

FILED

AUG 27 1986

CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

**IN RE THE MARRIAGE OF PATTY ANN SCHIFFER
AND DONALD JAMES SCHIFFER**

**Upon the Petition of
PATTY ANN SCHIFFER,**

)

Petitioner-Appellant,

)

Filed August 27, 1986

)

6-176
85-1767

**And Concerning
DONALD JAMES SCHIFFER,**

)

Respondent-Appellee.

)

Appeal from the Iowa District Court for Jackson County (No. 4-1249) -

J. L. Burns, Judge.

Petitioner appeals from the custody and property division award in the trial court's decree dissolving the parties' marriage. **AFFIRMED.**

Peter J. Klauer, Dubuque, for appellant.

Steven K. Warbasse, of White & Warbasse, Cedar Rapids, for appellee.

Heard by Oxberger, C.J., and Schlegel, and Sackett, JJ.

SACKETT, J.**301**

Petitioner Patty Schiffer appeals from the trial court decree dissolving the parties' marriage. She contends (1) the trial court should not have awarded Respondent Donald Schiffer physical care of the parties' three children in the joint custody arrangement, and (2) the property division is inequitable. We affirm.

Patty and Donald were first married in 1975. One child, Jennifer, was born in 1976. The marriage was dissolved in 1979. The parties remarried in 1981. Two daughters, Sarah and Shelby were born in 1982 and 1984 respectively.

In March, 1985, the present action was filed. After hearing, the court entered an order dividing the marital property and awarding custody of the children to Donald. Patty has appealed.

I. Scope of Review

Review of award of custody and property division in dissolution proceedings is de novo. Iowa R. App. P. 4; In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984). We examine the entire record and determine the parties' rights anew based upon all credible evidence on properly presented and preserved issues. Id. The appellate court gives weight to the trial court's findings of fact, but we are not bound by such findings. Iowa R. App. P. 14(f)(7); In re Marriage of Wallace, 315 N.W.2d 827, 829 (Iowa App. 1981).

II. Custody

Patty contends she should have been awarded physical care of the parties' three children.

The overriding concern in awarding custody is the best interest of the child. Iowa R. App. P. 14(f)(15); Iowa Code §598.41(1) (1985). The statutory criteria in awarding custody are found in Iowa Code §598.41(3) (1985):

- 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 parents agree or are opposed to joint custody.
- h. The geographic proximity of the parents.

The trial court's decree awarded joint custody of the three children to both parties. After finding either parent would be a proper custodian, the trial court made Donald the physical custodian. The trial court determined Donald had successfully handled custody of Jennifer, the oldest child, between the two marriages. The trial court further determined the likelihood the children would maintain maximum physical and emotional contacts with both parents was greater when they were in their father's custody. See Iowa Code §§598.41(1)-(3)(c) (1985).

The record shows the parties have maintained a very active part in their children's lives. They both continued to live in the same household with the three children until the time of the dissolution decree was entered.

Neither party has singularly assumed total responsibility for the three children. Jennifer obviously has an extremely close relationship with her father, due in part to the fact he assumed her care during the parties' separation. Patty was very young when Jennifer was born and at that point Donald exhibited more maturity. The evidence indicates Jennifer now places primary reliance in her father.

The two younger children are seven and eight years younger than Jennifer. During their lifetime the younger children have been in the primary care of their mother, although the record reflects Donald has had substantial involvement with the younger children.

The custody decision in this case is not easy. We commend both parents for the concern they have for their children. We determine, as did the trial court, both parties are loving and caring parents. We consider the factors enumerated by the trial court in making its determination and agree with these findings. We also determine the record reflects Donald has exhibited more stability and maturity during the two marriages, both in employment and family decisions. Therefore, we affirm the joint custody award making Donald the physical custodian of the parties' three children.

III. Property

Patty also contends the property division was inequitable. She asserts the trial court should have allowed her to remain in the family home and should have increased her property award by \$2,000. Patty's request to stay in the family home was premised on being granted physical custody of the children. Since Patty has not been awarded custody, we find no basis for her request to stay in the family home.

The court awarded each party assets valued at approximately \$14,500. However, the trial court also awarded the parties' home to Donald, determining it had been purchased primarily with funds Donald brought into the marriage. Patty requests \$2,000 because she alleges the parties' equity in the home increased by that amount during the marriage. We have examined the property award under the dictates of Iowa Code §598.21(1) (1985) and find it to be an equitable decision.

We further note Patty was not ordered to pay child support at this time.

We affirm the property award.

AFFIRMED.