

APR 29 1980

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JERALD J. SHIELDS AND EVELYN L. SHIELDS.

Upon the Petition of	)	
JERALD J. SHIELDS,	)	Filed April 29, 1980
Petitioner-Appellee,	)	
And Concerning	)	
EVELYN L. SHIELDS,	)	0-36
Respondent-Appellant.	)	3-62796

Appeal from Bremer District Court - J. W. Frye, Judge.

Respondent-wife appeals child custody provision of dissolution decree. - Affirmed.

Gerald B. Carney, Waverly, for respondent-appellant.

Gary J. Boveia, Waverly, for petitioner-appellee.

Paul W. Riffel, Waverly, for minor child.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-wife Evelyn Shields appeals the child custody provision of the dissolution decree awarding custody to petitioner-father Jerald Shields. Evelyn asserts that the best interests of the child require that she be awarded custody. We affirm the award of custody to Jerald.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing a child custody determination, we apply the criteria set out in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). Our primary concern is the best interest of the child. Iowa R. App. P. 14(f)(15).

Jerald and Evelyn were married December 22, 1973, the second marriage for each. Jerald had custody of six children of his prior marriage, and subsequent to her marriage to Jerald, Evelyn obtained custody of her child of her prior marriage. On August 22, 1974, Kelly, the only child of Jerald and Evelyn's marriage, was born. Kelly is the only child whose custody is at issue.

Our review of the record shows that neither Jerald nor Evelyn has been an ideal parent throughout the marriage. Jerald has exerted excess discipline on one of his children on at least one occasion. As a result, that child was removed from the home and placed in foster care by the Department of Social Services. Evelyn has also displayed excess discipline in her handling of the children. On one occasion, a child abuse report on her punishment of one of the children resulted in a Department of Social Services investigation. Evelyn's problems in properly disciplining the children apparently grew out of her frustration at attempting to adapt to a household with eight children. There was also evidence that Evelyn's behavior in front of the children was at times not suitable for a wholesome moral upbringing. The trial court found that Evelyn often placed her interests above those of the children and, consequently, she did not always as fully provide for the basic needs of the children as she was capable of doing.

On the other hand, there was testimony on Jerald's behalf that he did most of the cooking for the family, that he canned an abundance of vegetables from their garden, and that he was making a serious effort to provide for the children's basic needs and to see that they received a proper, wholesome upbringing. On Evelyn's behalf, there was

testimony that her behavior had stabilized after moving out on her own, that she could adequately provide both for her daughter of her prior marriage and for Kelly, and that any of her prior misbehavior had not been performed on or in front of Kelly. Testimony on both sides supports the conclusion that either parent could adequately provide for Kelly's needs. The attorney for Kelly recommended that Kelly's custody be awarded to Jerald with liberal visitation rights for Evelyn.

The trial court, after applying the Winter criteria, concluded that while neither party was a perfect parent, Jerald could minister more effectively to Kelly's long-range best interests. While this is a close question, as it so often is, our de novo review of the record combined with the deference we accord the trial court's findings of fact with regard to the credibility of witnesses, and our application of the Winter criteria leads us to conclude that the best interests of Kelly will be served by placing her custody with her father, Jerald. We affirm the trial court's award of the custody of Kelly to Jerald. Costs are taxed to Evelyn.

AFFIRMED.