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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF SUZANNE KRPAN AND THOMAS KRPAN

Upon the Petition of)
SUZANNE KRPAN,)
Petitioner-Appellant,)
And Concerning)
THOMAS KRPAN,)
Respondent-Appellee.)

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88-1313

Appeal from the Iowa District Court for Marion County (DM7-277), Michael Streit, Judge.

Petitioner appeals certain provisions of the decree of dissolution entered for the parties in district court. **AFFIRMED AS MODIFIED.**

James Vernon Hicks of Johnston, Hicks & Guiter, Knoxville, for petitioner-appellant.

Terry L. Wilson of Mick, Wilson & Mertz, Knoxville, for respondent-appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J. 175

Petitioner-appellant Suzanne Krpan appeals certain provisions of the decree of dissolution entered for the parties in district court. She claims the court erred in: 1) awarding primary care of the parties' son to respondent; and 2) certain provisions of the property settlement. We affirm as modified.

Suzanne Krpan and Thomas Krpan were married on May 9, 1970. They have two children: a son, Stacey Krpan, born December 27, 1972; and a daughter, Shana Krpan, born September 9, 1978. Suzanne is employed by Employers Mutual Company as a clerk. Thomas is employed by 3-M as a coder. He works the night shift from 6:00 p.m. to 6:00 a.m. The parties live in Melcher-Dallas, Iowa. At the time of the separation, Suzanne and Shana moved into a house five and one-half blocks away from the marital home. Thomas is very interested in motorcycles. He built a garage on the marital property in which he fixes motorcycles. Stacey is also interested in this hobby.

The district court granted the parties joint custody of Stacey and Shana. The court made Suzanne the primary custodian of Shana, and Thomas the primary custodian of Stacey. Each party has reasonable and liberal visitation rights with the child not under his or her primary care. Thomas was ordered to pay child support of $200 per month and to maintain medical insurance for the children. Thomas

was awarded the homestead. Suzanne was granted a property settlement of $7,000. No alimony was awarded to either party.

I. Suzanne first claims that the trial court erred in awarding physical custody of the parties' minor child, Stacey, to Thomas. Our review in this matter is de novo. In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974); Iowa R. App. P. 14(f)(15). 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 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).

In its custody determination, the trial court found that a split custody arrangement served the best interests of both children. We disagree. In trying to foster children's best interests, we ordinarily endeavor to keep

children of broken homes together. In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981). The underlying rationale of this general rule is that "split custody deprives the children or the benefit of constant association with each other which, as innocent victims of marital bankruptcy, they should not be subjected to." In re Marriage of Ellerbrock, 377 N.W.2d 257, 260 (Iowa App. 1985). The rule is not ironclad, however, but may be departed from if there exists good and compelling reason. Id.

We do not believe that a good and compelling reason exists in this case to separate Stacey and Shana. Aside from Stacey's expressed preference to live with his father (due in large part to their common interest in motorcycles), the record is devoid of any evidence which supports such a decision. Although children's expressed preferences are entitled to consideration, they are not controlling. In re Marriage of Burham, 283 N.W.2d 269, 276 (Iowa 1979). The record here indicates that Stacey and Shana enjoy a close brother-sister relationship. We further note that Stacey appears to get along quite well with his mother, and does not harbor any ill will toward her. Contra, Marriage of Jones, 309 N.W.2d at 461-62.

We are also concerned with Thomas's rather cavalier attitude towards his drinking problem. At trial, Thomas admitted to drinking a "couple" of cases of beer a week (48

beers). Furthermore, the record indicates that Thomas's drinking played a major role in his abusive behavior towards Suzanne, and that such behavior very often occurred in front of the children.

In view of the record before us, we find it is in the best long-range interest of Stacey that he be placed in the permanent custody of Suzanne with liberal visitation rights in Thomas. We also modify Thomas's child support obligations to $200 per month per child.

II. Suzanne further argues that she should have been awarded the marital homestead. The distribution of the parties' property in a dissolution proceeding should be that which is equitable under the circumstances upon consideration of the criteria codified in Iowa Code section 598.21 (1987). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). The record shows that the parties rented and then purchased the house during the course of their marriage. In view of our award of Stacey's physical custody to Suzanne, we believe that the right to occupy the marital home should be awarded to Suzanne with the minor children, see Iowa Code § 598.21(1)(g) (1987), until the youngest child reaches 18 or graduates from high school, Suzanne marries, or dies. Upon the occurrence of one of these conditions, the house is to be sold and the proceeds divided evenly between the parties.

In light of the foregoing, we see no reason to require Thomas to pay Suzanne a property settlement, and we strike that portion of the trial court's order requiring Thomas to pay $7000 to Suzanne.

AFFIRMED AS MODIFIED.