 2007. A hearing on temporary matters was held. Heather asked that physical care of Addison be placed with her, and Robert requested joint physical care. The district ordered temporary joint legal custody and joint physical care, with the parties alternating physical care weekly. Following two continuances, trial was held on February 29, 2008, on the issues of physical care of Addison and property division.

Robert was thirty-eight years of age at the time of trial and worked at Pioneer Hi-Bred International where he earned \$42,585.14 in 2007. Heather was thirty-three at the time of trial and worked as a first-grade teacher where she earned \$45,459.26 in 2007. At trial Robert requested continued joint physical care of Addison while Heather asked to have physical care of Addison placed with her. On March 20, 2008, the district court entered a written ruling equitably dividing the parties' property and awarding them joint legal custody and joint

physical care of Addison. In making its physical care determination the court found, in part,

Both Robert and Heather are good parents who can provide the same level of care for Addison. Addison is a normal, well-adjusted, and emotionally healthy child. She is bonded to each of her parents and has a close relationship with each parent. While Heather has been the primary caretaker of Addison, Robert has been extremely involved in Addison's life, and both Heather and Robert have similar parenting styles.

The court also acknowledged it shared some of Heather's concerns about Robert's alcohol consumption. Accordingly, it ordered Robert not consume alcohol while Addison is in his physical care.

Heather appeals, contending the district court erred in granting Robert's request for joint physical care instead of placing physical care of Addison with her.

## **II. SCOPE AND STANDARDS OF REVIEW.**

In this equity case our review is de novo. Iowa R. App. P. 6.4. We examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *In re Marriage of Reinehart*, 704 N.W.2d 677, 680 (Iowa 2005). We accordingly need not separately consider assignments of error in the trial court's findings of fact and conclusions of law, but instead make such findings and conclusions as from our de novo review we find appropriate. *Lessenger v. Lessenger*, 261 Iowa 1076, 1078, 156 N.W.2d 845, 846 (1968). We give weight to the fact-findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). This is because the trial court has a firsthand opportunity to hear

the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). Prior cases have little precedential value, except to provide a framework for analysis, and our decision must be based on the particular facts and circumstances before us. *Id.*

### III. MERITS.

“Joint physical care” means an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child. Iowa Code § 598.1(4) (2007). The rights and responsibilities include, but are not limited to, shared parenting time with the child, maintaining homes for the child, and providing routine care for the child. *Id.* With joint physical care “neither parent has physical care rights superior to the other parent.” *Id.* Iowa Code section 598.41(5)(a) provides:

If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. . . . If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child.

Any consideration of joint physical care must still be based on Iowa's traditional and statutorily required child custody standard of the best interest of the child.

*See id.*; *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007).

Physical care issues are not to be resolved based upon perceived fairness to the *spouses*, but primarily upon what is best for the *child*. The objective of a physical care determination is to place the children in the environment most likely to bring them to health, both physically and mentally, and to social maturity.

*Hansen*, 733 N.W.2d at 695 (emphasis in original) (citing *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995)).

With this consideration in mind, our supreme court recently devised a nonexclusive list of factors to be considered when determining whether a joint physical care arrangement is in the best interests of the children. *Id.* at 697-99.

The factors are (1) “approximation”—what has been the historical care giving arrangement for the child between the two parties; (2) the ability of the spouses to communicate and show mutual respect; (3) the degree of conflict between the parents; and (4) “the degree to which the parents are in general agreement about their approach to daily matters.”

*In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007) (quoting *Hansen*, 733 N.W.2d at 697-99).

In the case at hand the district court stated it applied the *Hansen* analysis to determine whether joint physical care was appropriate. It then briefly and generally discussed each of the *Hansen* factors set forth above. Summarized, the court stated in part that: (1) although Heather had been the primary caretaker of Addison, Robert had been very engaged in raising her as well; (2) even though the parties had in the past had some difficulties with communication and showing mutual respect, none of those difficulties directly involved Addison and the court was “encouraged by the parties’ ability in the last several months to communicate about Addison’s needs”; (3) while there certainly had been conflict during the course of the marriage, the record showed “little to no conflict since the parties separated”; and (4) the “record reflects tremendous agreement between the parties as to how best to meet Addison’s needs.” The court then went on to conclude, “By applying the analysis from *Hansen* to this particular case, the Court concludes that it would be in the best interest of Addison for the parties to have joint legal and joint physical care of her.”

