IN THE COURT OF APPEALS OF IOWA

No. 0-453 / 89-1858

FILED
FEB 26 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF JEFFREY W. PATTERSON AND TERESA L. PATTERSON

Upon the Petition of

JEFFREY W. PATTERSON,

Appellee,

And Concerning

TERESA L. PATTERSON,

Appellant.

269

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

The appellant claims the trial court erred in awarding physical custody of the parties' child to the appellee. **AFFIRMED.**

Diane L. Dornburg and Abby L. McDonald, Des Moines, for appellant.

Gary Hassel, Des Moines, for appellee.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

PER CURIAM

Jeffrey and Teresa Patterson were married in 1986. Their marriage was dissolved on September 5, 1989. They are the parents of a boy born in August 1986. The dissolution decree placed the child in joint legal custody and in Jeffrey's primary physical care. Teresa appeals the custody decision. We affirm.

Following the parties' separation, Teresa and the child returned to Des Moines to live with Teresa's mother. At trial time Teresa was still living with her mother; she was pregnant by another man but had no immediate plans to marry that man or live with him.

Jeffrey has been in the Air Force since 1986. He was stationed in California during most of the marriage and was still stationed there at trial time. He testified that his relatives live in the Des Moines area, that he still considers himself an Iowa resident, and that following his military service he will return to Iowa unless he re-enlists. If he does choose to re-enlist, there is a possibility he may be stationed overseas.

Our review in this matter is de novo. Iowa R. App. P. 4. In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3) and in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983) and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974).

All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

The respondent first contends the trial court erred[1] in failing to file findings of fact and conclusions of law. Iowa R. Civ. P. 179(a) provides:

> The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law; and direct an appropriate judgment. No request for findings is necessary for purposes of review. . .

There cannot be much question that rule 179 was not complied with. It would have been helpful, not only to this court but to the litigants, if the trial court had set forth its reasoning for the conclusions it reached. However, our review is de novo, and we will proceed with the consideration of the issue raised on appeal.

We have reviewed the entire trial transcript and realize the decision as to which parent should be granted

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1. We note that the respondent approved the court decree "as to form and content."

physical custody is a difficult one. However, at the conclusion of our review, we are in agreement with the trial court and affirm the award of physical custody to the father.

It is clear that both the mother and the father in this case love their son and are concerned with what is in the best interest of their child. There is certainly no guaranteed "best" solution to the problem of physical care; regardless of the decision, the parents both must work together to ensure the best for their son.

It appears from the record that Jeffrey is a responsible individual who loves his son very much and will provide care and guidance for him during his formative years and after. The fact that he is in the military service, standing alone, should not deprive him of the opportunity to have the physical custody of his child. There is testimony that he has the means and facilities to provide for and care for his boy.

We have considered the merits of the mother's claim that she should be awarded the physical custody of her child. We do not doubt her love and concern for her child. We believe the question is extremely close as to which parent can provide for the long-range best interests of their child. The trial court had the opportunity to judge the credibility of the witnesses. It came down on the side of the appellee. We see no reason to disturb that

result. Accordingly, we affirm. Costs shall be assessed to the appellant.

AFFIRMED.