

FILED

OCT 19 1978

IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

IN RE THE MARRIAGE OF KATHLEEN JO DUNLAP AND ANTHONY W. DUNLAP

Upon the Petition

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KATHLEEN JO DUNLAP,

)

Appellant,

)

Filed October 19, 1978

And Concerning

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ANTHONY W. DUNLAP,

)

Appellee.

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3-61945

Appeal from Delaware District Court - T. H. Nelson, Judge.

Petitioner-wife appeals custody provision of dissolution decree. Affirmed.

Francis J. Lange, of Dubuque, counsel for appellant.

Nancy Shimanek and Robert Shimanek, of Monticello, counsel for appellee.

Heard by Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

DONIELSON, Acting C. J.

The petitioner-wife Kathleen Dunlap appeals that portion of a dissolution decree giving custody of the two minor children, ages 2 and 3 at the time of the dissolution, to respondent-husband, Anthony Dunlap.

The issue in this case is whether the award of custody made by the trial court is in the best interests of the children. Rule 14(f)(15), Rules of Appellate Procedure. Our review is *de novo*. Rule 4, R. App. P. The principles applied to the resolution of custody questions are summarized in *In re Marriage of Winter*, 223 N.W.2d 165, 166-167 (Iowa 1974). While we accord weight to the trial court's findings of fact, we are not bound by them. Rule 14(f)(7), R. App. P.; *In re Marriage of Snyder*, 241 N.W.2d 733 (Iowa 1976).

After examining the entire record in light of the principles enunciated in *Winter*, we conclude the trial court was correct in awarding custody of the two minor children to Anthony. Kathleen filed for dissolution in June, 1977 and Anthony filed an answer seeking custody. Shortly thereafter a stipulation was reached agreeing that Kathleen was to have permanent custody. This stipulation was repudiated by Anthony at a later date when Kathleen went to jail for seven days on bad check charges. Kathleen testified that she spent a week in jail in Delaware County and that she had three convictions in Jones County resulting in a 14-day jail sentence which would commence soon after the trial in this matter. She also had convictions in Linn and Dubuque Counties, where she spent one or two nights in jail for writing checks on insufficient funds to gas stations, drug stores, grocery stores, and dress shops. Other witnesses testified that Kathleen was a poor housekeeper and cook, and that her apartment at times contained a great deal of spoiled food and dirty clothes. Attempts by the Department of Social Services to provide homemaker assistance produced no better results. Kathleen's employment record is shown to be for the most part temporary and transitory.

Anthony, while leaving much to be desired in assuming his fatherly responsibilities, was living on his parents' dairy farm and working at the Hopkinton Creamery netting \$200 a week. It was his intention to commence farming by working on his father's dairy farm on a share basis. The children were well cared for by his

parents in good living facilities. Anthony's 61-year-old mother, who has reared 13 children and is presently involved in church work and scouting activities, is providing the primary care for the children. Anthony planned to live in a trailer located on his parents' farm homestead.

We agree with the trial court's decision that the best interest of these children is served by placing custody with Anthony.

Affirmed.