

FILED
APR 25 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JIMMY W. MAYFIELD AND CARRIE JO MAYFIELD

Upon the Petition of	)	
JIMMY W. MAYFIELD,	)	
Petitioner-Appellee,	)	Filed April 26, 1979
And Concerning	)	
CARRIE JO MAYFIELD,	)	65
Respondent-Appellant.)		<u>3-62073</u>

Appeal from Johnson District Court - Robert Osmundson, Judge.

Respondent appeals that portion of dissolution decree granting custody of son to petitioner. Reversed and remanded.

Marsha Bergan, of Iowa City, for appellant.

Donald Diehl, of Iowa City, for appellee.

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

PER CURIAM

Respondent Carrie Mayfield appeals from that portion of the trial court's dissolution decree which granted custody of the parties' son to her former husband, Jimmy Mayfield. She maintains that custody of four-year-old Jamie should have been awarded to her. We reverse.

Our review is *de novo*. While deference is accorded the trial court's findings of fact, we are not bound by them. Iowa R. App. P. 4 and 14(f)(7); In re Marriage of Snyder, 241 N.W.2d 733 (Iowa 1976).

Factors to be considered in determining the custodial placement of a child were set forth in In re Marriage of Winter, 223 N.W.2d 165, 166-167 (Iowa 1974). The governing consideration in awarding custody is the long range best interests of the child. Iowa R. App. P. 14(f)(15); In re Marriage of Smith, 269 N.W.2d 406, 407 (Iowa 1978).

Keeping in mind the criteria outlined in *Winters*, we find that circumstances warrant placing Jamie in the custody of Carrie. While this marriage was beset with difficulties from its beginning in 1973, it is evident that both parents love Jamie very much and sincerely desire to be responsible for his custody. Until October of 1977, Carrie had the primary responsibility for Jamie's welfare. During much of that time, Jimmy was absent from the home and Carrie stayed with her parents. Carrie was able to provide a secure home atmosphere and parental care for Jamie. In the six months before trial, when Jimmy had temporary custody of Jamie, he moved at least four times and would not reveal his whereabouts to Carrie or her parents. Jimmy has uncertain income as an iron scrapper and butcher, and a record of criminal misdemeanor convictions, including a November 1977 conviction for public intoxication. He has not been reliable in providing support for the children of his previous marriages, accruing a \$5000 child support debt concerning a daughter from his first marriage. There was testimony that Jimmy drank, sometimes to excess, and that he allowed Jamie to accompany him to taverns.

While Carrie's conduct during the marriage has not been exemplary, moral misconduct does not necessarily preclude a parent from receiving custody. It is only one factor to be considered in making a custody determination. In re Marriage of Morton, 244 N.W.2d 819, 822 (Iowa 1976). In weighing the evidence in a light favorable

to both parties, with paramount consideration being given to the best interests of Jamie, we conclude that the trial court erred in granting custody of Jamie to Jimmy. It is in the long range best interests of Jamie to be placed with his mother.

Finally, we note that normally siblings should not be separated and lose the benefit of constant association with one another except where circumstances require it. In re Marriage of Hagge, 234 N.W.2d 138, 139 (Iowa 1975). While Jimmy denied that he was the father of a daughter born to Carrie in November 1977, Jamie has developed a caring and normal relationship with Tammy Jo. Custody granted to Carrie will allow that relationship to grow while encouraging Jamie's relationship with and access to his father. We have less confidence that Jimmy would allow Jamie similar access to Carrie.

We reverse that portion of the trial court's decree granting custody of Jamie to Jimmy and we remand for a decree in accordance with this opinion, at which time trial court may determine visitation rights.

REVERSED AND REMANDED.