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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JACKSON L. CAMPBELL AND JULIA F. CAMPBELL

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Upon the Petition of)
JACKSON L. CAMPBELL,)
Petitioner-Appellee,) Filed February 26, 1986
And Concerning)
JULIA F. CAMPBELL,) 5-648 / 85-384
Respondent-Appellant.)

Appeal from the Iowa District Court for Van Buren County (No. 23112) - D B Hendrickson, Judge.

Respondent wife appeals the trial court's decision to award custody of the parties' two children to petitioner husband under Iowa Code chapter 598A. **AFFIRMED.**

Thomas M. Walter of Johnson, Bauerle, Hester & Walter, Ottumwa, for respondent-appellant.

Michael J. Schilling of Ford Law Offices, Burlington, for petitioner-appellee.

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

SNELL, J.

Petitioner Jackson L. Campbell (hereinafter Jack) and respondent Julia F. Campbell were married in 1977. The parties have two children, Christopher and Aaron. In 1978, while Jack was in the Army, Christopher was born and the family resided in Germany for about two years. After Jack's discharge from the service in January of 1981, the parties moved to Milton, Iowa, and Aaron was born in February of 1981. Jack took courses in auto mechanics and auto body repair at a community college under the GI Bill. He performed various odd jobs during this period but never achieved steady employment. Julia was the primary caretaker of the children during their early years. The marriage steadily deteriorated.

After an argument one evening in August of 1983, Jack took the boys and went to his parents' home in Milton. He telephoned Julia the next evening and told her that he was filing for a dissolution. He also informed her at that time that she could not see the children until she was served because he feared that she would take the children and leave the state. Julia had threatened to take the children and leave Iowa on more than one occasion.

Dissolution proceedings were instituted on September 1, 1983. Until November of 1983, Jack often refused to let Julia see the children unless she would discuss reconciliation. Until late February of 1984, Jack and the children resided with his parents. Julia sought temporary custody, but no hearing date was set. On November 4, 1983, a stipulation and agreement was reached by the parties leaving custody with Jack and specifying a visitation schedule for Julia until temporary custody was decided by the court.

In January of 1984, Jack attended an Army reserve camp for two weeks and the children lived with Julia. When Jack returned from camp the children moved back in with him. For the first time Julia appeared to react favorably

to Jack's reconciliation efforts. Jack and Julia agreed to resume living together. Jack rented a house and moved all of their furniture into it. Julia insisted that Jack dismiss the pending dissolution action before she would actually move into the house. A dismissal was signed by both parties on February 22, 1984. On February 25, Julia picked up the children claiming that they were going shopping, but instead took the children and flew to California. She gave Jack no advance notice of the move, nor did she get in touch with Jack until several days later. At that time she sent a message through her attorney which read, "The boys and I are okay." Several days after Jack received that message, Julia's father called Jack and informed him that Julia and the children were living with him in San Bernardino, California. Julia did not notify Christopher's school that she was taking him away nor her landlord. Julia candidly admitted at trial that the reconciliation was all a hoax and she had planned to take the children to California while Jack was at army camp. Julia testified at trial that she pretended to reconcile with Jack in order to take the children to California free of any Iowa court orders.

Julia and the children resided in her father's home until the end of April, 1984. In March, Julia met Robert Bender, an Air Force staff sergeant. In the latter part of April, Julia, the children, and Robert moved into a rented house in Highland, California, to begin living together as a family. She left no forwarding address with her father. Robert was also married but separated from his wife. Julia is satisfied with their living arrangement and is not ready to marry again. She filed for a legal separation from Jack in California two weeks after leaving Iowa. That action is stayed pending resolution of the case before us.

Julia has not allowed visitation by Jack and monitors all of his telephone conversations with the children if he is even allowed to speak to them. Jack overheard Julia's father make derogatory comments to the children about Jack,

such as "the dummy's on the phone." Jack was not made aware of Julia's address, living arrangement, or telephone number after she moved in with Robert. Jack has had no personal contact with the children since they were removed from Iowa. Julia never wrote or called Jack to inform him of the children's health or welfare. Jack had to write several letters to Christopher's school in California to obtain information.

Julia is presently employed at Simi Insulation where she works with sales personnel. She grosses $880 per month. Christopher is attending elementary school and doing well. Aaron attends a day care center.

Jack returned to military service in November of 1984 as a full-time recruiter. He is assigned to the Ft. Dodge area for at least six years. He nets $1600 per month plus full medical benefits for himself and his dependents. Jack has visited with the elementary school principal and the person who would be Christopher's teacher should he gain custody. Jack has also made arrangements for child care. Several witnesses from Milton testified regarding Jack's ability as a parent and their observations of him with the children. They all testified that the children were clean, appeared healthy, and that Jack spent a lot of time with them. No one from Milton testified on Julia's behalf.

