FILED
SEP 25 1986
CLERK SUPREME COUR

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KIMBERLY DIANE BEAUDETTE AND BRIAN GREGORY BEAUDETTE

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Upon the Petition of)

KIMBERLY DIANE BEAUDETTE,)

Petitioner/Appellee-Cross-Appellant,)

And Concerning)

BRIAN GREGORY BEAUDETTE,)

Respondent/Appellant-Cross-Appellee,)

And Concerning)

GORDON A. BEAUDETTE and JEANNE G. BEAUDETTE,)

Intervenors-Appellees.)

Filed September 25, 1986

6-230
85-1117

Appeal from the Iowa District Court for Polk County (D.M. No. CD44-26177) - *Gene L. Needles, Judge.*

Respondent husband and intervenors, his parents, appeal, and petitioner wife cross-appeals from a dissolution of marriage decree. **AFFIRMED.**

Philip F. Miller, Amy Christensen Couch, and Margaret LaMarche, Des Moines, Iowa, for appellants.

Joseph G. Bertogli, Des Moines, Iowa, for appellee.

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

HAYDEN, J.

This appeal involves the custody of two minor children of respondent Brian Gregory Beaudette and petitioner Kimberly Diane Beaudette. Respondent's parents, as intervenors, are seeking sole custody of the parties' children. The trial court awarded sole custody of the minor children to the mother, gave the father and grandparents visitation, ordered the father to pay child support, and ordered both the father and grandparents to pay the mother's attorney fees. We affirm.

Brian and Kimberly were married on April 2, 1977. They have two daughters, Stephanie, who was born on October 4, 1977, and Jennifer, who was born on February 24, 1982.

On November 3, 1983, Kimberly filed her petition for dissolution of marriage. Initially Brian's parents intervened requesting only visitation but they later filed an application requesting either sole or joint custody of the children. Brian has never requested custody. On May 9, 1985, the trial court filed a decree of dissolution of marriage, reserving the issues of custody, visitation, child support, property division, and attorneys fees for a later date. Trial was held on these issues for five days in May, 1985. On July 19, 1985, the trial court filed its Findings of Fact and Conclusions of Law. The court supplemented this order on August 22, 1985. Kimberly filed a Motion for Permission to Leave the State; this was granted on December 27, 1985. To conform its earlier orders, the trial court entered an Order on February 26, 1986.

Brian contends that the trial court erred in ordering him to pay an unreasonable amount of Kimberly's attorney fees and in failing to suspend his support obligations for the six-week period during which the children reside with him. Intervenors argue that the trial court erred in not granting them full custody, in requiring them to pay Kimberly's attorney fees, and they assert that if custody

is not changed, then she should be restrained from moving out of state. On cross-appeal Kimberly asserts that the earlier award of attorney fees is inadequate and that she is entitled to such fees on appeal.

Our review in custody cases is de novo. In re Marriage of Carrico, 284 N.W.2d 251, 254 (Iowa 1979); Iowa R. App. P. 4. We give weight to the trial court's fact findings, especially when considering the credibility of a witness, but we are not bound by those findings. Iowa R. App. P. 14(f)(7). Our paramount consideration in a child custody case is the best interest of the children. Iowa R. App. P. 14(f)(15).

There exists a presumptive preference for parental custody and only when neither parent is a suitable custodian should an alternative be considered. In re Marriage of Reschly, 334 N.W.2d 720, 721 (Iowa 1983); In re Mann, 293 N.W.2d 185, 186 (Iowa 1980); In re Marriage of Smith, 269 N.W.2d 406, 408 (Iowa 1978). The intervenors in the present matter had the burden of proving Kimberly's unsuitability as a parent. Mann, 293 N.W.2d at 187.

We will not reiterate the whole record, but there are a few factors which we wish to note. Kimberly has remarried and moved to Florida. As mentioned earlier, prior consent was received from the trial court to allow her to move.

We also recognize the outstanding reputation and character of the intervenors and fully adopt the following trial court finding:

> Several witnesses testified on behalf of the Intervenors, showing them to be honest, hardworking, reliable folks who took well [sic] care of the grandchildren and gave them love and affection and are fit and able to parent the children. Indeed, the Court agrees. Gordon Beaudette answered all the questions put to him honestly and directly, regardless of whether the answers helped or hurt him. He did not vacillate, hedge, beg the question or answer a question with another question, but gave direct answers. He and his wife Jeanne are concerned grandparents. They are financially and physically able to look after the children.

Before the qualifications of the third parties become pertinent, we must consider both parents' attributes. There is little doubt that Brian was never a suitable parent. He imposed mental abuse on both Kimberly and the children. He also physically abused Kimberly, and she alleges that he raped her. He pointed a gun at her. He publicly assaulted her in front of the children, while in possession of a loaded firearm. Brian, throughout the marriage, had a serious drug habit.

Intervenors failed to sustain their burden of showing Kimberly to be an unsuitable parent. There is evidence of her drug use and transient life-style. We conclude that Kimberly was strongly affected by her husband and the environment in which they existed. There is substantial testimony that she is a good mother and took fine care of her children. In fact, the grandfather intervenor testified that Kimberly was a good mother, and that he and his wife had bragged about it. We conclude that the best interest of the children are served by the continued sole custody with their mother, Kimberly.

Regarding the amount of attorney's fees awarded by the trial court, we find them to be reasonable. We also recognize that trial courts have considerable discretion in granting attorney's fees in dissolution cases. In re Marriage of Lochmiller, 229 N.W.2d 228, 229 (Iowa 1975); In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa Ct. App. 1983). Petitioner requests an award of fees on appeal. Such a request may be granted, depending on the parties' respective ability to pay. Giles, 338 N.W.2d at 546. For the services rendered on this appeal, petitioner is entitled to $750 of attorney's fees ; such amount shall be paid by the intervenors and respondent.

On October 14, 1985, the Supreme Court of Iowa entered an order denying the intervenors custody and requiring that Kimberly receive permission from the trial court before moving from Iowa. Kimberly requested permission and it was granted. Intervenors now contend that the trial court erred in granting

the permission. The move to Florida was required so that Kimberly's new husband could accept employment there. We are of the opinion that this move was in the best interest of the children and affirm the trial court's order.

The trial court ordered Brian to pay $40 per week per child for child support. He claims the court erred by failing to suspend his support obligation for the six-week period each summer during which the children will reside with him. Initially, we note, visitation is to be between intervenors and respondent so that any expense will be borne by both parties. We support the proposition that child support payments should continue for the benefit of the custodial parent even though the other parent has the child for visitation lasting several weeks. In re Marriage of Carlson, 338 N.W.2d 136, 142 (Iowa 1983); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976); see also In re Marriage of Schlenker, 300 N.W.2d 164, 167 (Iowa 1981). The expenses of running a home continue even when the children are gone, the only difference is food and incidental expenses. See Fleener, 247 N.W.2d at 221.

AFFIRMED.