FILED
DEC 21 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KATHY J. FISH AND LARRY W. FISH

Upon the Petition of)
KATHY J. FISH,)
Appellee,)
And Concerning)
LARRY W. FISH,)
Appellant.)

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3-61658

Appeal from Black Hawk District Court - Peter Van Metre, Judge.

Appeal by husband from the custody provision in a dissolution of marriage decree. - Affirmed.

Edward J. Gallagher, III, of Gallagher, Martin, Keith & Langlas, Waterloo, for Appellant.

James F. Whalen, of Dunbar & Dunbar, Waterloo, for Appellee.

David Graeser, of Evans, Gartelos & Wagner, Waterloo, Attorney for Child.

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

PER CURIAM

This appeal proceeds from the provisions of a dissolution of marriage decree. Larry W. Fish appeals from the award of custody of Jeremy, born in May 1975, to petitioner, Kathy J. Fish. Larry asserts the trial court unjustifiedly found that Kathy provided the majority of actual care of the child and based its opinion on the "tender years doctrine".

The parties were married in August, 1974, and were ages 20 and 21 at trial time. Larry is employed at John Deere Waterloo Tractor Works as a press operator working a second shift from 3:30 p.m. to midnight. Kathy at time of trial was employed as a spray painter at the Hinson Division of Royal Industries with hours of employment from 5:30 a.m. until 2:30 or 3:00 p.m.

Larry points out the extra marital affairs of Kathy, her short temper and inappropriate disciplining as evidence regarding custody of Jeremy. Kathy testified that Larry never wanted to care for the child before the dissolution, that she did most of the child care duties and knew of his needs and habits. Both parties admitted the other was not an unfit parent.

Our review is de novo. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977); rule 4, Rules of Appellate Procedure. We give weight to the trial court's findings of fact but are not bound by them. Willcoxson, supra. In reviewing custody questions we apply the principles summarized in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). Our primary concern is the best interests of the child. Rule 14(f)(15), R. App. P.

The "tender years doctrine" that the best interests of younger children are served by placing them with their mother was abandoned by the court in In re Marriage of Bowen, 219 N.W.2d 683 (Iowa 1974). Although the trial court in its decree referred to Kathy's having provided the great majority of the care of Jeremy we do not from this conclude the law was misapplied. The evidence supports the trial court's conclusion it is in Jeremy's best interest that custody be placed with Kathy.

Kathy asks for attorney fees on this appeal. Without deciding the amount of fees to be charged by Kathy's attorney we determine only what portion should be paid by Larry. Larry shall pay $600 towards Kathy's attorney fees incurred in this appeal.

AFFIRMED.