

IN THE COURT OF APPEALS OF IOWA

No. 9-72 / 88-587

FILED

OCT 05 1989

CLERK SUPREME COURT

SCOTT A. SATTERLEE,

Petitioner-Appellant,

vs.

CHRISTINE WILSON,

Respondent-Appellee.

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Appeal from the Iowa District Court for Black Hawk County (No. 69429), William G. Klotzbach, Judge.

Petitioner appeals from the decision of the district court which placed custody of the parties' minor child with respondent. **MODIFIED AND REMANDED.**

John W. Ackerman of Ackerman Law Office, Waterloo, for petitioner-appellant.

Christine Wilson, pro se.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

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In this initial custody decision we must determine whether custody of Shane Scott Satterlee, born April 4, 1986, is best placed with his mother, respondent-appellee Christine Wilson, or his father, petitioner-appellant Scott A. Satterlee.

The parents were never married to each other. They cohabited for a year prior to Shane's birth and five months after.

The issue is which parent is the better parent; who will do the better job of raising the child. See In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974). The criteria for establishing custody is the same whether a marriage is being dissolved or if parents had never wed. Heyer v. Peterson, 307 N.W.2d 1, 7 (Iowa 1981).

The trial court awarded Christine custody. Scott contends he is the more stable parent and the trial court failed to abandon the inference that a young child's best interests are served by placement with his or her mother. We find primary custody should have been granted Scott. We modify the decree to place custody with him. We remand to the trial court to fix visitation for Christine.

Both parents are capable of raising the child and love him very much. The issue is who will give him better care. There is no longer an inference that a young child

is better placed in the care of his or her mother.¹⁵⁸ In re Marriage of Meier, 267 N.W.2d 46, 47 (Iowa 1978).

Scott is five years older than Christine. He has shown stability in maintaining employment. At the time of trial he had been a mechanic at K-Mart for the past seven years. He is financially responsible. He has assumed substantial responsibilities for the child and has contributed to his support. Scott has support from his family and the child has a strong relationship with Scott's extended family. Scott encourages the child's relationship with Christine's extended family.

Both parties have faults, the recitation of which would serve no useful purpose in this record. We are concerned, however, by the fact that Christine was arrested twice in two weeks for driving a motor vehicle while under the influence just shortly before the custody hearing.

Our de novo review of the facts and the applicable case law convinces us Scott is the better parent. In re Marriage of Grabill, 414 N.W.2d 852, 853 (Iowa App. 1987).

MODIFIED AND REMANDED.

Donielson, P.J., concurs; Habhab, J., dissents.

HABHAB, J. (dissenting)

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I respectfully dissent. The trial court placed the custody of Shane with his mother and I agree with that result.

Scott and Christine had lived together for approximately one year and five months. During this time Shane was born. The couple continued cohabitation for approximately five months after Shane's birth. Scott works as an automotive mechanic. Christine attends a local area community college and is studying accounting and works part-time.

Scott asserts he is more mature than Christine and that Shane would be better placed in his care. Both parents admit difficulties in controlling their tempers and inclinations toward violent behavior, exacerbated by drinking.

Christine works about fifteen hours per week and receives Aid to Dependent Children. Scott is called upon to pay \$100 per month to the Child Support Recovery Unit.

As the majority points out, both parties have faults. About five months after Shane was born Scott asked Christine to leave his house and Christine took Shane with her by agreement. Scott is now living with a Lisa Crawford, who is pregnant with his child. By his own admission, Scott has fathered three children by three women, Shane being his second. He has not married either mother.

Shane has been living with his mother primarily since birth. During the time the parties lived together, Christine had the primary responsibility for the care of Shane, although Scott did participate in preparing meals for the child and in changing diapers. Although not of great significance but nonetheless material, Scott does not even know the name of Shane's pediatrician and has never taken the child to the doctor, although the child initially had problems after being born four and one-half weeks premature.

Scott contends the trial court failed to abandon the inference that a young child's best interests are served by placement with his or her mother. Other than the fact that the trial court placed Shane with his mother, there is nothing in the judge's opinion which even remotely suggests that he did so under the abandoned inference that Shane's best interests are served by placement with his mother. In fact, the court, under its conclusions of law when applying the criteria set forth in In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974), found that Christine is the person who can minister more effectively to the long-range best interests of Shane, and that Christine placed Shane in the environment most likely to bring the child to a healthy physical, mental, and social maturity.

We have nothing but the cold record to examine. The trial court had the benefit of observing firsthand the

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conduct and demeanor of the witnesses and the ability to test and weigh the credibility of the witnesses. Although we are not bound by the findings of the trial court, we do give them weight. I would affirm.