FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DENNIS D. MARTIN,	)	
Appellee,	)	Filed February 22, 1979
vs.	)	
DIANNA SUE MARTIN,	)	10 3-61380
Appellant.	)	

Appeal from Polk District Court - Harry Perkins, Judge.

Respondent appeals that portion of the trial court's dissolution decree granting custody of the couple's youngest son to petitioner. - Reversed and remanded.

James R. Cook, Des Moines, for Appellant.

Keith Uhl, of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for Appellee.

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

PER CURIAM

Respondent, Diana Sue Martin, appeals from that portion of the trial court's dissolution decree which granted custody of her two children to her former husband, Dennis Martin. She maintains that custody of the couple's youngest son, Darrell, should have been awarded to her. We reverse.

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

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, 166-67 (Iowa 1974). 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). The governing consideration in awarding custody is the long range best interests of the child. In re Marriage of Smith, 269 N.W.2d 406, 407 (Iowa 1978); Snyder, supra; Winter, supra at 166; rule 14(f)(15), R. App. P.

Keeping in mind the criteria outlined in Winters, we find that circumstances warrant placing Darrell in the custody of Sue Martin. Dennis Martin is a Jehovah's Witness and he firmly believes that blood transfusions are a violation of the law of God. While it is not within the province of this court to pass judgment upon the religious beliefs of the parties before it, in this case the father's beliefs may not be in the best interests of his child. See In re Karwath, 199 N.W.2d 147, 150 (Iowa 1972). Since his birth, Darrell has undergone several operations and it is likely that he may need further surgery. During the last operation, Darrell needed a blood transfusion and Sue consented to it. Dennis testified that even if a transfusion were necessary, he would not consent to it. Although the trial court's decree allows Sue to consent to a transfusion if one were needed, this provision may not be adequate to protect Darrell's interests in this particular respect.

Also, the record indicates that Dennis strongly disapproves of Sue's behavior

and that the couple's oldest son, Brian, is highly resentful of Sue, very probably due in part to Dennis' moral condemnation of her. Dennis may also alienate Darrell from his mother. Furthermore, there is evidence to indicate that Darrell fears his father and grandfather and that, while he is compatible with his brother, he is not especially close to him.

On the other hand, the record shows that Sue has cared adequately for Darrell and that Darrell, who has lived with his mother for two years, is happy in his present environment. While Sue's activities may amount to moral misconduct, she has been discrete in her relationships. Further, moral misconduct does not necessarily preclude a parent from receiving custody, but 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 Darrell, we conclude that the trial court erred in granting custody of Darrell to Dennis. It is in the long range best interests of Darrell to remain with his mother, Sue.

Although the custody of Brian is not an issue before this court, we note that continued efforts on the part of Dennis to alienate Brian from his mother could serve as grounds for further modification of the dissolution decree. Sherwood v. Sherwood, 56 Iowa 608, 610, 10 N.W. 98, 99 (1881); see Albertus v. Albertus, 178 Iowa 1124, 1127, 160 N.W. 830, 831 (1917); Norenberg v. Norenberg, 168 N.W.2d 794, 797 (Iowa 1969); Spotts v. Spotts, 197 N.W.2d 370, 372 (Iowa 1972). Such conduct is not conducive to the best interests of the child. Sherwood, supra.

Sue asks that Dennis be required to contribute toward her costs in bringing this appeal. Dennis is in a better financial position than Sue and, therefore, he should pay $750 toward Sue's attorney fees. Costs of the appeal should be shared equally by both parties. This provision in no way fixes the amount to be charged by the attorneys. In re Marriage of Peterson, 227 N.W.2d 139, 142-43 (Iowa 1975).

We reverse that portion of the trial court's decree granting custody of Darrell to Dennis Martin and we remand for a decree in accordance with this opinion.

REVERSED AND REMANDED.

OXBERGER, C. J., specially concurs.

OXBERGER, C. J. (specially concurring)

The record in this case does not support the majority's finding that Dennis would not consent to a blood transfusion even if it was necessary to save his son's life. We should be extremely hesitant to base our custodial decision on the religious beliefs of the parties. This is especially true in a case such as this one where ample evidence, aside from the father's religious convictions, supports placing the child's custody with his mother. It was the opinion of the examining psychologist that Darrell should remain with Sue and that a change of custody to Dennis would be severely detrimental to the child. There was also testimony that Dennis has alienated his older son from Sue which raises the possibility that he would do likewise to Darrell. This evidence, to me, warrants granting Darrell's custody to Sue and I would reverse trial court's decree on that basis only.