



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF YVONNE GINA PLUM AND DENNIS WAYNE PLUM

Upon the Petition of	)	
YVONNE GINA PLUM,	)	Filed December 30, 1981
Petitioner-Appellee,	)	
And Concerning	)	
DENNIS WAYNE PLUM,	)	<u>1-389</u>
Respondent-Appellant.	)	<u>3-66591</u>

Appeal from Tama District Court - Robert E. Ford, Judge.

Respondent husband appeals from the decree which dissolved the parties' marriage and awarded custody of the parties' two minor children to the petitioner wife.

AFFIRMED.

Barry S. Kaplan of Fairall, Fairall, Reeves & Kaplan, Marshalltown, for respondent-appellant.

Jared O. Bauch, Traer, for petitioner-appellee.

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

DONIELSON, J.

Respondent husband appeals from the decree which dissolved the parties' marriage and awarded custody of the parties' two minor children to the petitioner wife. 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 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 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, 926 (Iowa 1976).

I.

The parties were married in 1975. They had two children, Chad born in 1975 and Melissa born in 1979. The marriage began to deteriorate after Melissa's birth and apparently they had long, loud arguments in front of the children. In recognition of the effects of such fights on the children, the parties took the children to live with respondent's parents on July 3, 1980. Petitioner filed for a dissolution on July 11, 1980. In August of 1980 the parties separated and respondent also went to live with his parents.

Respondent's work keeps him away from the home most of the day and the trial court found that he stops off for three beers every night before going home to his family. The children are primarily cared for by respondent's mother and sister. Petitioner acknowledged that she had a problem with alcohol in the past but claims it is now under control. The record indicates that petitioner is having an affair with a man she does not presently intend to marry and that this man has stayed overnight at her home when the children are visiting. The trial court found petitioner had the primary responsibility for rearing the children during the marriage and that both parties were proper parents to whom custody could be awarded. After consideration of these and other factors, the trial court awarded custody of the children to the petitioner. Respondent appealed and was granted a stay of the custody provisions while the appeal was pending.

II.

Respondent claims that the trial court erred by placing custody of the parties' children in the petitioner. We agree with the trial court that both parents in this case are proper parents and they could both provide a proper home for the children. However, our first and governing consideration in determining custody is the best interests of the child involved. Iowa R. App. P. 14(f)(15). With this in mind, we note further that the status of the 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 parties can minister more effectively to the long-range best interests of the children. Id.; Iowa R. App. P. 14(f)(15).

Petitioner had the primary responsibility to care for the parties' children during the marriage and clearly can continue to provide such care in the future. Respondent, on the other hand, is currently dependent upon the assistance of his mother and sister to care for the children. In the current living situation, the grandparents and aunt have essentially assumed the parental role. Their care should be a supplement to respondent's day-to-day care of the children, not a substitute for his care. Respondent appears to have little real responsibility for the day-to-day care of his children. He arises and leaves for work before they awaken. His mother and sister make sure the children are dressed, fed, and taken to either the school or a babysitter. Respondent then stops off for a beer every night after work rather than coming home to assume his parental duties. His mother and sister again assume this duty. It is true that petitioner will also have to use the services of a babysitter when she works, but if the children are placed in her custody they will receive a larger portion of their day-to-day care directly from one of their parents. The evidence also indicates that petitioner has a good relationship with respondent's mother so there is little danger that the children's relationship with their grandparents will suffer. In light of the potential for the grandparents and aunt to become in effect substitute parents for the children if

respondent is awarded custody, which was properly recognized by the trial judge, we find that the long-range best interest of the children will be better served if petitioner is awarded custody in light of her past record of caring for their daily needs during the parties' marriage. In addition, this arrangement will insure that the lines of parental responsibility and authority are clearly drawn. It will be clear to the children who is responsible for their care as between their parents, their paternal grandparents, and their aunt.

Petitioner's application for attorney's fees is denied and the costs of this appeal are assessed to respondent.

AFFIRMED.