After considering the relevant factors as discussed below, for the following reasons we respectfully disagree with the district court.

**A. Approximation.**

Heather first argues the district court should have rejected Robert's request for a joint physical care arrangement and granted her physical care of Addison because she was Addison's primary caretaker, both before and after the parties' separation. Heather testified she was the one who decided on Addison's pediatrician, almost always took Addison to the doctor, set up her day care, applied for her to be on the list for preschool, and always made the babysitting arrangements when the parties' needed one. The district court found, and we agree, that Heather is and has been Addison's primary caretaker. Heather's status as such is amply supported by the record, despite Robert's contrary assertions that the parties provided caretaking for Addison on an equal basis.

All other things being equal, however, we believe that joint physical care is most likely to be in the best interest of the child where both parents have historically contributed to physical care in roughly the same proportion. Conversely, where one spouse has been the primary caregiver, the likelihood that joint physical care may be disruptive on the emotional development of the children increases.

*Hansen*, 733 N.W.2d at 697-98 (citation omitted). Although it appears that Robert has been a caring and involved parent, we cannot conclude that he contributed to Addison's physical care in the same proportion as Heather. "The concepts of continuity, stability, and approximation thus cut strongly against joint physical care as a quality alternative least disruptive to [Addison] and most likely to promote [her] long-term physical and emotional health." See *id.* at 700.

**B. Communication and Mutual Respect.**

A second important factor to consider in determining whether joint physical care is in the child's best interest is the ability of spouses to communicate and show mutual respect. A lack of trust poses a significant impediment to effective co-parenting. Evidence of controlling behavior by a spouse may be an indicator of potential problems.

*Id.* at 698 (citations omitted).

Robert's own testimony regarding the parties' ability to communicate and show respect for one another is inconsistent and internally contradictory. Although he testified that he and Heather were able to communicate and cooperate about Addison, he also testified he felt Heather was mean, vindictive, manipulative, and controlling. Heather, felt somewhat similarly about Robert, testifying that she viewed Robert as controlling and that there had been a great deal of name calling and disrespectful communications during the pendency of the divorce. She testified that at various times Robert had called her a "fucking idiot," "liar," "bitch," and "fucking cunt." She stated she would often have to have a third party present when the parties exchanged Addison, in order to keep the situation amicable. Heather testified that this name calling and fighting had at times occurred in front of Addison. Robert acknowledged that the parties' "heated words" had occurred in Addison's presence. Heather's mother testified she observed Robert being "belligerent towards Heather when he was dropping off or picking up Addison." She also stated that Robert admitted to her that once when leaning down to say good-bye to Addison he had called Heather a derogatory name. Heather's sister also testified regarding Robert's lack of respect for Heather and the parties' inability to communicate, including that she

had numerous times heard him say things to Heather such as, "You're just a piece of dirt, you're a piece of trash to me," and "I just see you as the babysitter of my daughter."

The inability of the parties to communicate is also illustrated by Robert's refusal to tell Heather crucial pieces of information that concerned both the parties and their daughter. For several days he did not tell Heather he had moved to his new home in November of 2007, despite the fact Addison had been staying with him there. Robert did not tell Heather about a woman and her children that were staying with him and with Addison when she was in his care, until Addison told Heather about it. When Heather asked him about the woman, he would not give her any information about the woman. Heather also described an incident when it was Robert's Saturday to have Addison but he was not going to be able to be with her, so Heather asked if she could have Addison and Robert refused. He instead took Addison to his sister's house, which is apparently very close to Heather's residence, and told Heather that if she wanted to see Addison she would have to go to his sister's home to do so.

Another incident that demonstrates the parties' continued distrust, lack of mutual respect, and inability to cooperate involves an incident discussed at trial when Robert decided to take Addison boating with him and his friends on Lake Rathbun in the summer of 2007. Heather objected to Addison going on this trip because she did not believe that Robert could drink moderately in that environment and she feared for Addison's safety. Robert disregarded Heather's concerns and took Addison with him. When Heather later asked him how much



alcohol he had consumed on the trip he told her he did not drink at all. Robert later confided in Heather's mother that he had consumed three beers in three hours. Implicit in this admission is that he then drove with Addison in the car after the drinking. Both Heather and her mother testified they did not believe what Robert told them, as even his revised alcohol intake was not believable to them based on their past experience with his drinking and his inability to moderate his alcohol consumption, especially in that recreational environment.

