

IN THE COURT OF APPEALS OF IOWA

FILED

JUL 27 1988

CLERK SUPREME COURT

IN RE THE MARRIAGE OF RANDALL McCURDY and CANDACE McCURDY

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Upon the Petition of)
RANDALL McCURDY)

Petitioner-Appellee,)

And Concerning)
CANDACE McCURDY,)

8-307
87-1576

Respondent-Appellant.)

Appeal from the Iowa District Court for Guthrie County
(No. CD 766) - Arthur E. Gamble, Judge.

Petitioner-wife appeals from three provisions of a
dissolution decree. **AFFIRMED.**

John O. Reich, Adel and Constance C. Welu, of Welu and
Welu, Redfield, for respondent-appellant.

Mark S. Pennington, of Kutmus and Pennington, P.C., Des
Moines, and Lylea Dodson Critelli, of Nick Critelli
Associates, P.C., Des Moines, for petitioner-appellee.

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

OXBERGER, C.J.

Petitioner-wife appeals from three provisions of a dissolution decree. She contends that the trial court erred in (1) awarding physical custody of the parties' two minor children to the husband, (2) awarding the husband possession of the family's home, and (3) requiring that the wife pay child support. We affirm.

Our scope of review is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 13(f)(7).

Randall and Candace McCurdy were married in 1979. There were two children, Melissa and Matthew, born of this marriage. At the time of dissolution Melissa was six and Matthew was almost two. When the parties separated in March 1987 the district court granted temporary physical custody of the two minor children to Candace as well as possession of the marital home and required Randall to pay child care costs. When the dissolution decree was filed in November 1987 these positions were switched. The decree awarded Randall physical custody of the children and the marital home and required Candace to pay \$100 per month in child support.

In awarding custody, the court considers the factors 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 court's determination of what will be in the long-term best interest of the children. Id.

Candace contends that the trial court erred by disturbing the temporary order, which provided her with physical custody of the children, without a compelling reason to do so. This court declined to recognize such a burden from temporary to permanent custody in In re Marriage of Short, 373 N.W.2d 158, 160 (Iowa App. 1985).

Candace further contends that the trial court erred in finding that Randall was the primary caretaker of the children. A review of the facts reveals that due to the nature of both Randall and Candace's employment, Randall was the primary caretaker of the children. During the first four years of Melissa's life, Randall was a construction worker and was laid off in the winter months. Thereafter, Candace generally worked evenings requiring Randall to be the primary caretaker of both children in the evenings and mornings.

In considering which custody arrangement is in the best interest of the children, the court looks to the characteristics of each parent including age, character, stability, mental and physical health. Winter, 223 N.W.2d at 166-67.

Candace maintains that Randall's temper is the primary reason why she should be awarded sole physical custody of the minor children. The court notes that all incidents of Randall's temper cited by Candace are events which

occurred during and in connection with the dissolution proceedings. While this fact does not excuse such behavior, it makes it more understandable. At trial a clinical psychologist testified to Randall's demeanor and disposition with children as "calm, quiet and stable." He further testified that Randall would be an excellent custodial parent.

While Candace asserts that she is better able to meet the children's physical and emotional needs and is better able to provide a "stable and wholesome" environment, the record is absent specific examples to substantiate such claims. The testimony of Candace reveals a situation where she returned home at 4:00 a.m. when the babysitter understood that she would be returning at 1:00 a.m. Her testimony also revealed a history of smoking marijuana. Further, she openly allowed her boyfriend to sleep with her when the children were at home. A parent's moral misconduct is a serious consideration in making a custody determination but such misconduct is only one of several factors to be considered. In re Marriage of Zabecki, 389 N.W.2d 396, 398 (Iowa 1986).

In deciding custody issues, the court seeks neither to punish one parent nor to reward the other. In re Marriage of Sparks, 323 N.W.2d 264, 266 (Iowa App. 1982). However, the record reveals and it is the opinion of this court that Randall, who was the primary caretaker before the divorce, is the more reliable and mature of the two as a parent.

As we find physical custody of the children should remain with Randall, we need not consider the issues raised concerning changes in economic provisions of the family home and child support.

We affirm the award of the trial court which awards Randall physical custody of the children and possession of the family home, and requires Candace to pay child support of \$100 per month. Randall's net income is \$750 every two weeks; Candy nets \$1,000 per month.

Costs are taxed to the appellant.

AFFIRMED.