

OCT 19 1978

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROGER W. NEWHARD AND CHARLENE K. NEWHARD

Upon the Petition of	)	
ROGER W. NEWHARD,	)	Filed October 19, 1978
Appellee,	)	
And Concerning	)	<u>649</u>
CHARLENE K. NEWHARD,	)	<u>3-61036</u>
Appellant.	)	

Appeal from Linn District Court - August F. Honsell, Jr.

Respondent appeals from dissolution decree granting custody of three adolescent children to father and awarding title to family residence to him. - Affirmed.

Robert C. Gross, Cedar Rapids, for Appellant.

Ted V. Ruffin, Cedar Rapids, for Appellee.

Submitted to Donielson, Acting C.J., and Snell, Oxberger and Carter, JJ.

PER CURIAM

Respondent Charlene Newhard appeals the trial court's dissolution decree granting custody of three children to petitioner Roger Newhard and awarding title to the homestead to Roger. We affirm.

At the time of trial, Charlene and Roger had been married 18 years; their children were Kathryn, age 17, Philip, age 13 and Cherie, age 10. In resolving custodial rights, the long-range interest of the children is the polestar. *Schoonover v. Schoonover*, 228 N.W.2d 31, 34 (Iowa 1975). As a corollary to that principle, we recognize along with the trial court that the brothers and sisters should not be separated unless there are good and compelling reasons for doing so. *In re Marriage of Woodward*, 228 N.W.2d 74, 75 (Iowa 1975). This is especially true here where the children enjoy a positive interpersonal relationship with each other.

No attorney was appointed to represent the children. Both Kathryn and Philip expressed a preference to live with Roger. Kathryn has attained the age of majority during the pendency of this appeal. Although the wishes of the children are not controlling, they are entitled to consideration along with other relevant factors. *Jones v. Jones*, 175 N.W.2d 389, 391 (Iowa 1976). The evidence before the trial court shows an advanced degree of antagonism between Charlene and the children, whereas Roger has provided a more caring, stabilizing influence.

Charlene's contentions that Roger has a drinking problem must be balanced against Charlene's poor rapport and difficulty in communicating constructively with the children. Each of the parties claims that the other is responsible for the family's problems. In this connection, we note the superior position of the trial court to judge credibility and to observe the demeanor of witnesses. We accordingly give weight to the trial court's decision. *In re Marriage of Callahan*, 214 N.W.2d 133 (Iowa 1974). Although Charlene charges Roger with infidelity, there is no showing that Roger's relationship with a woman named Karen has had or will have an adverse effect on the children. See *Schoonover v. Schoonover*, 228 N.W.2d at 34.

Taking into consideration the stated preference of the children, their close relationship with one another, the deterioration of Charlene's relationship with the

children, the ability of Roger to provide for their needs and the findings of the trial court, we agree that the best interests will be served by leaving them in their father's custody.

Charlene's claim to the family residence is based on her argument that custody of the children should have been granted to her. Since we affirm the trial court's decision involving custody, we likewise affirm its award of the family home to Roger. Charlene was not ordered to make any child support payments. She earns approximately \$125 per week and held a number of different jobs during the year preceding the divorce. At the time of trial, Roger was earning \$280 per week. He has not filed a notice of cross-appeal challenging the denial of support payments.

Roger has likewise failed to cross-appeal trial court's award of the \$3800 lien to Charlene. We cannot consider, therefore, his argument challenging that portion of the decree.

AFFIRMED.