FILED
JUN 25 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LARRY DEAN PETERS AND JANE ANN PETERS

Upon the Petition of)

LARRY DEAN PETERS,)

Petitioner-Appellee,)

And Concerning)

JANE ANN PETERS,)

Respondent-Appellant.)

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Filed June 25, 1986

6-178
85-1862

Appeal from the Iowa District Court for Polk County (No. 46-27457) Gene L. Needles, Judge.

Respondent wife appeals from the custody provisions of the decree dissolving the parties' marriage. **AFFIRMED.**

Diane L. Dornburg, Des Moines, for appellant.

Raymond P. Drew and James M. Drew of Hobson, Cady & Drew, Hampton, for appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

DONIELSON, P.J.

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Respondent wife appeals from the custody provisions of the decree dissolving the parties' marriage. She claims the trial court should have awarded her physical care of the parties' children in the joint custody arrangement. We affirm the decree.

The issue presented in this case is whether the trial court erred in awarding Larry Dean Peters physical custody of the children in this joint custody arrangement. We summarized the general principles applicable to a custody issue in In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974):

> Our review is de novo. Although we are not bound by trial court findings we give them weight. The status of children should be quickly fixed and, thereafter, little disturbed. Siblings should usually not be separated. No hard and fast rule governs which parent should have custody. It is not a matter of reward or punishment. The issue is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the children. (citations omitted)

These principles must be applied in light of a number of important factors on a case-by-case basis. These factors include:

> 1. The characteristics of each child, including age, maturity, mental and physical health.
>
> 2. The emotional, social, moral, material, and educational needs of the child.
>
> 3. The characteristics of each parent, including age, character, stability, mental and physical health.
>
> 4. The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of the child.
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> 5. The interpersonal relationship between the child and each parent.
>
> 6. The interpersonal relationship between the child and its siblings.

7. The effect on the child of continuing or disrupting an existing custodial status.

8. The nature of each proposed environment, including its stability and wholesomeness.

9. The preference of the child, if the child is of sufficient age and maturity.

10. The report and recommendation of the attorney for the child or other independent investigator.

11. Available alternatives.

12. Any other relevant matter the evidence in a particular case may disclose. (citations omitted)

In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974).

Petitioner Larry Dean Peters and respondent Jane Ann Peters were married on May 20, 1976. They have two children, Dana (a girl), born in 1976, and Marci, born in 1978. At trial, both parties were awarded joint legal custody, with physical care given to the petitioner husband, Larry Peters, and Jane Peters was given liberal visitation rights.

In this case, neither parent would qualify as an ideal parent. Both have repeatedly engaged in improper and illegal conduct and have demonstrated a lack of moral judgment necessary to raise children in a wholesome environment.

The children's father has a very unstable employment history. During the last nine years, Larry Peters has quit, been laid off, or fired from ten jobs. Also, during the marriage, Larry regularly used and sold marijuana and was an occasional user of speed, LSD, hashish, and cocaine. Larry also purchased stolen bicycles, CB radios, and a stolen gun. In addition, he even admitted that he had physically abused Jane in front of the children.

The children's mother also did not have the most outstanding character. Jane Peters also has held several jobs in the past ten years, mostly at bars or as a waitress. She was heavily into alcohol and marijuana as well as being an

occasional user of speed. Jane has spent one day in jail for traffic charges, and at one time there was a warrant for her arrest on traffic charges. She knowingly possessed and used stolen property. Jane also had an extramarital affair with Bob Morton during the marriage and now lives with a man.

The trial court justifiably chastised both parties for their atrocious behavior. After balancing the misdeeds of both parties, we agree with the trial court that neither parent has any advantage over the other. Therefore, determining what custodial arrangement will best serve the long-range interests of the children becomes a matter of choosing the least detrimental available alternative for safeguarding the children's growth and development. See Goldstein, Freud, and Solnit, Beyond the Best Interests of the Child (The Free Press 1973). We affirm the trial court and grant physical custody of the children to the father while allowing the mother those visitation rights granted by the trial court. Our decision is based on these grounds: first, the characteristics of each parent; second, the children have established a satisfactory existence in Minnesota; third, the nature of each proposed environment; and finally, the preference of the children to live with their father.

In 1984, Larry was transferred by his employer to St. Cloud, Minnesota to be manager of a store. Soon after, it became very apparent to Larry that Jane would not move up there with the kids because she had told him she did not miss him and that she wanted him to give her custody of the kids. Because of his concern for the children's well-being, Larry took the kids to Minnesota to live with him on July 1, 1984, and they have been with him since that time.

The basis for Larry's concern for the children was that during the marriage, Jane was both financially and parentally irresponsible at times. Jane would stay out all night long with her friends, then would become irritable and short-

tempered around the children. She also regularly spent her paychecks on herself and her own habits rather than contributing to the payment of overdue bills.

Larry, on the other hand, has shown a willingness to put the children's welfare before his own. While married to Jane, he used his paycheck, at times supplemented by his wife, to pay the rent and raise the girls. Also, he now seems very happy to invest not only money, but also significant amounts of time with the children. Larry and the children have enjoyed going to many activities together in Minneapolis. They have been to a Renaissance Festival, the zoo, the movies, rollerskating, picnicking, swimming, and have spent time with friends. Larry also is a member of Parents Without Partners, and he and the girls attend functions sponsored by that group. Therefore, Larry seems to possess more characteristics necessary to nurture children to maturity, thus allowing them to become productive, wholesome citizens.

A second factor that we based our decision to grant the father custody of the girls upon is that the girls and their father have become sufficiently acclimated to their new environment. Larry now has a good steady job at Levahn Brothers Plumbing and is making $230 per week plus commissions. He also has ceased all illicit drug activities. Larry has enrolled both girls in school where they are performing very well. A bus takes the girls to a day care center every day after school for a couple of hours until their father gets out of work. Several of the girls' friends also go to this day care center. The girls are also members of the Brownies. Both the girls and Larry have also developed several friends in Minneapolis. Therefore, changing the custodial status of the children at this time would have a very disruptive effect on the children, especially considering the stable life-style they now enjoy.

The third factor was the nature of the proposed environments in which the children would be living. In Minnesota with their father, the children would

be living in a two-bedroom apartment. The apartment complex has a playground fifteen feet from Larry's front window and also they have access to a nearby swimming pool. There are several other children in the complex that the girls can play with.

On the other hand, the children's mother is now living in Des Moines with a man. Her apartment is located above a restaurant and has no place nearby except a parking lot for the children to play. They also live right next to a heavily traveled road. The man Jane is living with has physically abused Jane in front of the children, yet she still plans to marry him. After looking at both locations, the environment in Minnesota is much more conducive to the proper raising of children.

The preference of the children was the last factor upon which we based our determination that the father should retain custody of the Dana and Marci. The children have said that they prefer to live with their father. The grandmother testified that the children told her they "would rather stay with Daddy . . . [and that they] would only want to visit [their mother] now and then." Even when asked by a neutral party which parent the girls would rather live with, the children have clearly responded that they much prefer living with their father. In fact, when told they must visit their mother, the girls, on occasion, have become very upset and even feign illness to try to avoid having to visit their mother. Although this factor is not controlling, the children's stated preference should be considered when awarding custody. Jones v. Jones, 175 N.W.2d 389, 391 (Iowa 1970).

Therefore, when considering the children's welfare and long-range interests as the paramount concerns, the girls' welfare would be maximized by remaining in the custody of their father. We cannot say that this result is ideal; however, in light of the present circumstances, it would be difficult to say that any other

arrangement would be as effective. For the reasons previously discussed, we affirm.

AFFIRM.