

FILED

MAY 25 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GEORGE MILTON SMITH AND LEONA JEAN SMITH

Upon the Petition of)

405

GEORGE MILTON SMITH,)

Petitioner-Appellee,)

Filed May 25, 1982

And Concerning)

LEONA JEAN SMITH,)

2-170

3-67165

Respondent-Appellant.)

Appeal from Linn District Court - William R. Eads, Judge.

Respondent mother appeals from the child custody provisions of the parties' dissolution of marriage decree, asserting that the best interests of the parties' thirteen year old son require awarding custody to her. **AFFIRMED.**

James W. Affeldt of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for respondent-appellant.

R. Fred Dumbaugh of Dumbaugh, Booth & Chapman, Cedar Rapids, for petitioner-appellee.

Heard en banc.

DONIELSON, J.

Respondent mother appeals from the child custody provisions of the parties' dissolution of marriage decree asserting that the best interests of the parties' thirteen year old son require awarding custody to her. We affirm.

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). While we give weight to the findings of the trial court, especially where credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend upon the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

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).

Our de novo review of the record indicates that both parents would be fit

and proper parents for Grant. However, Grant has expressed his preference to remain with his father and there is evidence that Grant's relationship with his mother is somewhat unsatisfactory. While we do not consider Grant's preference controlling, In re Marriage of Bare, 203 N.W.2d at 554, we have weighed this and other evidence and conclude that the trial court was correct to award custody to petitioner. We note that the liberal visitation schedule ordered by the trial court will allow respondent an opportunity to improve and strengthen her relationship with Grant. We affirm the trial court.

AFFIRMED.