FILED
OCT 23 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PATRICIA NICHOLSON AND REX K. NICHOLSON

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UPON THE PETITION OF **PATRICIA NICHOLSON,**	)	
Petitioner-Appellee,	)	Filed October 23, 1984
AND CONCERNING **REX K. NICHOLSON,**	)	4-324 83-1430
Respodent-Appellant.	)	

Appeal from the Iowa District Court for Story County, David R. Hansen, Judge.

Respodent-husband appeals from the decree which dissolved the parties' marriage, asserting that the trial court should have awarded him custody of the parties' two minor children. AFFIRMED.

Greg W. Steensland of Payer, Steensland & Lathrop, Ames, for petitioner-appellee.

John P. Dollar, Des Moines, for respondent-appellant.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

In this appeal the petitioner, Rex Nicholson, asserts error in the trial court decision awarding custody of the couple's two minor children to the respondent-wife. We affirm.

Patricia Nicholson, the respondent in this appeal, moved out of the marital home in January 1982. Their daughter, who is now twenty years old, moved out of the home to live with her mother. The two other children, Michael, now aged seventeen, and Jamie, aged twelve, remained with their father until May 1983 when the decree dissolved the parties' twenty-one-year marriage. The court awarded custody of the two minor boys to their mother, with liberal visitation for the father, including at a minimum alternate weekends with the petitioner. Petitioner asserts several arguments attacking the court's decision.

Rex says that since Patricia never contested the arrangement between the separation and divorce, where the boys were living with the father, she in effect abandoned custody. He says her visits with the boys were irregular. If she felt the boys should not stay with him, he argues, she should have sought a change through a temporary custody order.

We believe the record shows Patricia did not abandon the children, and her visits were frequent, although not regularly scheduled since both parties worked and arrangements often were changed to accommodate everyone involved. We reject the idea that because a person chooses to leave his or her spouse and does not uproot the children from their familiar surroundings that the person has, without more, abandoned the children.

Rex claims that since the children lived with him for fourteen to fifteen months, the decree which awarded Patricia custody was more like a change in custody than an original award of custody. Therefore, he says, the more stringent

standard required for a change in custody must be met, and Patricia must prove she has superior parenting abilities pursuant to In re Marriage of Morton, 244 N.W.2d 819, 821 (Iowa 1976).

Until the decree was issued, the parties were still married and had joint custody of the children. We reject the idea that mere length of time spent with one parent can alter this fact. This appeal is from an original decree regarding custody, and we have never extended the more stringent standard to such an appeal.

Rex agrees in this situation both parties are capable of providing adequate parenting for the children. When both parents are capable of administering to the children's needs, we must decide in whose custody the long-range best interests of the children are better served. In re Marriage of Weidner, 338 N.W.2d 351, 359 (Iowa 1983). Here the court decided Patricia is more capable. It noted Jamie is hyperactive and needs firmer control than Rex is capable of giving. It also stated she is more understanding of Jamie's need for emotional growth and more concerned about his social development. Rex says this is a mere difference in philosophies regarding child rearing. Patricia says Rex has indicated he does not discipline the children because he does not want them to be mad at him. The court found, after listening to the witnesses, Jamie needed more structure than provided by his father.

The court further found Rex has disregarded Patricia's role as a parent and tried to shut her out. Our courts have noted where one parent resists a relationship between the child and the other parent, it may show sole custody is best placed with the other parent. In re Marriage of Bolin, 336 N.W.2d 441, 446 (Iowa 1983). Rex says if Patricia had problems in her visitations, it was because of the irregularity of her visits. However, the record shows Rex was not supportive of her visits with the children.

In a review of an equity proceeding, we are not bound by the trial court findings, but give deference to them, particularly where credibility of witnesses is involved. Iowa R. App. P. 14(f)(7). In determining custody of children, we look at all the factors set out at section 598.41(3) of the Code, and those also outlined at In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). Our paramount concern is always the best interests of the children. Iowa R. App. P. 14(f)(15).

In considering all the factors involved, we find there was ample evidence to support the decision that the best interests of the children warranted both legal and physical custody of the children be placed with Patricia. The communication between the parties had disintegrated to the level that they communicated arrangements regarding visitation through the children rather than to each other. The record also shows Rex was not supportive of Patricia's role as a mother, and the children would benefit from the firmer direction they would obtain from Patricia. The liberal visitation allowed Rex and Patricia's attitude of fostering the children's relationship with their father assures they will continue to have meaningful contact with him. Accordingly, we affirm the trial court decision.

AFFIRMED.