In June of 1984, Jack filed a petition for child custody pursuant to Iowa's Uniform Child Custody Act to determine custody of the children. The trial court awarded custody of both children to Jack. The court noted that while both parents can provide adequate care for the children, Jack is the parent most likely to provide the opportunity for maximum contact with both parents.

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, but are not bound by them. Iowa R. App. P. 14(f)(7). "In child custody cases the first and governing consideration of the courts is the best interest

of the child." Iowa R. App. P. 14(f)(15). It is not just the short-range interests of the children with which we are concerned, but their long-range interests as well. In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974). It has long been established in Iowa that custody is not to be awarded either parent as a reward or punishment. In re Marriage of Gonzales, 373 N.W.2d 152, 154 (Iowa Ct. App. 1985). "However, a parent's conduct in depriving the other parent of contact with the child 'is a most serious reflection on (that parent's) capacity to retain custody.' [Spotts v. Spotts, 197 N.W.2d 370, 372 (Iowa 1972)] A parent's interference in this area may warrant awarding sole custody to the other parent. Iowa Code § 598.41(1) (1985); In re Marriage of Bolin, 336 N.W.2d 441, 442, 446 (Iowa 1983); In re Marriage of Burham, 283 N.W.2d 269, 276 (Iowa 1979)." Id.; see also In re Marriage of Leyda, 355 N.W.2d 862, 866 (Iowa 1984) (appellate courts have been "steadfast in condemning parents who disappear with their children and deny their ex-spouses parental contact.")

The parties concede that the child custody criteria set out in Iowa Code section 598.1(6) and section 598.41 (1985) govern for purposes of this appeal. Section 598.1(6) provides:

> "Best interest of the child" includes, but is not limited to, the opportunity for maximum continuous physical and emotional contact possible with both parents, unless direct physical or significant emotional harm to the child may result from this contact. Refusal by one parent to provide this opportunity without just cause shall be considered harmful to the best interest of the child. (emphasis added)

Section 598.41 also provides in pertinent part:

> 1. The court, insofar as is reasonable and in the best interests of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, unless direct physical harm or significant emotional harm to the child is likely to result from such

contact with one parent, and which will encourage parents to share the rights and responsibilities of raising the child. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement.

* * *

3 In considering what custody arrangement under subsection 2 is in the best interests of the minor child, the court shall consider the following factors:

a. Whether each parent would be a suitable custodian for the child.

b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.

c. Whether the parents can communicate with each other regarding the child's needs.

d. Whether both parents have actively cared for the child before and since the separation.

e. Whether each parent can support the other parent's relationship with the child.

f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.

g. Whether one or both the parents agree or are opposed to joint custody.

h. The geographic proximity of the parents. (emphasis added)

The record is clear that since Julia moved the children to California, she has prevented them from seeing their father. Julia purposefully concealed the children's location from Jack and has limited contact between them to occasional telephone calls which she monitors. Julia refuses to communicate with Jack concerning the children's health or school progress. Moreover, Julia refuses to recognize that Jack has any parenting skills despite evidence to the contrary. Overall, Julia does not indicate that she will support any physical or emotional

relationship between Jack and the children in the future. While Jack initially interfered with Julia's visitation before a written agreement was reached concerning scheduled visitation, his fear that Julia would leave Iowa with the children proved justified. Once visitation was scheduled, Jack was supportive of Julia's relationship with the children.

It is unfortunate that these children must be moved again. However, the extended lapse of time cannot operate to deprive Jack of his custodial right where he promptly made an effort to recover the children. See Gonzales, 373 N W 2d at 152. We conclude that Julia's refusal to provide the children with the opportunity for maximum continuing contact with Jack is without just cause and warrants the award of custody of Christopher and Aaron to Jack.

AFFIRMED.

Donielson, J., concurs; Oxberger, C.J., dissents.

Neither parent in this fact situation has shown significant maturity in encouraging the other's involvement with the children. I strongly disapprove of the mother's actions in keeping the children from seeing their father. However, as the majority points out, an award of custody is not punishment or reward for that parent's conduct. In re Marriage of Gonzales, 373 N.W.2d 152, 154 (Iowa Ct. App. 1985). The child's best interests are always our primary concern Iowa R. App. P. 14(f) (15). The record shows the father was a heavy drug user and used drugs in front of Christopher. The father also abused the mother While the children were in Jack's care, he would leave them at home alone for up to three hours at a time. After visiting the father, they would return smelling of urine and without shoes, socks, or coats. It is the mother who has been the primary caretaker during the children's lives.

I do not support the mother's actions, but believe the best interests of these children would be served by leaving them in the custody of their mother. I would reverse.