IN THE COURT OF APPEALS OF IOWA

No. 1-039 / 90-1081

FILED
APR 02 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DENNIS S. PIAGENTINI AND RUTH A. PIAGENTINI

Upon the Petition of

320

DENNIS S. PIAGENTINI,

Appellee,

And Concerning

RUTH A. PIAGENTINI,

Appellant.

Appeal from the Iowa District Court for Marion County, Rodney J. Ryan, Judge.

Ruth Piagentini appeals that portion of her divorce decree which places the physical custody of her daughter with her husband Dennis Piagentini. **AFFIRMED.**

Ann Fitzgibbons of Scalise, Scism, Sandre, Uhl, McConville, Miller & Holliday, Des Moines, for appellant.

James Vernon Hicks of Johnston, Hicks, Guiter & Griffith, Knoxville, for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

HABHAB, J.

Dennis Piagentini and Ruth Piagentini were married in December 1981. They have one child, Holli, born in April 1987.

Dennis was thirty-one years old at the time of trial. He has a high school degree and one year of electrical training. He is employed at the VA Medical Center in Knoxville as an electronic maintenance worker with a gross income of $27,900 per year.

Ruth was twenty-six years old at the time of trial. She is a licensed beautician who has worked at several beauty salons and also has been employed at several manufacturing companies in the area. She is currently attending Indian Hills Community College in Ottumwa in the area of computer programming.

The district court entered a decree of dissolution. In doing so, the court granted the parties joint legal custody and placed physical care of Holli with Dennis. Ruth now appeals. She claims the court erred in placing physical care of Holli with Dennis for she was always the primary caretaker of Holli.

Our review in this matter is de novo. Iowa R. App. P. 4. In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3) and in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983) and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974).

All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

Our de novo review of the record casts doubt on Ruth's claim of being the primary caretaker. The record indicates both parents have provided care for the child. Since both parents have similarly cared for Holli we must, on review, determine who can best provide for her long term best interests. Upon a thorough review, we determine Holli's interests would best be provided for by Dennis and thus we affirm the trial court.

We agree with Ruth that her extramarital affair should not be considered. While moral misconduct is a factor in making a custody determination in a dissolution proceeding, it is weighed most heavily in those cases where the misconduct affects the children directly or occurred in the presence of the children. In re Marriage of Grandinetti, 342 N.W.2d 876, 879 (Iowa App. 1983). Upon review it is clear that the affair did not affect Holli.

We find both parents love the child very much and appear to have her best interests at heart. In this type of situation we rely in part on the trial court's assessment as to the credibility of witnesses. It is stated we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). While we are not bound by those determinations, it merits our consideration.

In this case it appears Ruth has demonstrated some measure of immaturity. The evidence reveals Dennis is a mature individual who will not only provide care for Holli, but will foster her relationship with her mother. Ruth has, on a number of occasions, commented on Dennis's well-rounded parenting abilities. Holli is living in the family home and is content in her surroundings. She has the benefit of the closeness of her father's family. We conclude it is in the child's best interest to be placed with her father.

Costs shall be assessed to the appellant.

AFFIRMED.