FILED
FEB 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ALISON KAY JENSEN AND JIMMIE DEAN JENSEN

123

Upon the Petition of	)	
ALISON KAY JENSEN,	)	Filed February 26, 1986
Petitioner-Appellant,	)	
And Concerning	)	5-674 85-837
JIMMIE DEAN JENSEN,	)	
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Kossuth County (DM 854) - Richard J. Vipond, Judge.

Petitioner appeals the district court's dissolution decree awarding physical care to respondent and ordering petitioner to pay child support. **AFFIRMED.**

Gregory G. Williams and Robert Malloy of the Malloy Law Firm, Goldfield, Iowa, for petitioner-appellant.

Joseph L. Fitzgibbons of the Fitzgibbons Brothers Law Firm, Estherville, Iowa, for respondent-appellee.

Heard by Schlegel, P.J., Hayden, and Sackett, JJ.

Petitioner Alison Jensen appeals the district court's dissolution decree awarding physical care to respondent Jimmie Jensen and ordering petitioner to pay child support. We affirm.

Since the breakup of their marriage, Alison has resided in a home near Ledyard, Iowa, with a female co-worker. She travels to Fairmont, Minnesota, five days a week where she works 37-1/2 hours per week at a Woolworth store. It takes a half hour to travel to work each day and a half hour to return. She earns approximately $115 net income per week and lives in a house owned by her parents.

Jimmie resides on the acreage owned by his father and has lived there since his marriage to Alison. Economic conditions have forced Jimmie and his father to reduce their farming operations to mainly growing crops with little or no livestock to care for. Consequently, Jimmie has been able to spend more time with Josh, the couple's two-year-old son, than Alison can with her work schedule. Jimmie has admitted that his time available for Josh would be greatly diminished during the planting and harvesting months.

Both parties have relied upon each other's parents for help in raising their son. Neither party criticizes the love and caring of the other, or of the respective grandparents. In fact, at the time of trial, Josh was alternating weeks with the petitioner and respondent. This arrangement appears to have been satisfactory to both parents.

The alleged shortcomings of each parent are not very serious. Alison complains that Jimmie cannot provide a safe environment for Josh on the farm. She alleges that she, rather than Jimmie, has been the primary caretaker of Josh since he was born, therefore demonstrating her superior ability to care for the child. She argues that Jimmie will return to raising livestock in the

future which in turn will drastically decrease the time available for Josh. Finally, she claims his lack of religious commitment creates a poor atmosphere for Josh to live in.

Jimmie, on the other hand, points to Alison's time during the week that she is forced to be away from her son. He emphasizes the fact that Alison chooses to socialize after work rather than come home to Josh, and, that her work schedule requires Alison to leave the child with his maternal grandmother two nights a week. During the trial he brought up two instances where the child, while under Alison's care, was in potentially dangerous circumstances. Lastly, during trial and on appeal, Jimmie stressed the fact that Alison contemplated moving.

The trial court awarded physical care to Jimmie based upon the fact that Alison left Josh with her mother two nights a week, and because Alison did not intend to remain in the area for the rest of her life. It also ordered Alison to pay $100 per month in child support. On appeal Alison alleges the trial court erred in awarding physical care to Jimmie, and in ordering her to pay child support.

In child custody cases, the best interests of the child is the first and governing consideration. Iowa R. App. P. 14(f)(15); In re Marriage of Burham, 283 N.W.2d 269, 274 (Iowa 1979). In reaching this determination, it is our duty to examine the entire record de novo. Burham, at 274. While we accord weight to the trial court's finding of facts because the trial judge heard and observed the witnesses firsthand, we are not bound by them. Id. at 274, 275. We have always accorded trial courts considerable discretion in matters of this kind, even though we review this case de novo. Hagen v. Hagen, 226 N.W.2d 13, 16 (Iowa 1975).

Our de novo review of the record shows the trial court did not err or abuse its discretion in its decision to award custody of Josh to the father. With Jimmie, Josh is most likely to have the opportunity for the maximum continuing physical and emotional contact with both parents, thus encouraging parental participation in the rights and responsibilities of raising the child. See Iowa Code § 598.41(1); In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974). Obviously, Josh would not be able to be with either parent all of the time under either proposed custodial arrangement. These parents, like all others, work and must necessarily rely on relatives or baby-sitters to help in caring for their children. However, we agree with the trial court that staying with his father, under the circumstances, is in the best interest of Josh.

Alison alleges, on appeal, that the trial court erred in deciding the physical care issue partially upon the finding that she intended to move from the area. She contends that she has no intention of leaving, and that even if she had, it is not probative of this issue.

We find ample support in the record for the trial court's finding that Alison did express an intention to move sometime in the future. The trial court took this finding into consideration and applied Iowa Code section 598.1(6) in determining Josh's potential removal from the area was not in his best interest. The trial court is supported in its decision by Iowa case law. See Alex v. Alex, 161 N.W.2d 192, 199 (Iowa 1968). We affirm its decision.

Alison also alleges that the trial court erred in ordering her to pay child support. She states that Jimmie is in an adequate financial position to care for the child. Both parents are liable for support of their children, not necessarily in equal shares, but proportionately according to their ability to pay. In re Marriage of Novak, 220 N.W.2d 593, 598 (Iowa 1974). Alison's net income per year is $5,980. She also owns corporate bonds that accrue $3,000 interest

annually. Based upon this data, the trial court ordered Alison to pay $100 per month child support. We hold the facts support the trial court's order requiring Alison to pay $100 per month in child support.

Because we agree with the findings of fact and application of law on all issues raised on this appeal, the trial court's dissolution decree is affirmed.

AFFIRMED.