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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RICHARD C. HOOTMAN AND DONNA R. HOOTMAN

Upon the Petition of)

RICHARD C. HOOTMAN,) Filed February 24, 1981

Petitioner-Appellant,)

And Concerning)

DONNA R. HOOTMAN,) 0-424
2-65247

Respondent-Appellee.)

Appeal from Linn District Court - August F. Honsell, Jr., Judge.

Petitioner-husband appeals from dissolution decree, contending that he should have been awarded custody of the couple's minor son. AFFIRMED.

Dennis J. McMenimen and Gregory M. Lederer of Simmons, Perrine, Albright & Elwood, Cedar Rapids, for petitioner-appellant.

R. M. Fassler, Cedar Rapids, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner Richard Hootman appeals from the provision of the parties' dissolution decree that awarded custody of the couple's minor son to the respondent Donna Hootman. We affirm the grant of custody to the mother.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner and respondent had been married for seven years when their marriage was dissolved on June 10, 1980. Both parties requested custody of the couple's only child, who was at the time approximately eighteen months old. Custody was awarded to the respondent and the petitioner was ordered to pay $30 per week child support. Petitioner then appealed the trial court's custody determination and applied for a stay of the child custody award, which application was denied by the supreme court.

Petitioner and respondent were married when he was age eighteen and she age nineteen. Petitioner now works for an insurance company and his net income is $140 per week. Respondent nets about $400 per month from an evening janitorial job and from babysitting. The couple's separation came about in August of 1979, when the petitioner took the child and went to live at his parents' house, where he still apparently resides. Respondent has remained in the apartment the couple shared before the separation, although it appears she now has plans to rent a house.

II.

Our first and governing consideration in determining custody is the best interests of the child involved. Iowa R. App. P. 14(f)(15). With this in mind, we note further that the status of children should be quickly fixed and, thereafter, little disturbed. In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974). In deciding the custody issue, we seek neither to punish one parent nor reward the other. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). There is no inference favoring one parent as opposed to the other in deciding which is the more fit custodian, except that arising from the particular facts of the case. Bowen, 219 N.W.2d at 688. Factors relevant to the custody

determination are listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), with the ultimate question being, based on the entire record, which of the parents can minister more effectively to the long-range best interests of the children. Id.; Iowa R. App. P. 14(f)(15). We conclude in the instant case that that parent is the respondent mother.

This case is unfortunately typical of most child custody cases we are called on to review, in that the record is replete with accusations and counteraccusations, all of which are steadfastly denied by the respective parties. We think it particularly important in a case such as this to emphasize that although on de novo review we are not bound by the findings of the trial court, we may give weight to those findings, especially where the credibility of witnesses is involved. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7).

The trial court heard testimony concerning petitioner's previous drinking problem, his violent temper and history of spouse abuse, and the attempts on the part of the petitioner and members of his family to convince respondent that she was mentally unstable and in need of psychiatric care. There was also testimony to the effect that the respondent had had two affairs during the marriage (petitioner admitted that he had also been unfaithful, but only after learning of respondent's infidelities) and that in 1979 she had admitted herself for a brief period to the mental ward of a local hospital. Petitioner and his mother testified that they believed the respondent to have a problem with stealing; this testimony was refuted by the respondent and a friend who had known her since grade school. With regard to the parenting abilities of the parties, the testimony was again conflicting. Respondent was the parent who had been primarily responsible for the child's daily care; depending upon whose testimony is believed, she is either an excellent parent or an unsatisfactory one. The same is true of the petitioner.

The only thing that can be determined with any certainty on this record is that neither parent is a paragon of virtue. Confronted as we are with a record full of conflicting testimony, we find it significant that the trial court judge, having had the opportunity to hear the witnesses and observe their demeanor, concluded that the best interests of this child required an award of custody to the respondent mother. After a very careful examination of this record, we reach the same conclusion.

Furthermore, we find no merit in petitioner's argument that the respondent has caused excess portions of the trial transcript to be included in the appendix and should

be assessed some of the cost of the appendix. Finally, respondent requests attorney fees on this appeal. Attorney fees are not recoverable as a matter of right. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). In evaluating a request for attorney fees incurred on appeal, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Erickson, 228 N.W.2d 57, 59 (Iowa 1975); In re Marriage of Stom, 226 N.W.2d 797, 800 (Iowa 1975). Based on these considerations, we award the respondent $400 in attorney fees on this appeal.

AFFIRMED.