We believe the evidence set forth above directly contradicts the trial court's findings that none of the parties' difficulties with communication "directly involved Addison." Further, although the parties perhaps had been able to communicate better in the "last several months" about Addison's needs, the evidence shows two people who have had and continue to have difficulty communicating and cooperating. They were not able to communicate and agree as to when each would have Addison when they attempted to carry out a visitation schedule different than that ordered by the court in its order on temporary matters. Robert failed or refused to provide Heather with information concerning matters affecting both her and Addison. Furthermore, there clearly exists a distinct level of mutual disrespect and distrust between the parties that, despite the district court's findings to the contrary, continued well after their separation. The record shows that, at least at times, Robert continued to disparage and fight with Heather in front of Addison and Heather continued to believe that Robert could not or would not care for Addison without consuming alcohol, a concern that has significant support in the record.

We conclude the record demonstrates that the parties lack an adequate ability to communicate, trust each other, cooperate, and show mutual respect. Accordingly, this second factor militates against a joint physical care arrangement.

**C. Degree of Conflict.**

[T]he degree of conflict between parents is an important factor in determining whether joint physical care is appropriate. Joint physical care requires substantial and regular interaction between divorced parents on a myriad of issues. Where the parties' marriage is stormy and has a history of charge and countercharge, the likelihood that joint physical care will provide a workable arrangement diminishes. It is, of course, possible that spouses may be able to put aside their past, strong differences in the interest of the children. Reality suggests, however, that this may not be the case.

*Hansen*, 733 N.W.2d at 698.

Even a low level of conflict can have significant repercussions for children. Courts must balance the marginal benefits obtained from the institution of a joint physical care regime as compared to other alternatives against the possibility that interparental conflict will be exacerbated by the arrangement, to the detriment of the children.

*Id.* at 699 (citations omitted).

It appears from the record that a main source of conflict between the parties, both during their marriage and after their separation, has been Robert's alcohol consumption.<sup>1</sup> The major conflicts between the parties discussed by both sides at trial almost all revolve around Robert's drinking. Robert conceded on cross-examination that one of the main reasons the marriage broke up was his drinking. He testified he would go out one to two times per week and typically

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<sup>1</sup> Another source of continuing conflict involves an extramarital affair that Robert carried on for months during the latter part of the parties' marriage. Heather remains bitter that Robert engaged in the affair, and Robert remains bitter that Heather disclosed it to family and friends upon learning of it.

would drink between two and eight beers. There was an incident in the fall of 2005 when Robert and Heather went to an Iowa football game in Iowa City and had a fight over whether Robert had consumed too much alcohol to drive home. Robert insisted on driving home, over Heather's strong objection that he had been drinking all day. According to Robert, on the way home Heather "slugged" him in the face, took the keys, and threw the keys in the ditch so he could not drive.

The incident that occurred immediately prior to, and apparently directly precipitated, the parties' separation in February 2007 also began because Robert was out drinking after work and Heather was upset that he was drinking and once again would be getting home later than he said he would. Robert testified he had been at the bar drinking since late afternoon and although he had five or six beers while there before going home he was "fine," he was not intoxicated, and he drove home from the bar. After Robert got home a fight ensued that ended with Heather being pushed over a couch, Heather calling the police, and Robert being escorted out of their residence by the police. Addison witnessed the majority of this incident.

Despite Robert's acknowledgement that all of these incidents occurred as a result of his drinking and that his drinking was "obviously" one of the reasons their marriage ended, Robert testified he did not believe he had a drinking problem and felt that the amount he drinks is always appropriate.

