

FILED

OCT 27 1992

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-422 / 92-87

17

IN RE THE MARRIAGE OF PATRICIA J. BANKES AND
DANNY L. BANKES

Upon the Petition of
PATRICIA J. BANKES,

Appellant,

And Concerning
DANNY L. BANKES,

Appellee.

Appeal from the Iowa District Court for Wayne County,
Thomas S. Bown, Judge.

The wife appeals the child custody provision of a
district court judgment and decree dissolving her
marriage. **AFFIRMED.**

Thomas M. Walter of Johnson, Hester & Walter, Ottumwa,
for appellant.

Paul M. Goldsmith of the Goldsmith Law Office,
Chariton, for appellee.

Heard by Hayden, P.J., Habhab, J., and McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on
this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

This unhappy matter comes before us on the appeal of the petitioner, Patricia J. Bankes, from the district court decision that physical placement of two minor children of the parties be with the respondent, Daniel L. Bankes (Danny). We affirm.

Patricia, or Trish as she prefers to be called, and Danny were married on April 5, 1985. They have two children, a little boy, Gavin, born February 19, 1986, and a little girl, Desiree, born October 21, 1987. The children were respectively about five years eleven months of age and four years one month of age at the time of trial of the within dissolution in December, 1991.

Our review is de novo. In re Marriage of Prague, 462 N.W.2d 692 (Iowa App. 1990).

While our standards of review are easy to articulate they are often most difficult to apply in these custodial problems.

The long-range best interest of the child is the first and governing consideration. In re Marriage of McElroy, 475 N.W.2d 221 (Iowa App. 1991). The crucial issue then is to determine which parent will do better in raising the child. Id. The best interest of the child is served by placing the child in that environment most likely to bring the child into a healthy physical, mental and social adulthood. In re Marriage of Rodgers, 470 N.W.2d 43 (Iowa App. 1991). In this regard, stability of the home

environment is considered very important. In re Marriage of Welbis, 327 N.W.2d 756 (Iowa 1982).

Both parents were found by the trial court to be fit custodians and consequently granted joint custody, but decreed that the physical placement of the children be with Danny.

While both parties agree that Trish has been the principal care provider for the children, both, however, have provided considerable care over the years.

The children love their parents and both parents love their children. Danny is ambitious -- he has a job at a factory and also engages in a farming operation, while Trish has been more concerned with maintenance of the children and the home. She has two older children from a prior marriage.

Trish asserts that Danny's long work hours inhibit his ability to parent. However, she too recently obtained steady employment at a care center, and will be required, as will Danny, to use others to provide day care while at work.

Both parties have undertaken live-in relationships with third parties subsequent to their separation. Danny proposes to use his newly acquired female companion, who has a child of her own, to provide care for Danny. The counselor making the home study found her to be able to provide good day care. Trish's newly acquired companion is unemployed, but she will use family members for such care.

Both parties have their respective strengths and both have suffered from some personal problems.

Trish suffers from a deep depression, but it is apparently under control through daily medication. She further suffered an eating disorder which was, however, resolved at time of trial. Trish has entertained suicidal thoughts on more than one occasion. Her anger has caused her to physically assault Danny and to cause considerable damage to certain of his property.

Danny has on one occasion drove a vehicle while intoxicated, although the record reflects he is not an alcoholic. Subsequent to the separation, Trish has moved on several occasions. Danny, however, occupies the family home, which has been the children's home throughout their lives. Trish's numerous moves have made it necessary for Gavin to change schools, but residence in the family home has returned him to the school and children with whom he is acquainted.

The counselor who made the home study and who testified at trial, found both parents to be fit, but recommended the children be placed with Trish. His opinion was hedged, however, by his belief that Trish was not forthright and by her inability to understand the nature and purpose of the study. He found her to be easily excited and impulsive, and with trouble delaying gratification of any of her wishes. He did not believe she was wholly truthful with him about her living situation or about herself.

The counselor found Danny to be honest and open, and believed he was truthful, had common sense and a strong sense of right and wrong. The counselor further found Danny to be a likable person with a sense of humor.

The counselor was not aware of, and further did not take into account, certain factors in making his recommendations. He was unaware Trish was working or would go to work at a job that would also require her to provide day care for the children if left with her. The counselor was unaware of the serious problems with depression she had suffered or that Danny had experienced difficulties with visitation of the children while they were with Trish during the pendency of the action. He was also unaware of various home moves made by Trish. He further testified that had Trish left the children with Danny at the time of the separation instead of taking them with her, the counselor would have recommended the children remain with Danny. He acknowledged that had he known some of these facts, his recommendation could well have been different. It was apparent the counselor, in making his recommendation, initially placed considerable weight on the fact that Trish was the birth mother, even though he later modified this position by referring to Trish as having provided more of the care of the children.

Both parents offer certain advantages, but on balance we conclude Danny represents a more stable environment for the children.

We are persuaded that the suicidal thoughts, the manifestations of anger, the various home moves, together with her bouts of serious depression, make Trish less apt to provide the stable environment the children need, and they will be better served by their placement with Danny.

Although Trish has provided more of the care of the children than has Danny, such does not mandate the placement of the children with her. In re Marriage of Toedter, 473 N.W.2d 233 (Iowa App. 1991).

Liberal visitation granted by the trial court to Trish will fulfill the need for the children to have a continuing and developing relationship with Trish.

While we are not bound by the trial court's determination of factual findings, we give them considerable weight, especially when considering the credibility of the witnesses. In re the Marriage of Craig, 462 N.W.2d 692 (Iowa App. 1990).

In resolving this most difficult problem, we agree with the conclusion of the trial court that the children should be physically placed with Danny. We therefore accordingly affirm the decision of the trial court.

The costs of this appeal are taxed one-half to the appellant and one-half to the appellee.

AFFIRMED.