

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 31 1987

CLERK SUPREME COURT

IN RE THE MARRIAGE OF PAULA G. YOUNG AND WILLIAM T. YOUNG

Upon the Petition of

)

448

PAULA G. YOUNG,

)

Filed March 31, 1987

Petitioner-Appellee,

)

And Concerning

)

7-48
86-1196

WILLIAM T. YOUNG,

)

Respondent-Appellant.

)

Appeal from the Iowa District Court for Johnson County (DM 6390) - Paul J. Kilburg, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage. **AFFIRMED.**

Margaret T. Lainson of Meardon, Sueppel, Downer & Hayes, Iowa City, Iowa, for respondent-appellant.

Patricia C. Kamath, Iowa City, Iowa, for petitioner-appellee.

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

HAYDEN, J.

Petitioner, Paula D. Young, and respondent, William T. Young, were married in 1981. They have one child, Megan, born March 16, 1983. Respondent is a food service worker; respondent is a grocery store manager. The main issue at trial was the custody of Megan. In its dissolution decree, the trial court set up a joint custody arrangement with petitioner having physical care of Megan. It found, among other things: (1) petitioner exclusively had taken care of Megan from Megan's birth to the parties' separation; (2) an extremely close relationship existed between petitioner and Megan; (3) the custody study prepared by a social worker recommended placement with petitioner; and (4) respondent used physical discipline with Megan. The trial court allowed respondent visitation of every other weekend, every Father's Day, alternate other holidays, and three weeks in the summer (the latter to be extended as Megan grows older). The trial court directed respondent to pay a total of \$1,050 toward petitioner's attorney fees. Respondent has appealed from the dissolution decree.

Respondent contends: (1) the trial court should have awarded him, rather than petitioner, physical care of the parties' child; and (2) his visitation is inadequate. Petitioner requests attorney fees on appeal.

Since dissolution actions are equitable proceedings, our review 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 when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). As with all dissolution cases, precedent is of little value, and therefore our decision must ultimately depend on the particular facts relevant to each issue. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984).

In resolving issues concerning child custody, the primary and governing consideration is the best interest of the child. Iowa R. App. P. 14(f)(15); In

re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa Ct. App. 1985). The factors considered in awarding custody are delineated in section 598.41(3) of the Iowa Code and in In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974). The pivotal issue in ascertaining the child's best interest involves a determination of which parent is capable of administering more effectively to the long-range best interests of the child. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982). Iowa Code section 598.41 (1985) provides in pertinent part as follows:

Custody of children.

1. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure a minor child frequent and continuing contact with both parents. . . .

This statutory language encourages courts to consider and grant liberal visitation rights when permitted in the circumstances. See In re Marriage of Weidner, 338 N.W.2d 351, 356-59 (Iowa 1983). We fully recognize the trial court's superior position in determining when, and the conditions under which, visitation is proper. Lamansky v. Lamansky, 207 N.W.2d 768, 771 (Iowa 1973).

After a careful review of the record and consideration of the legal principles involved, we conclude: petitioner was the primary caretaker of Megan; evidence existed that respondent physically abused Megan; evidence existed of respondent's drug use, the home study by the Department of Human Services favored petitioner's physical custody; and evidence was presented of respondent's manipulation of petitioner throughout the marriage. From the record presented, we conclude the trial court was correct in placing physical custody in petitioner. Furthermore, we consider the trial court's grant of visitation reasonable and therefore affirm.

Trial courts have considerable discretion in granting attorneys' fees in dissolution cases. In re Marriage of Lochmiller, 229 N.W.2d 228, 229 (Iowa 1975). The allowance of attorney's fees incurred on appeal is generally based

upon the parties' respective financial resources. In re Marriage of Pittman, 346 N.W.2d 33, 37 (Iowa 1984). We also consider whether the party making the request for fees was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981).

Petitioner requests attorney fees on appeal. Since she was required to defend the trial court on appeal and respondent has adequate financial means, we determine petitioner shall receive \$750 from respondent to apply upon her attorney fees.

AFFIRMED.