FILED
FEB 21 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DARCY DEE MADISON AND KEVIN MADISON 360

UPON THE PETITION OF
DARCY DEE MADISON,

Petitioner-Appellant,

AND CONCERNING
KEVIN MADISON,

Respondent-Appellee.

Filed February 21, 1984

3-413
83-101

Appeal from the Iowa District Court for Union County-Robert O. Frederick, Senior Judge.

Petitioner-wife appeals the trial court's award of custody of the parties' child to the respondent-appellee. REVERSED AND REMANDED.

Marion E. James, Creston, for petitioner-appellant.

James R. Cook of Cook & Waters, Des Moines, for respondent-appellee.

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

OXBERGER, C.J.

Petitioner-wife filed her notice of appeal from the trial court's findings of fact and conclusions of law in this dissolution action; no dissolution decree has yet been entered. We will treat the notice of appeal as an application for interlocutory appeal pursuant to Iowa Rules of Appellate Procedure 1(c); we grant the application. See Iowa R. App. P. 2. We reverse and remand.

I. Scope of Review

Our review in this equitable proceeding is de novo. Iowa R. App. P. 4. We review the entire record and adjudicate anew the rights of the parties on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7); In re Marriage of Novak. 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974).

II. Child Custody

We review the trial court's order in light of the factors enumerated in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), bearing on the determination as to which parent will better provide for the child's needs. As always, the paramount consideration in any custody dispute is the long-term best interests of the child. Iowa R. App. P. 14(f)(7). Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975); In re Marriage of Sparks, 323 N.W.2d 264, 266 (Iowa Ct. App. 1982).

Darcy is age twenty; Kevin is twenty-three years old; son Brant was born February 17, 1982, and was three months old when the parties separated. Both parties offered convincing evidence that they loved their child and were concerned about his welfare.

The trial court concluded that Darcy played softball two nights a week and that at least one night a week she would go to a cocktail lounge or tavern and drink alcoholic beverages. The trial court found that in August 1982, Brant had an ear infection and diarrhea, and that Kevin refused to return Brant to Darcy's custody. The trial court did not make any other findings bearing on the custody issue. We have examined the entire record and conclude that the best interests of Brant would be served by placing custody of Brant with his mother.

During the time the parties lived together Darcy provided the bulk of parental support for Brant. After the parties separated, by mutual agreement of the parties Darcy continued to provide the bulk of parental support for Brant. Both parties are competent and fit to care for Brant. We see no reason to disagree with the parties' mutual decision during marriage and separation that Darcy should provide the bulk of parental care for Brant.

The trial court's ruling granting physical custody of Brant to Kevin is reversed and this matter is remanded to the trial court for determination of Kevin's child support obligation.

III. Attorneys Fees

In a dissolution action, attorneys fees are not awarded as a matter of right. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). The trial court awarded Darcy $750 toward her attorney fees in that proceeding. Upon consideration of the financial condition of the parties, we order Kevin to pay Darcy $650 toward her attorney fees on appeal.

REVERSED AND REMANDED.

SNELL, J. (dissenting)

I respectfully dissent. I believe the child's best interests would be served by granting custody to the father, Kevin. Therefore, I would affirm the trial court.

It is evident that both parties love the child and could provide good care, yet there are some facts which tip the scale in Kevin's favor. Kevin seems to have a more settled lifestyle than Darcy. He appears to be more concerned for the child and more interested in spending time with him. The psychologist's report, after reviewing the background of both parents, recommended that custody should be given to Kevin. Kevin's mother indicated she was willing and able to help care for the child when Kevin is working; Darcy's mother indicated she would not be available on a permanent basis to help care for the child while Darcy is working because she also worked. In the course of a short amount of time, Darcy had employed six different babysitters to care for the child. I believe the availability of Kevin's mother as supplemental care provider would add stability to the child's life and serve in some ways as an extended family.

Although we are not bound by the trial court's findings of fact, the trial court was able to observe first-hand both parents and the witnesses. Its conclusions on parental abilities bolster my observations in this close case. See Iowa R. App. P. 14(f)(7) (1981). Therefore, I find that the child's best interests would be served best by affirming the trial court's award of custody to Kevin.