IN THE COURT OF APPEALS OF IOWA

No. 1-469 / 91-549

FILED
DEC 31 1991
CLERK SUPREME COURT

RICK D. BLACK,

Appellee,

vs.

TRACY MECHTEL,

Appellant.

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson, Judge.

The mother appeals from the district court judgment awarding primary physical care of her son to the father. The mother claims that the best interests of the child require that primary physical care be placed with her. **AFFIRMED.**

James C. Ellefson of Welp, Harrison, Brennecke & Moore, Marshalltown, for appellant.

Gene L. Beach of Grimes, Buck, Schoell & Beach, Marshalltown, for appellee.

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

DONIELSON, P.J.

Tracy Mechtel and Rick Black, the parties in this child custody action, began dating in 1983. As a result of this relationship, Tracy gave birth to a son, Christopher, on February 29, 1984. However, the parties' relationship had ended prior to Christopher's birth. Tracy had terminated the relationship before learning of her pregnancy.

Rick has been employed at Fisher Controls in Marshalltown for fifteen years. He has apparently been living in his current residence for over ten years. Rick admitted paternity, and he has provided support for his son since the child's birth.

Tracy, on the other hand, lives a nomadic lifestyle. She is a high school drop-out and an alcoholic. She has been convicted of O.W.I. and has hidden from law enforcement authorities for four years in an attempt to avoid apprehension for failure to pay the fine. She has twice found herself unable to support herself and Christopher. At trial, she was in the sixth month of her second pregnancy.

During the first five and one-half years of Christopher's life, he and Tracy lived in ten different places. They lived in Iowa until mid-October 1986, when they moved to Tucson, Arizona. Rick made several trips to Tucson and spent a total of five weeks visiting Christopher. In December 1986, Christopher was returned to

Iowa and remained with his maternal grandmother until April 1987.

In 1988, Tracy again experienced financial difficulty, and Christopher was returned to Iowa to stay with one of the mother's sisters and his grandmother. Tracy returned for a Christmas visit in 1988. When Rick learned of Tracy's plan to return to Arizona with Christopher in the spring of 1989, he filed a petition for temporary custody and obtained a temporary injunction requiring that Christopher be kept in Iowa. After two failed attempts at service upon Tracy, substituted service was made on her mother. There is conflicting evidence concerning whether Tracy knew of the temporary injunction when she violated it by returning to Arizona with Christopher on May 18, 1989.

Rick hired a private investigator to locate Tracy. Once she was found, Tucson police officers removed Christopher, pursuant to an Arizona court order to enforce the Iowa custody order, and Christopher was delivered to Rick. Christopher has remained in Rick's custody since June 26, 1989, and Tracy has exercised regular visitation.

Since Tracy returned to Iowa, she has lived with her sister in Marshalltown, then with her parents in Melbourne, and then in Rick's home. Apparently, Tracy is currently living in Tucson again.

In January 1990, Rick filed an application for permanent custody. The district court entered an order awarding the parents joint custody. The primary physical

care of Christopher was awarded to Rick, subject to Tracy's visitation rights. The court reasoned that Rick has a stable residence and employment while Tracy does not, Rick shows a greater interest in the child's educational development than does Tracy, the child had been with Rick since June 1989, and Rick is more emotionally stable than Tracy. Tracy has appealed.

This child custody action was tried in equity, and our standard of review is, therefore, de novo. Iowa R. App. P. 4. The criteria for determining custody are the same whether the child's parents are dissolving their marriage or are unwed. Heyer v. Petersen, 307 N.W.2d 1, 7 (Iowa 1981).

> When the issue of custody arises from the competing claims of unwed parents, we do not believe the critical issue to be which parent possesses the greater right to the child. Rather, we conclude that in a custody contest of this nature, the controlling consideration must be the best interests of the child.

Id. (citing Iowa Code § 675.31 (1979)(The court has continuing jurisdiction "to determine . . . custody in accordance with the interests of the child.")(emphasis added)).

> This profound decision involves selecting as the custodial parent the person who can minister more effectively to the long-range best interests of the child. The objective ought always to be to place the child in the environment most likely to bring that child to healthy, physical, mental and social maturity.

Id. "Unfortunately, '[d]etermining what custodial arrangement will best serve the long-range interest of a

child frequently becomes a matter of choosing the least detrimental available alternative for safeguarding the child's growth and development.'" Id. at 7, n.6 (citing In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974)).

On our review, we affirm the trial court's judgment. We believe Christopher's interests are best served by his placement with Rick. Rick is the more stable parent, and Christopher appears to be developing well in his care. We do not believe Tracy's lifestyle is conducive, let alone better suited, to providing Christopher with a healthy, stable environment.

The costs of this appeal are taxed to Tracy Mechtel.

For all the reasons stated, the judgment of the district court is affirmed.

AFFIRMED.