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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-332 / 92-1992

IN RE THE MARRIAGE OF MELISSA SUE McLAUGHLIN AND ROBERT TIMOTHY McLAUGHLIN

Upon the Petition of

MELISSA SUE McLAUGHLIN,

Appellee,

And Concerning

ROBERT TIMOTHY McLAUGHLIN,

Appellant.

Appeal from the Iowa District Court for Franklin County, Stephen P. Carroll, Judge.

The respondent appeals the custody provision of the decree dissolving the parties' marriage. **AFFIRMED.**

Richard N. Tompkins, Jr., Mason City, for appellant.

Mark A. Young of Pappajohn, Shriver, Eide & Nicholas, P.C., Mason City, for appellee.

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

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DONIELSON, P.J.

Melissa and Robert McLaughlin were married on March 30, 1985. They had two children, Toni, age eight at the time of trial, and Tyler, age five. Melissa and Robert separated in 1989. Melissa lived with Robert's brother for several years following the separation. The children resided with Melissa. The court ordered Robert to pay child support, but he has not been current with his support because of self-imposed unemployment.

On May 22, 1992, Melissa filed the present petition for dissolution of marriage. The district court awarded joint legal custody, with physical custody given to Melissa and specified rights of visitation for Robert. He appeals the physical custody provision of the decree.

Robert argues that it is in the best interest of the minor children that he be awarded custody. Robert argues he is the better parent. Robert claims Melissa sets a bad moral example for the children by sleeping with his brother and then with one of her friends. Robert maintains Melissa does not provide the children with nice clothes. Robert points out that during the trial, his brother, with whom Melissa was sleeping, testified that he could not say Melissa would be the better parent. Robert alleges Melissa has denied him visitation during the separation period. Robert requests the costs of this action be assessed against Melissa.

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Our review in this matter is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). In child custody cases, the best interest of the children is the first and governing consideration. The factors the court considers in awarding custody are enumerated in In re Marriage of Weidner, 338 N.W.2d 351, 355-56 (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 children. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the children is which parent will do better in raising them; 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).

After a careful examination of the record before us, we agree with the district court's award of custody to appellee as being in the long-term best interest of the children. Appellant has demonstrated his lack of concern for their welfare by failing to pay child support as ordered. Appellee is a suitable custodian, provides for their emotional development, and has demonstrated over a

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significant period of time the ability to care for the children by herself. See Weidner, 338 N.W.2d at 355-56. We also believe that more stability in the children's lives would come from continued placement with their mother. We disturb custody, once fixed, only for the most cogent reasons. In re Marriage of Frederici, 338 N.W.2d 156, 160 (Iowa 1983); In re Marriage of Mickelson, 299 N.W.2d 670, 671 (Iowa 1980); In re Marriage of Melton, 256 N.W.2d 200, 205 (Iowa 1977). Appellant has failed to provide us with those "most cogent reasons." We therefore affirm the decision of the district court awarding joint custody with primary physical care to appellee.

Costs of this appeal are taxed to appellant.

AFFIRMED.