

FILED

JAN 31 1978

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IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

IN RE THE MARRIAGE OF CARLA MEIER AND DELWIN MEIER

UPON THE PETITION OF

CARLA MEIER,

Appellee,

AND CONCERNING

DELWIN MEIER,

Appellant.

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Filed January 31, 1978

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3-60679

Appeal from Bremer District Court - B. C. Sullivan, Judge.

Appeal from child custody and property division aspects of a dissolution decree.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Gaylen V. Hassman, of Engelbrecht, Ackerman & Hassman, of Waverly, counsel
for appellant.

John S. Tremaine, of Sumner, counsel for appellee.

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

PER CURIAM

Respondent-Delwin Meier appeals the child custody and property division aspects of a dissolution decree. He alleges, *inter alia*, that in deciding the custody issue, the trial court improperly afforded petitioner-Carla Meier the presumption or inference that the best interests of young children would be better served if their custody is awarded to the mother. In re Marriage of Bowen, 219 N.W.2d 683, 688 (Iowa 1974); In re Marriage of Winter, 223 N.W.2d 165, 166-167 (Iowa 1974).

After a review of the entire record, we conclude that a basis exists for respondent's allegations that the trial court made such an impermissible presumption or inference regarding the custody of the minor children. Furthermore, we cannot say that the atmosphere of judicial intimidation in which this case was tried did not adversely affect certain witnesses, limiting their ability to fully and freely respond to attorney and trial court interrogation. The custody issue is close. Because the best interest of these children is our paramount consideration, rule 14(f)(15), Rules of Appellate Procedure, we find that in order to safeguard their interests, we are obliged to reverse the district court and remand this case for precedence in assignment and retrial to a different district judge.

Although our review of this matter is *de novo*, rule 4, R. App. P., and we could conceivably remand only the custody issue and decide the property division question, we believe that, in light of respondent's allegations, the record made by the trial judge and the nature of his participation, we must remand the entire proceeding for retrial before a different judge, as the custody and property division aspects of a dissolution case are closely interrelated. Consequently, we reverse the district court and remand this cause for a new trial. In light of our disposition, we direct that each party pay his own attorney fees on this appeal.

REVERSED AND REMANDED WITH INSTRUCTIONS.