

IN THE COURT OF APPEALS OF IOWA

No. 2-330 / 91-912

IN RE THE MARRIAGE OF CHRISTINE M. SAPP AND
REGINALD P. SAPP

FILED

OCT 27 1992

CLERK SUPREME COURT

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Upon the Petition of

CHRISTINE M. SAPP,

Petitioner-Appellee,

And Concerning

REGINALD P. SAPP,

Respondent-Appellant.

Appeal from the Iowa District Court for Polk County,
Joel D. Novak, Judge.

Husband appeals from the custodial provision of the
parties' dissolution decree. **AFFIRMED.**

Robert A. Wright, Jr., Des Moines, for appellant.

Thomas R. Isaac of Isaac & Adams Law Office, Des
Moines, for appellee.

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

SACKETT, J.

The sole issue in this appeal is whether the trial court in a dissolution decree correctly determined petitioner-appellee Christine M. Sapp was the superior custodian for Melissa Sapp, born May 2, 1988. Respondent-appellant Reginald T. Sapp contends he is the superior custodian and the trial court should have made him, not Christine M. Sapp, the physical custodian. We affirm.

The parties married in 1987. At the time of trial, Christine was twenty-four years of age and Reginald was thirty-nine years of age.

This has been a stormy marriage, and both Christine and Reginald have had problems that have an impact on their abilities to parent their daughter. Both parents obviously love their child, but neither parent has been able to translate this love into responsible parenting.

Christine has exhibited serious deficiencies in parenting, a large part because of drug and alcohol abuse. Christine claimed at the time of hearing to be recovering from these addictions.

After this case was filed, a child custody investigator was hired to evaluate the custody issue. The investigator's written custody study was entered as an exhibit in this case. The custody investigator obviously spent considerable time interviewing both parties and their

witnesses. The child custody investigator also observed the child in the care of each parent. The witnesses the custody investigator interviewed gave negative reports on both parties. A review of that evidence in this opinion would serve no useful purpose. At the conclusion of the investigation, the investigator concluded:

Of the two, the greater evidence is that Mr. Sapp is more mature and stable. This is based not only upon observations, but upon the relatively somewhat more consistent information favorable to him and to his account as to the events of their marriage and to the events pertaining to the child. At the same time, his domestic circumstances does not strongly lend itself to good child care. While the circumstances does not render good child care impossible, it does render it somewhat awkward.

Chris seems still to be a pretty unstable young woman whose capability to remain free from drug and alcohol use seems doubtful. There are sufficient accounts of her unstable actions to make a recommendation that the child be placed with her questionable at best.

Chris' mother impresses this investigator also as being an unstable and even potentially violent person. Reginald's mother may be in a circumstance of tenuous health. This investigator has not seen her home and would be unable to render a judgment at this time either way as to whether she might be a proper caretaker of the child.

The child custody investigator then recommended:

[t]he Iowa Department of Human Services and the Juvenile Court of Polk County be engaged to investigate this situation with the possibility of foster care. During the pendency of this investigation, it is recommended Reginald's mother be considered as the most likely safe haven for the child during that time period.

The trial court recognized the serious problems both parties have experienced. The trial court found Christine sincere in her effort to correct her serious alcohol and drug problems, but understood the concern of the child custody investigator about her return to the use of drugs and alcohol. The trial court also found that during the marriage Christine had assumed the majority of the day-to-day care of the child and of her nurturing.

Our review is de novo. Iowa R. App. P. 4. 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). We are not, however, bound by these determinations. Id.; see also In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Like the trial court, we find no easy answers in this case. We are not convinced either parent has the ability and maturity to be a good parent to this child. However, the State has not seen fit to intervene and the only issue before us is which parent will be the better custodial parent.

The trial court found "Christine seems to have remained 'clean and sober' for a little over a year." If Christine has her substance abuse under control, we find her the better parent.

We find no compelling reason to reverse the trial court decision. We affirm.

We are not aware whether or not the concern of the child custody investigator about the need for foster care was ever communicated to the Iowa Department of Human Services. We recognize events may have transpired during the time this appeal has been pending may have or have not lessened the concerns the child custody investigator advanced.

The treatment this child received at the hands of her parents prior to the dissolution hearing cause us the same concern it did the child custody investigator. We recognize we have no authority to order the Department of Human Services to intervene in this child's life. We will, however, send a copy of this opinion to the Polk County Department of Human Services, because we, like the child custody investigator, are of the opinion that the department should be aware of the facts concerning this child's care.

Neither party has requested attorney fees on appeal. We determine each party shall pay his or her own attorney fees.

AFFIRMED.