

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 24 1987

CLERK SUPREME COURT

IN RE MARRIAGE OF EDWARD HAROLD RHODES AND ~~ELLEN SUE RHODES~~

Upon the Petition of)

163

EDWARD HAROLD RHODES, SR.,)

Filed June 24, 1987

Petitioner-Appellee,)

And Concerning)

ELLEN SUE RHODES,)

7-134
86-1110

Respondent-Appellant.)

Appeal from the Iowa District Court for Polk County (CD46-27021),
Luther T. Glanton, Senior Judge.

Respondent wife appeals with permission an oral decree which dissolved
the parties' marriage and provided for them to have joint custody of their
child. **AFFIRMED AND REMANDED.**

Diane L. Dornberg, Des Moines, for appellant.

Bruce Washburn, Des Moines, for appellee.

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

SCHLEGEL, J.

Respondent wife appeals with permission an oral decree which dissolved the parties' marriage and provided for them to have joint custody of their child. She asserts that the trial court should have given her rather than petitioner husband physical care of the child. We affirm and remand.

Ellen and Ed Rhodes were married in 1981. Ed, Jr., or Eddy, was born in 1982. A petition for dissolution of marriage was filed in 1984. On June 21, 1984, temporary physical custody was given to Ellen. On August 8, 1984, a custody investigation was ordered and it was filed with the court on May 13, 1985. Final hearing on the dissolution and trial of the custody issue was held on July 15 and 23, 1986. Following the close of evidence, the court heard arguments in chambers. The court placed physical custody with the father, provided that within three months the father obtain appropriate accommodations for the child. Pending the father's obtaining such accommodations, physical custody of Eddy was to remain with the mother. If the father did not obtain such accommodation within three months, the mother was to have physical custody. Upon the father arranging for the new accommodations, a hearing would be held, limited to review of the father's housing situation. Ellen filed an application to the Supreme Court of Iowa to appeal this ruling. An order allowing this appeal was entered by the supreme court on November 6, 1986. Further proceedings in the trial court were thereby stayed.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court but we are not bound by them. Iowa R. App. P. 14(f)(7). In child custody cases the first and governing consideration of the courts is the best interest of the child. Iowa R. App. P. 14(f)(15).

There are no hard and fast rules governing the issue of custody. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). Precedent is of little

value and our decision must ultimately depend on the particular facts relevant to each issue. Id. The basic tenet which overrides all else in determining which parent is entitled to custody is the best interest of the child. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). The general principles applicable to the issue of custody are set forth at length in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and Iowa Code section 598.41(3) (1985), and need not be repeated here. Among the most important factors to be considered in making a child custody determination are the capacity and interest of each parent to provide for the needs of the child and the stability and wholesomeness of each proposed environment. In re Marriage of Grandinetti, 342 N.W.2d 876, 879 (Iowa App. 1983). The ultimate question is therefore which parent could minister most effectively to the long-range best interests of the child. In re Marriage of Sparks, 323 N.W.2d 264, 266 (Iowa App. 1982).

In the present case, we agree with the trial court's conclusion that Ed would be the parent more capable of ministering effectively to the long-range interests of Eddy. The record reveals Ed has been gainfully employed as a mechanic for four years. He has always supported his family and has paid his child support in full and on time. He consistently exercised his visitation periods with Eddy. He and his family are lifelong residents of their community and plan to continue to reside in this community. It is true that Ed must work and would have to arrange child care during the days for Eddy. The child custody investigator found that both parents loved and had concern for their son and that either parent would be able to adequately raise Eddy. The investigator did initially recommend physical custody be placed with the mother based primarily, it appears, on the concern that a change in the established living arrangements would be destabilizing to Eddy. At trial, this same investigator, after having been apprised of certain changes which had occurred in the mother's

life since the initial recommendation, testified that the recommendation might have been different had she known of these changed circumstances.

Ellen is also a good parent, who loves and has adequately cared for Eddy. However, at the time of trial a live-in relationship between Ellen and Dan Friedel, a relationship which the child custody investigator had heavily relied on for the investigator's assessment of home and financial stability, had ended. The child custody investigator had understood that Dan Friedel was Ellen's live-in fiancé and that Dan and Ellen were to be married. At the time of trial Ellen had separated from Dan and was on ADC, a considerable change from the investigator's initial finding that Ellen had a good paying job as a co-manager of an apartment complex with Dan.

Ellen's difficulty in providing a wholesome environment after the end of her relationship with Dan is apparent in the record. Ellen began a relationship with Gary Davis after her separation from Dan. While living in a one-bedroom apartment with her son, Ellen started living with Davis. A series of incidents of physical abuse of Ellen by Davis then began for which the police were frequently called. Ellen finally had to go to the Family Violence Center. She obtained a restraining order from the courts and was cooperating with the State in prosecuting criminal charges against Davis. The record indicates, however, that Ellen was not able to completely end all contacts with Davis.

Ellen also spent approximately four months in Las Vegas at one point after her separation from Ed. Ellen took Eddy with her, did not inform Ed of her removal of the child, and testified that she thought it none of Ed's business. Ellen indicated that she had no intention of moving back to Las Vegas "currently" since a prior job offer working on the "slots floor" of a casino had been filled.

The record also indicates instances of Ellen's not completely forthright communication with Ed during the marriage concerning her employment and the friends she was seeing. We need not detail the examples of this nonforthright communication, but we do believe that these instances tend to support the trial court's findings which must, of necessity, heavily depend on determinations of credibility. See Iowa R. App. P. 14(f)(7).

Based on these facts, we agree with the trial court that Eddy's long-range interests would best be served by placing physical custody with Ed. Ed has proven himself more stable, responsible, and mature. The untidy quality of Ed's parent's home in which he was living at the time of trial does not seriously diminish his ability to care for Eddy.

The trial court still must make a determination whether the father has fulfilled his responsibility of providing a satisfactory place to live for Eddy and himself. We remand to the trial court for its determination that he has obtained appropriate accommodations for the child.

AFFIRMED AND REMANDED.