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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DUANE EUGENE SMITH AND MARY LYNNE SMITH

Upon the Petition of)

DUANE EUGENE SMITH,) Filed January 30, 1981

Petitioner-Appellant,)

And Concerning)

MARY LYNNE SMITH,) 0-385
3-63743

Respondent-Appellee.)

Appeal from Story District Court - Newt Draheim, Judge.

Petitioner husband appeals alimony provisions of the parties' dissolution decree and respondent wife cross-appeals child custody provisions of the decree. AFFIRMED.

Timothy J. Finn of Murray, Curtis & Finn, Ames, for petitioner-appellant.

Jere C. Maddux of Hegland, Newbrough, Johnston, Brewer & Maddux, Ames, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

Petitioner Duane Smith appeals the alimony provisions of the parties' dissolution decree and respondent Mary Smith cross-appeals the child custody provisions of the decree. We affirm.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 286 (Iowa 1976).

I.

Petitioner and respondent had been married for fifteen years when their marriage was dissolved on June 22, 1979. Petitioner was awarded custody of the couple's two sons, ages fourteen and eleven. Petitioner was also ordered to pay $200 per month in alimony until the respondent remarries or dies or there is a substantial change in circumstances justifying modification. As part of a property settlement, petitioner was awarded the family residence and furnishings and was required to pay the respondent $10,000.

Petitioner, who is now 35 years old, is a civil engineer who has almost earned his master's decree. During the marriage, he attended college and worked for the State Department of Transportation. He is currently employed by a construction firm and earns $30,000 per year. Respondent has a high school education and has worked in retail sales throughout the marriage. She currently manages a candy store and makes approximately $7,000 per year.

The respondent was committed to a local hospital for mental health treatments for a period of time shortly after the marriage broke up, and the couple's sons have been residing with the petitioner since that time. Both boys testified that they would prefer to live with their father, and the guardian ad litem recommended that the petitioner be given custody because he is more stable and shares more interests with the boys. At no time, however, has the respondent been found to be an unfit mother.

II.

In appealing the alimony provisions of the decree, the petitioner does not contend that the respondent is not entitled to alimony or that $200 per month is an inappropriate figure. Instead, he argues that he should be required to pay respondent $200 per month for only three years rather than until respondent dies, remarries, or has a substantial change in circumstances. We find this argument unconvincing.

Payment of alimony is not an absolute right; the circumstances of the particular case determine whether an award should be made. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976); Behrle v. Behrle, 228 N.W.2d 25, 27 (Iowa 1975); In re Marriage of Matson, 215 N.W.2d 358, 359 (Iowa 1974). The factors to be considered in determining the propriety of an alimony award are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). Applying the Schantz criteria to the record in this case, we conclude that the petitioner's proposed limit on his alimony obligation is unjustified.

Petitioner earns $30,000 per year, whereas the respondent makes approximately $7,000. Petitioner is close to receiving his master's decree in civil engineering; respondent, on the other hand, has only a high school education. Although the petitioner suggests that the respondent's earning capacity is such as to allow her to significantly increase her income in the future, we find no evidence that this is so. In fact, respondent's limited education and lack of varied work experience would tend to indicate that the respondent cannot realistically hope to earn much more than she does now. Respondent thus has clearly demonstrated to this court her need for alimony payments and the petitioner's ability to make such payments. Furthermore, we are not unmindful of the fact that the respondent, who worked outside the home during the fifteen years of the marriage, has made significant financial contributions to the general well-being of the family. In addition, her contribution through the performance of household duties must be recognized. In re Marriage of Moorhead, 224 N.W.2d 242, 245 (Iowa 1974). Finally, we consider it important to note that the respondent worked to help support the family while the petitioner earned his civil engineering decree. See In re Marriage of Horstmann, 263 N.W.2d 885, 891 (Iowa 1978). For these reasons, we find that the trial court was justified in awarding $200 per month alimony until such time as the respondent dies, remarries, or has a substantial change in circumstances.

III.

Respondent wife cross-appeals from the provision of the decree that grants custody of the couple's sons to petitioner. We affirm.

Our first and governing consideration in determining custody is the best interests of the children involved. Iowa R. App. P. 14(f)(15). With this in mind, we note further that the status of children should be quickly fixed and, thereafter, little disturbed. In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974). In deciding the custody issue, we seek neither to punish one parent nor reward the other. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). There is no inference favoring one parent as opposed to the other in deciding which is the more fit custodian, except that arising from the particular facts of the case. Bowen, 219 N.W.2d at 688. Factors relevant to the custody determination are listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), with the ultimate question being, based on the entire record, which of the parents can minister more effectively to the long-range best interests of the children. Id.; Iowa R. App. P. 14(f)(15). We conclude in the instant case that that parent is the petitioner father.

One of the factors we consider in our determination is the emotional and mental stability of the respondent mother. Although she maintains that she is now stable, the fact remains that at one point in 1979, when the children were still in her care, she experienced emotional and mental problems of a sufficiently serious nature to require emergency hospitalization in the mental health unit of a local hospital. While this factor is not controlling, we think it warrants careful attention.

Other considerations lead us to conclude that custody should remain with the petitioner. He and the boys share several common interests and participate in many activities together. The record suggests that the petitioner's relationship with the boys is such that he is better able to discipline and control them. Both boys, who were found to be intelligent and mature by their guardian ad litem, expressed a preference for living with their father, and we note that the preference of intelligent and mature minor children is a factor relevant to the determination of custody. Winter, 223 N.W.2d at 167. Finally, the recommendation of the children's guardian that custody be given to the father is of significance to our inquiry. Id.; see In re Marriage of Joens, 284 N.W.2d 326, 329 (Iowa 1979). These children are happy and well-adjusted with their father. Thus, having carefully considered the evidence presented by this record, we affirm the

trial court's grant of custody to the petitioner.

AFFIRMED.