

FILED

JAN 26 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA
IN RE THE MARRIAGE OF PAUL RAY McALLISTER
AND EMMA JEAN McALLISTER

Upon the Petition of)
PAUL RAY McALLISTER,)
 Petitioner-Appellant,)
And Concerning)
EMMA JEAN McALLISTER,)
 Respondent-Appellee.)

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8-607
87-1733

Appeal from the Iowa District Court for Warren County
(D.M. 6-319), Thomas Bown, Judge.

The husband appeals a dissolution decree, challenging
the custody provisions placing three of the parties' four
minor children in the wife's physical care. **AFFIRMED.**

Ray Sullins, Des Moines, for petitioner-appellant.

Marc S. Harding, Des Moines, for respondent-appellee.

Considered by Schlegel, P.J., and Sackett and Habhab,
JJ.

SCHLEGEL, P.J**176**

The husband appeals a dissolution decree, challenging the custody provisions placing three of the parties' four minor children in the wife's physical care. He contends the district court had no authority to decide the custody of these children because they are presently under the jurisdiction of the juvenile court due to pending juvenile proceedings.

On November 4, 1987, a decree was entered dissolving the marriage between petitioner, Paul Ray McAllister, and respondent, Emma Jean McAllister. Four children were born of the marriage: Kathleen McAllister, born December 5, 1976; Daniel McAllister, born July 14, 1979; Paul Andrew McAllister, born October 20, 1984; and Gina Maria McAllister, born March 30, 1986. At the time of the dissolution proceeding, the three oldest children were subject to the jurisdiction of the juvenile court, and two of the children were in foster care. The decree provided both parties with joint custody of the children, with Jean being awarded the primary physical care, custody, and control of the children "subject to the jurisdiction of the Iowa District Court in and for Warren County (Juvenile Division) and the Iowa Department of Human Services." This custody provision was based upon a proposed settlement agreement between the parties, which petitioner indicated he understood and accepted under oath:

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Q. Now, to the best of your knowledge, Paul Andrew McAllister and Gina Marie McAllister currently reside with the respondent Emma Jean McAllister, is that correct? A. As far as I know, yes, sir.

Q. And the older two children, Kathleen and Daniel are residing in foster homes or-- A. A care center, yes.

Q. Or a care center. And you are aware of that and there is a separate juvenile action as a result of this placement? A. Correct.

Q. And likewise Paul Andrew is also subject to the jurisdiction of the Juvenile Court? A. Yes, sir.

Q. It is your understanding that as a result of that jurisdiction that this Court does not have the power or the jurisdiction to make an immediate order relative to their custody, well-being, and things of that nature? A. To those three, yes, sir.

* * *

Q. Now, as the Judge has indicated on the record, there have been informal discussions with the Court. You and I have gone over a proposed settlement of this matter. I want to just touch base with you on a couple of things. Number one, that there would be an award of joint custody, subject to the jurisdiction of the Juvenile Court while that--those cases are pending? A. Yes, sir.

Q. That upon the release of--or the dismissal of those cases, that all four children would be placed in the physical care of the respondent, again subject to the Juvenile Court action? A. Yes, sir.

Q. Is that your understanding? A. Right.

Q. That you would be required to pay child support, maintain medical insurance, subject to some other requirements that will be contained in the decree. Is that your understanding? A. Right.

On appeal, petitioner claims that, pursuant to Iowa Code section 232.3(1) (1987), the trial court was without jurisdiction to decide the custody of the children. In In re Marriage of Bolson, 394 N.W.2d 361, 365 (Iowa 1986), the Iowa Supreme Court interpreted the provisions of section 232.3(1) and stated that:

Upon noting the pendency of the juvenile court proceedings [in matters such as these,] it [is] incumbent upon the trial court to defer to the juvenile court for authorization to proceed concurrently . . . or await the juvenile court's decision.

We find petitioner's claim to be without merit. The record here reveals that the court ratified the parties' negotiated agreement concerning custody subject to the juvenile court proceedings, that petitioner understood the court did not have the power or the jurisdiction to make a final custody order in the case, and that the court never purported to do so. We fail to find any conflict with section 232.3(1) or Marriage of Bolson.

AFFIRMED.