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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-542 / 94-365

IN RE THE MARRIAGE OF LARRY WALTER CROOKS AND CATHERINE SUE CROOKS

Upon the Petition of
LARRY WALTER CROOKS,

Appellant,

And Concerning
CATHERINE SUE CROOKS,

Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Glen M. McGee, Judge.

Larry Crooks appeals from the child custody provisions of the parties' dissolution decree. **REVERSED AND REMANDED WITH INSTRUCTIONS.**

Roger J. Hudson and Michael E. Marshall of Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson, Mallaney, Schindler & Scalise, P.C., Des Moines, for appellant.

Forrest E. Ebersold of Ebersold Law Office, Council Bluffs, for appellee.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

HUITINK, J.

Larry Crooks appeals the custody provisions of the parties' dissolution decree. We reverse and remand with instructions.

Larry and Catherine Crooks were married in February 1981. At the time of trial Larry was fifty-four years of age and Catherine was thirty years of age. They have three children: Brandy, born in August 1981; Scott, born in May 1983; and Nicole, born in January 1986.

Larry filed for dissolution in March 1993 after an incident where Catherine threatened him with a butcher knife. Larry received a *no*-contact order against Catherine as well as temporary custody of the children.

In May 1993 Larry quit his job as a truck driver to stay home with the children. In the summer of 1993 he and the children moved to Des Moines and enrolled them in school. Larry testified he worked as a building contractor renovating apartments. He also received public assistance, and they lived in an apartment provided by the Catholic church. He planned on moving into a mobile home he had purchased within two weeks.

At trial both parties sought custody of the children. Larry represented himself. He admitted being listed in the Colorado child abuse registry for the alleged physical abuse of Scott but denied abusing the children or Catherine.

Larry presented the testimony of Charleyne Tull, a psychiatric counselor who had interviewed the children individually at Larry's request. She testified the children related that Catherine abused them all, but especially Brandy. The children also claimed Catherine drank too much and was having an affair.

Catherine admitted she was convicted of a domestic abuse assault after threatening Larry with the butcher knife. She denied abusing the children and professed she always provided for their needs during the marriage.

Catherine also testified she had completed an alcohol abuse treatment program and was employed at a nursing home. She stated she could not take the children to her current residence but would seek new housing if awarded custody.

The district court awarded sole custody to Catherine and granted Larry only supervised visitation. The court ordered Larry to pay fifty dollars per month in child support and $500 towards Catherine's attorney fees and court costs.

Larry, through counsel, filed a motion for new trial. The motion contained a copy of a founded report of child abuse against Catherine which was filed while the parties were in trial. Larry challenged the court's decisions not to award joint custody, not to award him primary physical care, and to only allow him supervised visitation. The district court denied the motion.

On appeal Larry contends he should be awarded primary physical custody of the children. He argues he can better provide for the needs of the children, they wish to live with him, and Catherine's alleged abuse of the children justifies awarding him physical custody.

Our review in equity actions 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 we are not bound by them. Iowa R. App. P. 14(f)(7).

In custody determinations our first and governing consideration is the best interests of the child. Iowa R. App. P. 14(f)(15). Our objective is to place the child in the environment most likely to bring the child to healthy physical, mental, and social maturity. In re Marriage of Bartlett, 427 N.W.2d 867, 877 (Iowa App. 1988) (citation omitted).

In this case the parenting abilities of both parties leave a lot to be desired. Both Larry and Catherine have histories of domestic abuse. Both have abused alcohol. Catherine has completed an inpatient alcohol abuse treatment program. Larry testified he no longer drinks. Fortunately, both parties have extended support from family members, and each has relied on family during difficult times.

During the parties' marriage Catherine had been the primary caretaker for the children. The fact a parent was

the primary caretaker prior to the parties' separation does not assure he or she will be awarded custody of the children in a dissolution action In re Marriage of Fennel, 485 N.W.2d 863, 865 (Iowa App. 1992) (citation omitted).

Reverend Kennedy, the parties' next-door neighbor in their Council Bluffs mobile home park, testified he often heard Catherine yelling at the children. He stated the children were usually disheveled and the inside of the mobile home was filthy. He also testified that he frequently saw a male companion visit the home when Larry was not there. These conditions reflect badly on Catherine's custodial abilities.

Larry has little experience as primary caregiver, but nothing in the record leads us to believe he is unable to provide a suitable home for the children. It appears the children are now in a permanent residence since Larry purchased the mobile home. The children's attendance cards indicate they are doing well in school. They are also involved in after-school programs.

Although the children did not testify, Charleyne Tull testified about her interviews with each child. Her testimony as well as her written reports of the interviews indicate the relationship between Catherine and Brandy is severely strained. Tull related the children desire to reside with Larry. A child's preference, while not controlling, is a factor to be considered in determining custody arrangements. In re Marriage of Sires, 506 N.W.2d

813, 815 (Iowa App. 1993) (citation omitted). Tull believed the children had drawn together and were bonded to Larry because he provided structure to their lives. We are impressed by the fact that the children appear to be happy and have thrived while in Larry's care.

Larry places great emphasis on the founded report of child abuse. However, the abuse was not reported by Brandy until two days prior to trial. This abuse allegedly occurred more than six months earlier. These allegations were made in the context of a heated custody dispute. We therefore view the reported abuse with great skepticism and accordingly give these allegations little if any weight.

Upon our de novo review of the record before us, we conclude the best interests of the children are better served if they are allowed to remain with Larry. In making this determination we are choosing the environment where the children have shown they can thrive and have experienced much happiness.

We therefore reverse the district court and award the parties joint legal custody of the children. Larry shall have primary physical custody of the children.

We recognize Catherine has taken steps to stabilize her life. She should have liberal visitation so she can rebuild a healthy relationship with her children. Larry and Catherine have rights and responsibilities toward the children, and they should understand neither one's rights are superior to those of the other parent. Iowa Code §

598.1(3) and § 598.41(5) (1993). We urge them to cooperate and to place the best interests of their children ahead of their animosity toward one another.

We remind Larry that a custodial parent's interference with the rights of the noncustodial parent may be grounds for modification of custody. In re Marriage of Quirk-Edwards, 509 N.W.2d 476, 480 (Iowa 1993). In addition, future interference with the development of normal, healthy relationships between Catherine and the children may serve as grounds for modification. See In re Marriage of Gratias, 406 N.W.2d 815, 817-18 (Iowa App. 1987). We trust this strong admonition will guide Larry in the exercise of his considerable discretion as the parent awarded primary care responsibility.

We are unable to determine from the record the parties' monthly incomes for purposes of child support. Therefore, we remand the issues of child support and visitation to the district court to determine Catherine's support obligation and to establish a liberal visitation schedule. Each party shall be responsible for his or her own appellate attorney fees, and the costs shall be divided equally.

REVERSED AND REMANDED WITH INSTRUCTIONS.