

IN THE COURT OF APPEALS OF IOWA

No. 0-394 / 89-1655

FILED

OCT 23 1990

CLERK SUPREME COURT

IN RE THE MARRIAGE OF WILLA M. GOODFELLOW AND JACOB E. KRCH

Upon the Petition of

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WILLA M. GOODFELLOW,

Appellee,

And Concerning

JACOB E. KRCH,

Appellant.

Appeal from the Iowa District Court for Scott County,
C. H. Pelton, Judge.

Jacob (Jack) appeals a district court dissolution
decree. **AFFIRMED.**

Dennis D. Jasper of Stafne, Lewis, Jasper, Alexander,
and Preacher, Bettendorf, for appellant.

Patrick W. Driscoll of Stanley, Rehling & Lande,
Davenport, for appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

Willa and Jacob (Jack) were married in 1983. Jacob, born October 28, 1984 is the only child born to the couple. Willa serves as priest in charge at the St. Paul's Episcopal Church in Grinnell, Iowa. Jack serves as assistant pastor of the First Presbyterian Church of Davenport, Iowa.

The dissolution decree placed Jacob in joint legal custody and in Willa's primary care. The court granted Jack visitation every other weekend and certain holidays. Jack appeals the decree.

Jack contends that he should have primary physical care of Jacob. He claims that: 1) Willa has mental problems, including suicidal tendencies dating back to her childhood; 2) Willa uses improper physical discipline on Jacob; 3) Willa has denied him visitation; 4) he is more stable; and 5) he has attended better to Jacob's educational and medical needs. Jack also requests more liberal visitation.

Willa requests attorney fees on appeal.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App.

P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

In child custody cases the first and governing consideration is the best interests of the child. Iowa R. App. P. 14(f)(15). The determination of which parent should have the physical care of a child results from an evaluation of all the evidence to decide which parent can minister more effectively toward the long-range best interests of the child. In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974).

After evaluating the record as a whole we come to the conclusion that both parties are loving parents who can appropriately minister to Jacob's needs. After that conclusion we find that the record and both parties' arguments become a tangle of conflicting statements and attempts to portray the other in a highly unfavorable light. In such a situation we feel it appropriate to rely on the trial court's decision reached after hearing all the evidence coupled with the opportunity to watch the witnesses present their testimony. Maisel v. Gelhaus, 416 N.W.2d 81, 86 (Iowa App. 1987).

Jack contends that the trial court did not receive a full picture of Willa's mental status because it did not see some personal letters written by Willa to friends.

We find the trial court heard significant testimony about Willa's past problems with depression and the letters serve only as cumulative evidence of Willa's past depressions. The trial court arrived at its decision after being made fully aware of Willa's problems with depression.

We find no reason to disturb the trial court's decision to place Jacob in Willa's physical care. Willa appears to have been Jacob's primary care giver throughout his life and by all reports, Jacob is a healthy, happy child that is adjusting quite well to the dissolution of his parent's marriage. The record also shows that Willa has actively assisted Jacob in adjusting to his parent's separation as well as emphasizing to Jacob that both of his parents still love him and he can and should still love both of them. We affirm the trial court's decision to place Jacob in Willa's physical care and encourage both parents to continue their fine examples of parenting.

We also find no reason to disturb the visitation schedule adopted by the trial court. The schedule is both reasonable and appropriate when evaluated against the record as a whole and will continue to be workable after Jacob starts kindergarten and elementary school.

We affirm the trial court with respect to both its order placing Jacob in Willa's physical care and its visitation schedule.

Willa requested that Jack be ordered to pay her attorney's fees incurred as a result of this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

After evaluating the parties' respective positions we order Jack to pay \$750.00 towards Willa's attorney fees incurred as a result of defending this appeal.

AFFIRMED.