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CLERK SUPREME COURT
230

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROGER C. STUMME AND DONNA L. STUMME

UPON THE PETITION OF ROGER C. STUMME,	)	
Petitioner-Appellant,	)	Filed May 22, 1984
AND CONCERNING DONNA L. STUMME,	)	4-143 / 83-780
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Bremer County-John F. Stone, Judge.

Petitioner-husband appeals from the decree dissolving the parties' marriage MODIFIED IN PART; REVERSED IN PART; AND REMANDED.

Dale E. Goeke, Waverly, for petitioner-appellant.

David R. Nagle, Waterloo, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, and Hayden, JJ.

Petitioner-husband appeals from the decree dissolving the parties' marriage. We reverse.

I. Scope of Review

As in all cases involving a challenge to a trial court's decree in a dissolution of marriage, our review is de novo. Iowa R. App. P. 4. The responsibility of the court is to review the facts as well as the law and to determine rights anew from credible evidence on properly presented and preserved issue. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). Weight is to be given to the findings of the trial court, especially where credibility of witnesses is involved, but this court is not bound by them. Iowa R. App. P. 14(f)(7). Case precedent is of little value, and the decision must ultimately depend on the particular facts of each case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

II. Motion to Strike

On August 15, 1983, the supreme court, per Justice Schultz, dismissed Donna's cross-appeal as untimely. Subsequent to Donna's brief being filed, Roger moved to strike Donna's brief, asserting that Donna had argued cross-appeal issues and seeks relief to which she is not entitled. The motion to strike has been submitted with this appeal. Pursuant to the dismissal of her cross-appeal, we will not consider cross-appeal issues raised by Donna in her brief. There is material, however, within her brief that is responsive to the issues that Roger raises. Therefore, we deny Roger's motion to strike; we will, however, limit our consideration on appeal to the issues and arguments properly before this court.

III. Physical Care

232

The trial court awarded joint custody to the parties and alternated the physical care of the children between the parties on a weekly basis. Roger contends he should be granted sole physical care. We agree.

Our first and governing consideration in determining custody is the best interests of the children. In re Marriage of Sparks, 323 N.W.2d 264, 266 (Iowa Ct. App. 1982). Other guidelines applicable to this case are as follows: (1) a child's need for a stable and continuing environment enjoys preeminent application in custody cases, In re Marriage of Carrico, 284 N.W.2d 251, 254 (Iowa 1979); (2) in joint custody cases, the status of physical care should be quickly fixed and little disturbed, In re Marriage of Bolin, 336 N.W.2d 441, 447 (Iowa 1983); and (3) it is usually unwise and not for a child's best interests to be placed in one household part of the time and part-time in another, Smith v. Smith, 133 N.W.2d 677, 679 (Iowa 1965).

With these directives in mind, we turn to the evidence at hand.

At the time of trial, Shelley was six and one-half years old and Shawn was four. Shelly was in kindergarten two full days and one half day per week. Shawn was in preschool a couple of mornings per week. Other than various remarks indicating that the children were properly fed, dressed, and cared for, there was very little evidence concerning the children themselves. There was much evidence concerning the parties and their characters.

In this case, the joint physical custody arrangement entailed the complete transfer of the children to Roger's farm home one week and then a complete transfer to Donna's apartment the next week. The court ordered "no majority placement in either home." At trial each party questioned the other's ability to parent. For example, each parent's own style of discipline was at issue. Roger was portrayed as a strict disciplinarian; Donna was viewed as being lax. We do not favor one mode of discipline over another. We are, however, convinced that when

a child is forced to behave a certain way one week and a different way the next, such double authority cannot help but be damaging to a child. See Smith at 679.

There are other examples of party allegations and how those allegations pertain to this situation and to the children's welfare. We see no need to reiterate them here. Let it suffice to say, we disapprove of a constant change of life-style week after week and can only believe that such shuffling precipitates gross instabilities in the lives of the children at issue. Therefore, we find the "no majority placement" award to be improper.

Donna does not ask for sole physical care. She seeks to preserve the joint custody and the divided care award. Under those circumstances, we are limited by Bartels v. Hennessey Brothers, Inc., 164 N.W.2d 87, 92 (Iowa 1967), from granting any greater relief than was accorded her by the trial court. Roger seeks sole physical care. The evidence indicates that he is capable of caring for the children's needs. Therefore, we find a sole physical care award to him to be proper.

Roger lives on the acreage where the children have resided for the past three years. It provides a permanent, wholesome, and stable environment for the children. Roger has a stable work history and is amenable to changing shifts on his job in order to correlate the children's changing school schedules with his work. Roger indicated further that he will make every effort to allow the children to see Donna and her family.

Without delineating the factors to be considered in determining whether sole or joint custody should be awarded, we have reviewed those factors with the evidence and find the joint legal custody award proper. See In re Marriage of Bolin, supra. However, for reasons stated above, we reverse the physical care award and grant Roger sole physical care of Shelley and Shawn.

We also reverse that portion of the trial court's ruling ordering Roger to pay Donna child support. We remand this case to the trial court for a determination of Donna's child support obligation and her visitation rights.

III. Attorney Fees

Roger was ordered to pay Donna's entire attorneys fee amounting to $2,387.75. Such fees are not allowed as a matter of right; any award must depend upon the financial circumstances and earnings of both parties. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Roger asks that he only be required to pay $1387.75, thus reducing the amount by $1000. We do not find an abuse of the trial court's discretion in this award.

Donna also asks for attorney fees on appeal. We order Roger to pay $400 toward her attorney fees on appeal as well as $2387.75 toward Donna's attorney fees in the original action. Each party is to assume one-half of the costs of this appeal.

MODIFIED IN PART; REVERSED IN PART; AND REMANDED.