FILED
NOV 29 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KATHLEEN ANN STANGL
AND DARYL KENNETH STANGL

Upon the Petition of)
KATHLEEN ANN STANGL,)
Petitioner-Appellee,)
And Concerning)
DARYL KENNETH STANGL,)
Respondent-Appellant.)

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8-444
88-249

Appeal from the Iowa District Court for Monroe County (No. DM2-290-1286), James D. Jenkins, Judge.

Respondent appeals from certain provisions of the decree of dissolution entered in the district court for these parties. **AFFIRMED AS MODIFIED.**

Robert H. Laden of Hyland, Laden & Pearson, P.C., Des Moines, for respondent-appellant.

Garold F. Heslinga of Heslinga, Heslinga, Dixon & Grotewold, Oskaloosa, for petitioner-appellee.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

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Father appeals the district court's dissolution decree awarding primary physical care of the couple's two children to the mother. He asserts 1) he is better able to serve the long-range interests of the children; 2) visitation rights should be awarded in conformity to the parties' pretrial stipulation; and 3) the child support award is excessive. We affirm as modified.

Our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, especially where the credibility of the witnesses is concerned, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Kathleen and Daryl Stangl were married on December 27, 1975. Two children were born subsequently: Sarah, born on November 27, 1979, and Andrew, born on January 13, 1982. Daryl is a special education teacher. Kathleen is an ordained minister in the United Presbyterian Church.

Daryl contends he should be awarded primary physical care of Sarah and Andrew. In essence, he asserts he is the better parent. Iowa Code section 598.41(3) lists those factors which must be considered in determining issues of custody. After reviewing the entire record, we find the district court correctly applied such considerations in arriving at its decision.

He also asserts the trial court erred in placing too much emphasis upon his testimonial demeanor. It is the

trial court's duty to assess the credibility of witnesses. We see no compelling reason to disturb the court's ruling in this regard.

The father also asserts the district court should have adopted the parties' pretrial stipulation regarding visitation rights. The district court awarded Daryl four weeks summer visitation until Andrew reaches the age of nine. The parties stipulated to ten weeks of summer visitation for the noncustodial parent. The parties submitted such stipulation subject to the approval of the court. The trial court found that a ten-week visitation is too extensive for children the ages of Sarah and Andrew; that it would be in the children's best interests to reduce summer visitation. Appellant cannot now complain if the stipulation was submitted pending court approval. The court prescribed such visitation schedule only as a minimum. Additional weeks may be added if the parties so agree and it is in the best interests of the children to do so. We, therefore, affirm the district court's decision regarding visitation and additionally overrule and delete the last three sentences in paragraph 3 under subsection C, "Visitation."

Finally, the trial court awarded Kathleen $320 child support per month for Sarah and Andrew. Daryl argues this is excessive. Kathleen's gross income is $14,825 annually; Daryl receives $21,670. We find the trial court correctly

applied those factors as set forth in Iowa Code section 398.21(4). Such award is not excessive, nor unduly burdensome.

Kathleen requests appellate attorney fees. An award of such fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). Both Kathleen and Daryl are presently employed. Daryl grosses approximately $6,000 more than Kathleen annually. We, therefore, order Daryl to pay $500 towards Kathleen's appellate attorney fees.

Costs are taxed to the appellant.

AFFIRMED AS MODIFIED.