FILED
AUG 2 3 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-144 / 88-1537

IN THE MATTER OF MICHAEL L. LIPHARDT,
A Minor Child;

385

Upon the Petition of

MELVIN LEE LIPHARDT,

Petitioner-Appellant,

And Concerning

JUDITH M. KICKHOEFER,

Respondent-Appellee.

Appeal from the Iowa District Court for Clinton County, L. D. Carstensen, Judge.

The parties in this action were never married but are the parents of a child. In this equitable proceeding the district court placed the child in the mother's custody. The father has appealed, asking that the child be transferred to his custody. **AFFIRMED.**

Robert J. McGee of McGee & Schoenauer, Clinton, for petitioner-appellant.

G. Wylie Pillers III of Pillers, Pillers & Pillers, Clinton, for respondent-appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

DONIELSON, P.J.

The parties, Melvin Liphardt and Judith Kickhoefer, were never married to each other but lived together from 1981 to 1986. They are the parents of one child, Michael, born in August 1982.

Following the parties' separation, Melvin filed the present equitable action seeking custody of the child. The district court placed the child in Judith's custody, granting Melvin liberal visitation.

Melvin has appealed from the district court's ruling. He contends that he is the preferable custodian and that the child should be placed in his custody.

Our review in this matter is de novo. In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974); Iowa R. App. P. 14(f)(15). In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3) and in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983) and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child is which parent will do better in raising the child;

gender is irrelevant and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

Because the trial court was present to hear and observe the witnesses, we give weight to its findings, Iowa R. App. P. 14(f)(7), but we are not bound by them.

A review of the record reveals that the parties began living together in 1981 and their son, Michael, was born in August of 1982. In December of 1986, without notice to petitioner, respondent took the child with her to Wisconsin. She returned in February of 1987 and left the child with petitioner. In June of 1987, respondent returned to Clinton, Iowa, and took Michael back to Wisconsin. Respondent left petitioner with the impression that she would be taking the child for a two-week visit and that he would be returned to petitioner.

Thereafter, petitioner was unable to locate respondent and his son. He retained a private investigator and was able to ascertain her general whereabouts. In November of 1987, petitioner filed an action pursuant to Iowa Code Chapter 598A seeking custody of the parties' minor child. Hearing on this matter was held on May 17, 1988.

Testimony and evidence presented at trial revealed several questionable aspects with respect to each party's ability to provide for their son, Michael. Respondent was

unemployed at the time of trial, and her live-in boyfriend appeared to have only sporadic and unsteady employment. Respondent and her boyfriend were the parents of a newborn child, and it was revealed that their major source of financial support was respondent's receipt of $517 in AFDC each month. Petitioner is self-employed and earns approximately $14,000 a year. However, petitioner has been deluged with a large number of lawsuits from unpaid business creditors and he has been subjected to tax liens in the past. Furthermore, petitioner has not made any of the $350 a month support payments that he was ordered to provide for his two children from his marriage to Barbara Liphardt. Those child support payments were ordered in 1981 yet petitioner admits that he has not made one payment. Petitioner prefers to provide the types and amounts of support that he prefers without the structure of court-ordered cash payments. Petitioner's ex-wife appears to have accepted and accommodated his wishes in this regard.

Testimony at trial also provided insight as to the quality of the parties' relationships with their children from past relationships. While petitioner has a close and caring relationship with his children, Rhonda and Brian, respondent appears to have very little contact with her children, Joshua and Cary Wheeler. While this fact may simply be the result of the placement of physical custody

with her ex-husband and respondent's move to Wisconsin, it is a factor to be considered by this court.

Other issues raised at trial concerned the disciplinary practices of petitioner, the relationship Michael has with his stepsisters and stepbrothers who reside in Clinton, and the quality of housing that each parent could provide. Testimony at trial reveals that both parties care about Michael and that they are considered good parents by their ex-spouses.

It is evident from a review of the record that the trial court was frustrated by aspects of the life-styles of both of the parents. The trial court had the opportunity, however, to assess the credibility of the parties and their witnesses. Such assessment as a tool in reaching a sound decision is entitled to our close attention because we are denied the impression created by the witnesses during the presentation of evidence. In re Marriage of Zabecki, 389 N.W.2d 396, 400 (Iowa 1986). Our first and governing consideration is a determination of what will be in the long-term interests of the child. Although we are not bound by the trial court's findings, we find no reason to disagree with the decree of the trial court.

AFFIRMED.