FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

67

IN RE THE MARRIAGE OF DENNIS LEROY LANDRUS and MELBA JOYCE LANDRUS

DENNIS LEROY LANDRUS,	)	
Petitioner,	)	Filed May 30, 1980
And Concerning	)	
MELBA JOYCE LANDRUS,	)	0-34 3-62377
Respondent.	)	

Appeal from Linn District Court - William R. Eads, Judge.

Father appeals child custody provision of dissolution decree alleging trial court erred in ruling the best interests of the parties' minor child require custody be awarded to the mother. AFFIRMED.

Lloyd E. Humphreys of Humphreys & Associates, Cedar Rapids, Iowa, for petitioner-appellant.

Frank S. Mitvalski of Silliman, Gray & Stapleton, Cedar Rapids, Iowa, for respondent-appellee.

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

Petitioner, Dennis Leroy Landrus, appeals child custody provisions of decree dissolving his marriage to respondent, Melba Joyce Landrus. We affirm.

The parties' marriage of approximately twenty-nine months was dissolved July 19, 1978. Melba, having been married previously, brought a daughter, Melanie Shaw, to the marriage. Together, Melba and Dennis had a daughter, Virginia Dee Landrus, born November 16, 1976. Dennis appeals the trial court's awarding custody of Virginia to Melba asserting the trial court erred in accepting the recommendation of the child's attorney without proper foundation and in ruling the child's best interests would be served by awarding Melba custody. We review his contentions de novo. Iowa R. App. P. 4. Our governing concern is the child's best interests, Iowa R. App. P. 14(f)(15), and although we are not bound by the findings of the trial court, we give them weight, especially in matters of witness credibility. Iowa R. App. P. 14(f)(7).

Dennis claims he can better serve Virginia's best interests and therefore custody should have been awarded him. At trial, Dennis presented evidence Melba would not get up in the morning, play with the children, change Virginia's diapers, promptly administer medication for Virginia's illnesses, cook for, bathe or properly dress the children. He also elicited testimony on Melba's inadequate housekeeping and supervision of the children.

Melba denied most of these allegations and presented evidence to rebut them. She also made negative assertions on Dennis's level of maturity and responsibility. She argued the couple had insufficient funds for food or laundry expenses because Dennis overslept and was laid-off from work at times. She also alleged Dennis had physically struck her and Melanie.

While the allegations of the parties bear directly on whom can best meet the needs of the children, resolution of issues raised depends on assessment of witness credibility. The trial court was present during witness testimony and we defer to its superior vantage point. The trial court assessed the evidence in the record and determined the bests interests of the child, under the criteria enunciated in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). We find the trial court's determination correct under its findings of fact. Although the trial court's order

paralled the recommendations of Virginia's appointed counsel, it is clear the trial court made its own decision in light of all matters properly before it. See In re Marriage of Joens, 284 N.W.2d 326, 328 (Iowa 1979).

The judgment of the trial court is affirmed.

AFFIRMED.

Johnson and Donielson, JJ., dissent.

Normally, we give deference to trial court's opportunity to observe the witnesses and give weight to its fact findings. In re Marriage of McDowell, 244 N.W.2d 238, 239 (Iowa 1976). In the instant case, however, trial court's fact findings in relation to the parties' allegations are minimal, concluding both parties are fit parents displaying affection and concern for Virginia. No finding was made petitioner's temper resulted in physical abuse of the children or respondent's failure to clean the house affected the children's health. It consequently is necessary to examine each parties' ability to answer Virginia's needs.

Petitioner's complaints are directed against respondent's ability to answer Virginia's emotional needs. Several of petitioner's family members who, although undoubtedly predisposed to extol petitioner's virtures and magnify respondent's failings, had ample opportunity to observe the parties' interaction with the children, testified to respondent's indifferent attitude toward the children. Specific instances of respondent laying Virginia on the floor to feed her cereals or baby food through a bottle rather than holding her and feeding her with a spoon were offered to support these contentions. Examples of respondent's general eagerness to escape her parental duties were catalogued. Respondent generally denied these allegations, but offered no examples of petitioner's neglecting Virginia's emotional needs. Based on our review of the record, we give deference to petitioner's evidence in this regard.

Materially, I cannot say either party will be able to better meet Virginia's needs. It is the obligation of both parties to support their child and the evidence does not reflect Virginia will receive substantially greater economic benefit by residing with one parent or the other.

Nor can I say Virginia will receive measurably better moral training from either parent. Flirtations with the opposite sex were suggested by both parties. I do note, however, petitioner's family has always been religiously active while respondent has been taking the girls to church since the separation.

With regard to the educational needs of Virginia, I believe petitioner has established he can better meet Virginia's needs. Evidence was presented petitioner taught Melanie her colors and how to tie her shoes. Respondent generally denied the veracity of this evidence, but failed to offer any independent evidence supporting her position.

Virginia's social needs also are a factor in our determination. While it is well settled the residence of siblings will not be split, if possible, this presumption is not as strong when dealing with half-blood relatives. Although respondent established Melanie loves Virginia, no evidence was presented as to the existence of a psychological or emotional attachment by Virginia to Melanie. Since our concern is the interests of Virginia, not Melanie, in this appeal, I do not find respondent's evidence helpful. In light of these considerations, I do not believe any violation of the rule against splitting siblings will result by placing Virginia in petitioner's custody.

Looking to secondary considerations, the record shows each party intends to reside with his or her parents. While petitioner comes from a close-knit and fairly stable home, this is the second marriage for respondent ending in dissolution. Two of respondent's brothers have similarly terminated marital relationships. One of respondent's brothers has been convicted of a felony and is incarcerated in the Nebraska penitentiary. Although not presently residing there, another brother and his girlfriend also have previously stayed with respondent's parents. While I do not speculate on their return to the parent's home, these are factors this court may consider in evaluating the stability and wholesomeness of the environment respondent can offer Virginia.

In conclusion, I find petitioner's allegations were directly related to respondent's indifference and inability to meet Virginia's needs, whereas, on the other hand, respondent offered little, if any, evidence petitioner would not be more capable. Her complaints were not directed towards petitioner's ability to care for Virginia, but rather, other problems in the marriage. When asked on cross-examination what her worst criticisms of petitioner were during the marriage, she replied they were losing his temper, not picking up his clothes, and not washing out the bathtub. No attack was made on his love for or desire to care for Virginia. With these considerations in mind, I conclude petitioner should have been awarded custody of Virginia.

Donielson, J., joins this dissent.