IN THE COURT OF APPEALS OF IOWA

No. 0-586 / 90-274

FILED
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CLERK SUPREME COURT

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IN RE THE MARRIAGE OF JOE GOTT AND BRENDA GOTT

Upon the Petition of

JOE GOTT,

Appellant,

And Concerning

BRENDA GOTT,

Appellee.

Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel, Judge.

Petitioner challenges the district court's award of primary physical care of the parties' two minor children to the respondent in a dissolution proceeding. He also contests the award to the respondent of a part of his retirement account. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Randy S. DeGeest of DeGeest Law Office, Oskaloosa, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

PER CURIAM

In this dissolution of marriage action, the petitioner challenges on appeal the trial court's award of primary physical care of the parties' two minor children to the respondent. The petitioner also claims the trial court erred in awarding the respondent the sum of $8,000 from his retirement account pursuant to a qualified domestic relations order. We affirm.

Joe and Brenda were married on July 1, 1984 and divorced on January 23, 1990. Prior to the marriage Joe had purchased a lot in New Sharon and later built a house on it. This was Joe's first marriage and Brenda's second. Brenda has one girl from her first marriage who was age nine at the time of trial. Joe and Brenda have two girls from this marriage. At trial time the parties' girls were ages 4 and 2.

During the marriage Joe worked for Rolscreen in Pella, Iowa, earned $11.75 per hour, and had accumulated an employee's trust account fund. Although Brenda initially worked as a nurses' aid after the parties were married, she ceased working full time in August 1985. Thereafter she became the family's primary caretaker, although Joe shared in these responsibilities. After the parties separated Brenda and the children moved to a large farm house near Crawfordsville, Iowa, and obtained a job earning $4.65 per hour working for a nursing home.

During trial the parties disputed custody. Both presented witnesses in support of their respective positions. After viewing the witnesses the district court found that Joe's witnesses lacked credibility. The court also considered home study investigations conducted by the Mahaska and Louisa County Department of Human Services regarding the respective parenting abilities and other pertinent matters relating to this custody proceeding before making a decision.

The court concluded that the best interest of the children required that Joe and Brenda have joint custody of the children with Brenda having primary physical custody and Joe having visitation. Based on the child support guidelines, the court set support at a minimum of $380 per month. It awarded Brenda the family automobile and personal property then in her possession. Joe received the parties' real estate, all other personal property, and the responsibility for the debts shown on the parties' stipulation. The court also ordered that $8000 should be paid from Joe's retirement account pursuant to a qualified domestic relations order to Brenda pursuant to Internal Revenue Code section 414(p). Each party paid their own attorneys fees, while Joe was ordered to pay costs.

When determining placement of child custody or physical care, the first and governing consideration of the court is the best interests of the child. Iowa R. App. P. 14(f)(15). In equity cases, especially when considering

the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7). In custody proceedings, the status of children should be quickly fixed and thereafter little disturbed. In re Marriage of McFarland, 239 N.W.2d 175 (Iowa 1976). Precedence is of little value as each case must be evaluated on its own facts to determine which parent can minister more effectively to the long-range best interests of the child. In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974).

It is our responsibility to review the record de novo and to determine the issues presented upon the facts disclosed of record. In evaluating the testimony of witnesses, we give special weight to the findings of the trial court as to credibility. We do so for the trial court has the opportunity to observe the conduct and demeanor of the witnesses on the witness stand. After evaluating the testimony of the various witnesses, the trial court concluded that the respondent was the better parent to serve the long-range best interests of the children and, accordingly, awarded her their primary physical custody. From our de novo review of the record, we concur in this evaluation.

We have also considered the appellant's claim that the trial court erred in awarding the respondent the sum of $8,000 from the petitioner's retirement account pursuant to a qualified domestic relations order. When we consider

this award with the division of the parties' property, we find it to be fair and reasonable. Accordingly, we affirm the trial court on this issue.

We affirm the trial court in all respects. Costs of appeal are assessed to the appellant.

AFFIRMED.