

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 25 1987

CLERK SUPREME COURT

IN RE THE MARRIAGE OF THOMAS W. BOOTH AND PAULA S. BOOTH

Upon the Petition of	)	17
THOMAS W. BOOTH,	)	
Petitioner-Appellee,	)	Filed February 25, 1987
And Concerning	)	
PAULA S. BOOTH,	)	6-456
Respondent-Appellant.	)	86-772

Appeal from the Iowa District Court for Greene County (No. DM 699)
- Louis F. Beisser, Judge.

Respondent wife appeals from the decree dissolving the parties' marriage, asserting that the trial court should have given her, not petitioner husband, physical care of the parties' three children in the joint custody arrangement.
AFFIRMED.

William C. Ostlund, Jefferson, for appellant.

Rita Harmening Pedersen of Mumma Law Firm, Jefferson, for appellee.

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

PER CURIAM

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The parties to this appeal, Paula and Thomas Booth, were granted a dissolution of their marriage by the District Court for Greene County on May 5, 1986. The district court, as part of the dissolution decree, awarded the parties joint legal custody of their children, Jennifer, Brandy, and Samantha, with physical custody being awarded to Thomas. On the date the dissolution decree was entered, these children were nine, seven, and three years old, respectively. Paula brings this appeal, challenging the district court's award of physical custody to Thomas. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's findings of fact, we give them weight. Iowa R. App. P. 14(f)(7).

We begin our analysis of the custody issue with the recitation of what is certainly one of the most firmly-established propositions in the jurisprudence of our state: In child custody cases, the best interests of the child is the first and governing consideration. Iowa R. App. P. 14(f)(15); In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). The general principles applicable to the custody issue are summarized in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and In re Marriage of Bowen, 219 N.W.2d 638, 687-88 (1974), and need not be set out at length here. In addition to the cases, we find guidance in the statutes. Iowa Code Chapter 598 (1985).

Paula contends first and foremost that her experience in raising the children, combined with Thomas's alleged lack of parenting skills and interest, mandate that she be awarded custody. The capacity and interest of each parent to provide for the holistic needs of the children are, of course, criteria relevant to the custody determination. Winter, 223 N.W.2d at 166. In support of this contention, she claims to have been responsible for essentially all of the child-rearing duties prior to the separation of the parties. In addition, she points to her involvement

with the Home Based Head Start Program as an indicator of her efforts to improve her parenting skills. Although we agree that Paula was primarily responsible for many of these duties and commend her initiative in becoming involved with the Head Start Program, we think the record also demonstrates that Thomas possesses a number of parenting skills and interests for which Paula is unwilling to credit him. The record is clear that, at least since he assumed the primary physical care for the children pursuant to a temporary custody order, he has proven himself to be capable of providing for the children and willing to do so. Testimony from a variety of sources familiar with and interested in the children's situation attests that, since Thomas became their primary physical custodian, the children are generally healthy, happy, and progressing satisfactorily in school. Thomas has met the small crises incident to parental status, such as childhood illnesses, with appropriate concern and action.

We are fully cognizant that Thomas has occasionally engaged in inappropriate conduct, such as an incident where he was arrested for operating a motor vehicle while under the influence of alcohol while the children were with him. We share Paula's concern that this incident, or incidents like it, not be repeated. In addition, we assume Thomas will stabilize his employment record. We think, however, that an application of all the relevant factors outlined in Winter, its progeny, and the statutes leads us to agree with the district court's custody determination.

As the present record discloses no reason to disrupt the custodial arrangement established by the district court, we affirm its determination.

AFFIRMED.

Snell and Hayden, JJ., concur; Oxberger, C.J., dissents.

I respectfully dissent. Unfortunately, as is often the case in resolving questions of child custody, the record before us largely consists of allegations that the parental attributes of both Thomas and Paula are flawed with shortcomings. In these circumstances, it is particularly difficult to determine which parent is more capable of effectively administering to the long-range best interests of the children. See In re Marriage of Welbes, 327 N.W.2d 756, 757 (Iowa 1982). Nevertheless, after reviewing the record de novo, I am convinced that the children's best interests lie with Paula.

In reaching this conclusion, I think that the following facts are particularly significant. First, the record discloses that throughout the marriage, Paula assumed responsibility for the day-to-day care of the children. While I agree with the majority in acknowledging that the children have been happy and prosperous while Thomas has had temporary custody, I think that under the record as a whole, Paula's contributions, skill, and experience are entitled to a great deal of weight in evaluating her parental capabilities. See In re Marriage of McFarland, 239 N.W.2d 175, 178 (Iowa 1976).

In addition, I am particularly troubled by the manner in which Thomas secured temporary custody. The record reveals that when the parties initially separated, Paula retained custody of the children. Several weeks later, Thomas picked the children up for visitation and refused to return them or allow Paula to see them. Paula subsequently signed a temporary custody agreement naming Thomas as physical custodian. Paula testified that she signed the agreement only because she felt that it was the only way to see her children; consistent with this testimony, Paula immediately requested a temporary custody hearing. At the hearing, the court declined from terminating Thomas' role as temporary custodian because the judge "[could] not see switching the children at this time . . . they should

be moved as few times as possible." Similarly, in naming Thomas permanent physical custodian, the district court noted that the children had adjusted well in Thomas' care and that a transfer in custody would require them to attend a different school. While the inherent disruption caused by a transfer of custody is certainly a relevant consideration, I am hesitant to conclude that this factor stands on equal footing with Paula's continual contributions and experience.

Finally, the record discloses that although Paula is planning to marry a *man who has a questionable reputation*, the children like him and get along well with him. In addition, Paula and her boyfriend are planning to purchase a home and Paula is planning to resume her prior employment. Thomas, on the other hand, has been employed only sporadically and was unemployed at the time of the trial. In these circumstances, I am persuaded that Paula is more capable of *providing the children a stable and suitable environment*. Accordingly, I would reverse the district court and grant physical custody of the children to her.