

**IN THE COURT OF APPEALS OF IOWA**

No. 3-557 / 02-1777  
Filed August 13, 2003

**IN RE THE MARRIAGE OF LORI CORDES  
and JOHN CORDES**

**Upon the Petition of  
LORI CORDES,**  
Petitioner-Appellee/Cross-Appellant,

**And Concerning  
JOHN CORDES,**  
Respondent-Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Polk County, D. J. Stovall, Judge.

The respondent appeals, and petitioner cross-appeals, from the child custody and property division provisions of the parties' dissolution decree.

**AFFIRMED AS MODIFIED AND REMANDED.**

Andrew Howie of Hudson, Mallaney & Shindler, P.C., Des Moines, for appellant.

Todd Babich and Alexander Rhoads of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines, for appellee.

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

**EISENHAUER, J.**

The respondent appeals, and petitioner cross-appeals, from the child custody and property division provisions of the parties' dissolution decree. Respondent contends the district court erred in awarding the parties' joint physical care of their four minor children and requests physical care. Petitioner requests she be awarded the children's physical care, and also contends the property division was inequitable. We affirm as modified.

***I. Background Facts and Proceedings.*** John and Lori Cordes were married in 1984 and have four minor children, Jeremy, born August 25, 1986, Jessica, born August 25, 1988, Lauren, born September 11, 1990, and Alexandra, born September 6, 1994. John is employed at Pioneer Hi-Bred as a benefits manager and earns approximately \$70,000 per year. Lori is employed as a nurse midwife for Iowa Health Physicians and also earns approximately \$70,000 per year.

During their marriage the parties moved frequently, but ultimately settled in the Des Moines area in order to provide the children with a more stable environment. Because of their opposite work schedules, both parties shared equally in providing the children's care. In addition to working full-time and caring for the children, Lori obtained her master's degree in nursing from Drake University.

In 2000, Lori commenced an affair with her supervisor, Dr. Edward Steinman. She began to spend considerable time away from the family, ostensibly on work-related trips. Lori occasionally took the children on vacations

with Dr. Steinman, and one time the two slept together in the same tent as the children. Lori also began showering and sleeping with her daughters.

As their marriage deteriorated, and Lori spent more time with Dr. Steinman, John began providing more of the children's daily care. Despite problems in the marital home, the children continued to do well in school. In August 2001, Lori filed a petition for dissolution of marriage, but remained in the marital home.

At trial, Dr. Keri Kinnaird testified she conducted interviews with the family at the court's request. She stated Lori's relationship with Dr. Steinman created emotional complications with the children, since they were aware he was their physician, family friend, and their mother's paramour, despite the fact she was still living with them in the home. Dr. Kinnaird maintained Lori's efforts to have the children keep the secret of her affair from John created a loyalty bind, causing considerable stress. She stated the children's mental health was harmed by Lori attempting to treat the children as adults and intimately involving them in the dissolution proceedings. Dr. Kinnaird opined it was reasonable for John to increase his interests in the children's activities during such a traumatic time in the children's lives. She concluded John was the parent better able to provide for the children's best interests, despite the children's expressions of closeness to their mother.

Dr. Eva Christiansen, however, testified Dr. Kinnaird failed to obtain any independent collateral sources of information about the parties or the children. She further testified Dr. Kinnaird failed to properly assess the children's

emotional behavior. Dr. Christiansen testified she was startled to see Dr. Kinnaird's report since it was not based on a full factual evaluation.

In its decree, the district court concluded that despite Lori's behavior, both parties would be excellent caregivers. The court awarded both parties joint legal and physical care, and provided physical care would be alternated in two-week cycles. When one party had physical care, the other would have visitation rights each Wednesday from 5:00 to 8:00 p.m., with alternating holidays. The court ordered John to pay Lori thirty percent of any bonuses he received from work.

The court additionally awarded John the marital home, but awarded Lori \$51,885 in equity as a lien. The court further awarded joint ownership of the parties' lake property. Lori was awarded \$82,168.48 in financial accounts, and John was awarded \$107,919.19. Lori was ordered to pay debts of \$11,569.19 and John was ordered to pay \$12,000. John has appealed, and Lori has cross-appealed.

**II. Scope of Review.** Our scope of review is de novo. Iowa R. App. P. 6.4. We give deference to, but are not bound by, the district court's findings. *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). When determining which parent should have physical care of a minor child, our primary concern is the best interests of the child. *In re Marriage of Riddle*, 500 N.W.2d 718, 719 (Iowa Ct. App. 1993).

**III. Physical Care.** Upon our de novo review of the record, we are convinced it is in the children's best interest to be placed with John. Although the district court stated it was not very concerned about Lori's relationship with Dr. Steinman, the court also stated "Lori's above cited actions had the affect of

placing the children in a hostile non-nurturing environment.” The court also noted Lori’s behavior did not exhibit good role modeling for the children. During the last few years of the marriage, Lori spent considerable time away from the family to be with Dr. Steinman. Dr. Kinnaird’s report to the court indicated Lori’s actions negatively impacted the children’s emotional behavior. Lori attempted to bring the children into the fray by having them keep secret from John her affair with Dr. Steinman. In contrast, none of the experts who testified regarding their observations of the family stated John’s behavior was detrimental to the children. Dr. Christiansen testified there was some concern expressed by the children regarding John’s sincerity in increasing his participation in their activities, but we agree with the district court’s assessment that John’s increased awareness could only benefit the children.

While the Iowa legislature has approved of joint physical care as a viable option when it is in the children’s best interest, we conclude this is not one of those cases. See Iowa Code §598.41(5) (2001). Dr. Kinnaird concluded Lori would not support John regarding the children while they were in his care. Dr. Steinman likewise would not foster a relationship with John, calling him a “snake” and a “dark knight.” Although the parties attempted to cooperate, their divergent lifestyles created a hostile environment in the home. We therefore modify the district court’s decree by awarding John the children’s physical care. We remand to the district court for a determination of appropriate visitation and child support payments.

***IV. Property Division.*** Lori argues the district court erred in failing to equitably divide John’s Pioneer defined benefits pension plan. Pursuant to Iowa

Rule of Civil Procedure 1.1012, Lori informed the trial court it had failed to include this asset in its property division, and requested it be divided equitably. John testified the pension would pay monthly benefits of \$456.68 at some future date, but little other testimony was offered regarding its value. The district court concluded the property division was equitable and declined to modify it. Lori contends she should receive one-half of this pension secured through a Qualified Domestic Relations Order, since the parties previously agreed it should be divided equally.

It appears the district court failed to include this pension in its division of marital property. Despite Lori's motion, the district court ruled "the assets of the parties were equitably divided and therefore finds no basis to change its previous decree in this regard." It appears that most of the pension's value was accumulated during the marriage. We conclude Lori is entitled to one-half of John's Pioneer defined pension plan. We remand to the district court for entry of a Qualified Domestic Relations Order (QDRO) to secure the transfer of her interest in this pension.

**AFFIRMED AS MODIFIED AND REMANDED.**