

FILED

APR 21 1981

85

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KATHERYN MAY SANGER AND JOSEPH SANGER

Upon the Petition of)

KATHERYN MAY SANGER,)

Filed April 21, 1981

Petitioner-Appellant,)

And Concerning)

JOSEPH SANGER,)

1-37
3-65457

Respondent-Appellee.)

Appeal from Polk District Court - J. P. Denato, Judge.

Petitioner wife appeals provision of the parties' dissolution decree that awards custody of their infant daughter to the respondent husband. **AFFIRMED.**

Lawrence F. Scalise and Ann Fitzgibbons of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for petitioner-appellant.

Phillip F. Miller of Haugan & Miller, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner Katheryn Sanger appeals from the provision of the parties' dissolution decree that awards custody of their infant daughter to respondent Joseph Sanger. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4.

I.

The five-year marriage of Katheryn and Joseph Sanger was dissolved on August 25, 1980. Their only child, Stacey, was born in 1978. After the child's birth, the petitioner remained in the home to care for the child, although she recently has opened a beautician's shop. Both parties appear to be good and loving parents. It was revealed at trial that the petitioner has a boyfriend who stays overnight several times a week and that before the dissolution the petitioner occasionally went out to bars at night, either with her girlfriends or alone.

On July 11, 1980, the trial court filed its findings and conclusions in which it ruled, among other things, that the respondent should receive custody of the child. The findings also stated that the respondent's attorney should draft a decree incorporating the court's findings and conclusions and that this decree should be submitted to the court and opposing counsel within a week. The decree was not actually entered until August 25, 1980, although the petitioner filed notice from the findings and conclusions of the trial court on August 11, 1980.

II.

Since the petitioner filed her notice of appeal after the trial court made its findings and conclusions but before entry of the decree incorporating those findings, we must initially decide how to treat this appeal. It would appear that the petitioner's notice of appeal was not from a final judgment. See Wolf v. Murrane, 199 N.W.2d 90, 95 (Iowa 1972). However, we conclude that the notice of appeal should be treated as an application for interlocutory appeal under Iowa R. App. P. 1(c) and that the application should be granted because the child custody ruling was contained in the court's findings and conclusions. Moreover, although a limited remand is available to make the decree effective prior to filing of the notice of appeal, see In re Marriage of McCreary, 276 N.W.2d 399, 400 (Iowa 1979), we prefer to avoid the delay of a limited remand in determining the custody of this child.

III.

Our first and governing consideration in determining custody is the best interests of the child involved. Iowa R. App. P. 14(f)(15). With this in mind, we note further that the status of children should be quickly fixed and, thereafter, little disturbed. In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974). In deciding the custody issue, we seek neither to punish one parent nor reward the other. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). There is no inference favoring one parent as opposed to the other in deciding which is the more fit custodian, except that arising from the particular facts of the case. Bowen, 219 N.W.2d at 688. Factors relevant to the custody determination are listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), with the ultimate question being, based on the entire record, which of the parents can minister more effectively to the long-range best interests of the children. Id.; Iowa R. App. P. 14(f)(15). We conclude in the instant case that that parent is the respondent father.

The trial court noted that its observation of the parties as witnesses and the substance of testimony given at trial led it to conclude that, although both parties are equally capable of providing for the needs of their child, the respondent should have custody because he "has a deeper commitment to the care of the child." Based on our review of the record, and mindful that we may give weight to the trial court's assessment of witness credibility, Iowa R. App. P. 14(f)(7), we are compelled to agree that custody should be awarded to the respondent. We find that the petitioner's conduct both before and during the dissolution, including her practice of leaving the child at night with the respondent without telling the latter where she could be reached, demonstrates a lack of maturity and responsibility that calls into question her capacity and interest to provide for the various needs of her daughter. See Winter, 223 N.W.2d at 166. Moreover, we have reservations as to the stability and wholesomeness of the environment petitioner proposes for the child. See id. For these reasons, we affirm the trial court's award of custody to the respondent and the grant of liberal visitation rights to the petitioner.

AFFIRMED.