

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 23 1984

CLERK SUPREME COURT

IN RE THE MARRIAGE OF JUDY KIM McMILLIN AND STEVEN FRANCIS McMILLIN

316

Upon The Petition Of)
JUDY KIM McMILLIN,

Petitioner/Appellee/Cross-Appellant)

Filed October 23, 1984

And Concerning)
STEVEN FRANCIS McMILLIN,)

4-328
83-1558

Respondent/Appellant/Cross-Appellee.)

Appeal from the Iowa District Court for Taylor County—Arthur E. Gamble,
Judge.

Respondent Steven McMillin appeals from his decree of dissolution awarding
custody of the minor child to petitioner. Modified to provide for joint custody
with physical care to Judy. AFFIRMED AS MODIFIED.

Arnold O. Kenyon II, of Kenyon & Kenyon, Creston, for
respondent/appellant/ cross-appellee.

Marion E. James, of Camp, Harsh, Boysen, James & Mackaman, for
petitioner/ appellee/cross-appellant.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

Respondent, Steven McMillin, appeals from a decree of dissolution awarding custody of the two minor children of the marriage, Brandi, born December 25, 1975, and Jason, born August 20, 1980, to Petitioner Judy.

The parties married in 1975 because of the impending birth of Brandi. The marriage was troubled from the beginning. Each party blames the other for the problems. Judy left the family home three times. The third time she took the children and went to New Mexico where she has secured employment cleaning houses independently and for a cleaning service. The parties are in dispute as to whether Steven knew Judy was going to New Mexico. Steven went to New Mexico and the children returned to Iowa with him. Steven claims Judy was to follow; Judy claims Steven was to return the children in three weeks. The children stayed with Steven in Iowa for several months prior to the time of trial, despite two trips by Judy to Iowa to take the children back to New Mexico. One of Judy's attempts to retrieve the children resulted in an ugly confrontation in front of the children in which neither party acted respectfully.

The trial court found that both parties were good parents and awarded custody to Judy but declined to award joint custody because Judy would be living in New Mexico and Steven in Iowa.

We do not believe that distance between places of residence alone is a sufficient reason to not award joint custody and we modify the award to provide for joint custody.

We must next determine what parent should have physical care. Judy accepted the early responsibilities for the care of the children and handled these responsibilities admirably. Steven has done an excellent job with the children since their return from New Mexico. We see no reason to overturn the custody decision made by the trial court and find that physical care of the children should be with Judy. We affirm as modified. The costs on appeal are charged one-half to each party.

AFFIRMED AS MODIFIED.