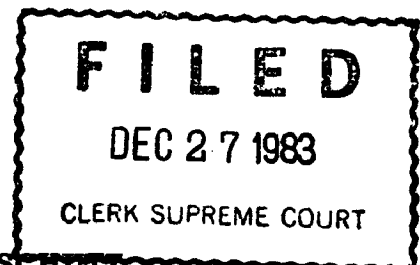


IN THE COURT OF APPEALS OF IOWA



IN RE MARRIAGE OF FAITH ANN SCHUTZ AND JOHN CHRIS SCHUTZ

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Upon the Petition of	)	
FAITH ANN SCHUTZ,	)	Filed December 27, 1983
Petitioner-Appellee,	)	
And Concerning	)	<u>3-364</u>
JOHN CHRIS SCHUTZ,	)	<u>83-651</u>
Respondent-Appellant.	)	

Appeal from Dallas District Court - Thomas W. Mott, Judge.

Respondent appeals from that portion of the trial court's decree awarding custody of the parties' daughter to petitioner. REVERSED.

Barbara G. Barrett and Ronald L. Anderson of Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, Iowa, for respondent-appellant.

John O. Reich of Frush, Reich & Norman, Adel, Iowa, for petitioner-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Respondent appeals from that portion of the trial court's decree awarding custody of the parties' daughter to petitioner. We reverse.

Petitioner, Faith Ann Schutz, and respondent, John Chris Schutz, were married November 22, 1975. At the time of trial Faith was 25 and John was 29 years of age. The parties had two children: Jason, born in 1976; and Sarah, born in 1980.

During the marriage the parties lived in Mason City. In June, 1982, Faith and the children moved to her mother's house in Adel. Two months later Faith agreed to let Jason go back to Mason City to live with John. Faith testified that she believed it to be in Jason's best interest to remain with his father permanently. She maintained, however, that she could more effectively minister to Sarah's needs than could John. At trial John sought custody of both children.

John is employed in Mason City earning \$14,000 per year. Faith is a licensed cosmetologist, but she is unemployed. She testified that her chances of employment would be better if she had transportation to Des Moines. At the time of trial Faith was collecting ADC. She and Sarah share a house in Adel with Faith's mother and sister.

The trial court awarded custody of Jason to John and custody of Sarah to Faith. The court provided that Faith should have both children the first weekend of every month and John should have both children the third weekend each month.

Our review of this equitable proceeding is *de novo*. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I. Child Custody. In child custody cases the overriding concern of the court is to determine what is in the best interests of the child. Iowa R. App. P. 14(f)(15). The factors listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), aid in making that determination. Generally, brothers and sisters

should not be separated unless there are compelling reasons for the separation. Doon Thi Hoang Anh v. Nelson, 245 N.W.2d 511, 517 (Iowa 1976); Wells v. Wells, 168 N.W.2d 54, 60 (Iowa 1969). Reasons which justify a separation include hostility between the children or the exposure of one child to the undesirable habits of another. See In re Marriage of Jones, 309 N.W.2d 457, 461-62 (Iowa 1981); In re Marriage of Wahl, 246 N.W.2d 268-270-71 (Iowa 1976).

In this case there are no reasons which justify the split custody. There was ample evidence that Jason and Sarah love each other and look forward to being together. They are both young and will have the benefits of each other's company for several years if custody is not split. Furthermore, there was expert testimony that the children should remain together. Petitioner argues that the four year age difference between the children justifies the separation. We do not agree. A child psychologist testified that the relationship between children of this age difference would not be the same as the relationship between two children closer in age, but that it is still beneficial to keep these children together.

Although we find that both parties are fit parents, after reviewing the record, we conclude that both children should be in the custody of their father. Faith admitted that John was better able to take care of Jason. We can find no compelling reason to deprive Jason and Sarah of growing up together under one roof.

The trial court's order allowing each party visitation with both children one weekend per month is vacated. Faith should be allowed liberal visitation rights with both children at such reasonable times as do not interfere with their health, education, or welfare. If specification of visitation times is sought, we suggest to the trial court that one weekend per month is insufficient. In re Marriage of McBee, 244 N.W.2d 327, 329 (Iowa 1976).

II. Child Support. That part of the trial court decree ordering John to pay child support for Sarah is vacated. Since Faith's financial position is tenuous, we make no provision for her to pay child support at this time.

III. Attorney Fees. Allowance of attorney fees in a dissolution action is not a matter of right, but depends upon the financial condition of the parties and their respective ability to pay. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). In this case there is not sufficient disparity in the financial positions of the parties to justify an award. Although John is employed, his modest income must be stretched to support two children. We further note that petitioner's attorney, for whom she requests an allowance, did not appear at oral argument to argue this case on her behalf. Each party should pay his or her own costs and legal fees connected with this appeal.

REVERSED.