The district court found that although there "certainly was conflict during the course of the marriage," "the record indicates little or no conflict since the

parties separated and have been living apart.” The court saw “no reason why the lack of conflict will not continue into the future.” We disagree. Several of the issues discussed above that caused conflict between the parties, including Robert failing to tell Heather pertinent information regarding his residence and who was staying with him, their inability to communicate and agree on their alternate visitation schedule, the incident when Robert refused to allow Addison to stay with Heather even though he would not be able to be with Addison that day, and the boating incident at Lake Rathbun, occurred *after* the parties separated. Furthermore, we believe that Heather’s justified concerns about Robert’s inability to be responsible with alcohol consumption while Addison is in his care will continue to be a source of conflict in their relationship, unless and until Robert acknowledges this issue.

[A] stormy marriage and divorce presents a significant risk factor that must be considered in determining whether joint physical care is in the best interest of the children. The prospect for successful joint physical care is reduced when there is a bitter parental relationship and one party objects to the shared arrangement.

*Id.* at 698.

We conclude that the high level of recurrent conflict and discord that began during the parties’ marriage and continued throughout their separation, along with Heather’s strong objections to a joint physical care arrangement, weigh strongly against such an arrangement in this particular case.

Based on our determination that all three of the factors discussed above weigh against granting joint physical care, we conclude the district court should not have ordered joint physical care of Addison. The court’s findings and

conclusions that none of the parties' communication difficulties directly involved Addison, their ability to communicate regarding Addison had improved in the months before the trial, there has been little or no conflict between the parties since their separation, and there is no reason this lack of conflict will not continue into the future are not well-supported by the evidence in the record.<sup>2</sup> Furthermore, we find the court's findings with regard to Robert's alcohol consumption, namely that most of the evidence of his alcohol consumption was from several years ago and that there was no showing the consumption of alcohol had any adverse impact on Addison, are also not fully supported by the record.

In light of the above principles, and after our de novo review of the record, we conclude that joint physical care is not in Addison's best interest under the particular facts presented in this case.

**D. Placement of Physical Care.**

Once it is decided that joint physical care is not in the best interest of the children, the court must next choose which caregiver should be awarded physical care. When considering the issue of physical care, our overriding consideration is the child's best interest. Iowa R. App. P. 6.14(6)(o). In assessing which physical care arrangement is in the child's best interest, we are guided by the factors set forth in Iowa Code section 598.41(3), as well as those identified in *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The ultimate goal is

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<sup>2</sup> We note it does seem Robert and Heather are in general agreement about their approach to daily matters with regard to raising Addison, the last *Hansen* factor. However, that is not enough to warrant joint physical care when the other three factors weigh so heavily against it.

to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). The critical 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 re Marriage of Courtade*, 560 N.W.2d 36, 37-38 (Iowa Ct. App. 1996). While not the singular factor in determining which placement would best serve the children's interests, we give significant consideration to placing them with the historical primary caregiver. *In re Marriage of Decker*, 666 N.W.2d 175, 178-80 (Iowa Ct. App. 2003); *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa Ct. App. 1995).

Based on the facts and circumstances set forth above, including but not limited to the fact Heather has been Addison's primary caregiver for the entirety of Addison's life and Robert's seemingly unaddressed and unresolved issues with alcohol, we conclude it is in Addison's best interest that the responsibility for her physical care be placed with Heather.

Robert nevertheless has an important role to play in Addison's life. No one questions his devotion to her or her need for his guidance and support. "A responsible, committed, nonresident parent, with good parenting skills, has the potential to engage in a high-quality relationship with his or her child and to positively impact the child's adjustment." *Hansen*, 733 N.W.2d at 702. Furthermore, we expect Heather to support Robert's relationship with Addison as required by Iowa Code section 598.41(5)(b). Through liberal visitation and the

exercise of joint legal custody, Addison can realize the benefits of Robert's continued involvement in her life. *See id.*

#### **IV. CONCLUSION AND DISPOSITION.**

Based on our de novo review of the record, and for the reasons set forth above, we conclude that portion of the court's decree granting Robert's request for joint physical care of Addison must be modified. We conclude it is in Addison's best interest that the responsibility for her physical care be placed with Heather with liberal visitation awarded to Robert. We remand the case to the district court to enter an order placing physical care of Addison with Heather and to determine an appropriate visitation schedule and amount of child support not inconsistent with this opinion.

**AFFIRMED AS MODIFIED AND REMANDED.**