

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 29 1985

CLERK SUPREME COURT

DOUGLAS DEE BURRIER,)

Petitioner-Appellant,)

Filed January 29, 1985

vs.)

REBECCA JEAN ROBINSON,)

Respondent-Appellee.)

4-491

84-781

Appeal from the Iowa District Court for Linn County - William L. Thomas,
Judge.

Petitioner appeals from the trial court's award of custody of the parties'
child to respondent. AFFIRMED.

Emmit J. George of Emmit J. George Law Office, Iowa City, for petitioner-
appellant.

Gerard J. Glaza, Cedar Rapids, for respondent-appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

Petitioner appeals from the trial court's award of custody of the parties' child to the respondent. He asserts (1) that the trial court should have awarded him custody of the child; and (2) that two letters which respondent introduced into evidence were hearsay, and the trial court should have excluded them. We affirm.

In 1978, petitioner Douglas Dee Burrier and respondent Rebecca Jean Robinson began living together. At the time, Douglas was married to Patricia Burrier. Rebecca had been recently divorced and had custody of her and her ex-husband's four children. In 1979, Rebecca gave birth to the parties' child, Anthony. In 1981, Douglas moved to Oklahoma to look for work; Rebecca had planned to follow with the five children, but the parties' relationship deteriorated and she did not. In 1982, Douglas moved back to Iowa and returned to his wife. Visitation problems developed, and Douglas later brought this action for custody of Anthony.

The trial court found, among other things, (1) that a home study prepared by the social services department indicated that Rebecca was an excellent mother, and (2) that Douglas and his wife had not had any experience raising children. Based on its findings, the trial court awarded Rebecca custody of Anthony. Douglas has appealed.

The paramount consideration in determining custody is the best interests of the child. Iowa R. App. P. 14(f)(15). No hard and fast rule governs which parent should have custody. Rather, it is necessary to view the record as a whole and consider the characteristics and needs of the children, the characteristics of the parents, their respective abilities to provide for the emotional, social, moral, material and educational needs of the children, the nature of each proposed environment, available alternatives, and any other relevant matters disclosed in the particular case. In re Marriage of Bowen, 219 N.W.2d 683, 688 (1974). As in all cases of this type, precedent is of little value and our decision will ultimately

depend on the particular facts of the case. In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981).

After reviewing the record, we conclude that it would be inappropriate to disturb the trial court's award of custody to Rebecca. Anthony has lived with Rebecca since birth and she has provided the child with a stable and secure environment. Douglas testified that Rebecca had disciplinary problems with Anthony and her other children. However, a home study done by the department of social services revealed that her children were "well behaved and played together with a minimum of argument." The study also indicates that Rebecca is an "excellent mother."

Douglas argues on appeal that on a number of instances Rebecca has demonstrated immaturity. He points to the fact that she refused to allow him to visit or contact Anthony on several occasions. Rebecca did not deny this and stated that she feared Douglas would take the child and leave the state. We cannot say this concern was unfounded. In December 1982, Douglas took Anthony from a babysitter and went to Oklahoma. He remained at large for 27 days. Under such circumstances, it is difficult to fault Rebecca for attempting to limit contact between Douglas and his child.

Douglas also asks this court to consider the fact that Rebecca has had several short-term relationships with men. The record reflects, however, that these relationships all occurred prior to Anthony's birth. It is not our task to pass judgment on Rebecca's past lifestyle, especially when there is no indication that it has adversely affected her child.

We are confident that Rebecca will provide a suitable environment for Anthony. She has demonstrated an ability to look after the emotional and medical needs of her children. Anthony has lived with his mother and half-brothers since birth and we see no reason to unnecessarily disrupt his life by removing him from this environment.

As the trial court indicated, Douglas and his wife Patricia have had little experience in raising children. Furthermore, their lifestyle reflects a degree of irresponsibility which would be less suitable for raising a child. Douglas fathered a child shortly before his marriage to Patricia and did not see the child until she was 14 years old. The relationship between Douglas and his child is strained. Patricia also had a child by a previous marriage who has been raised by her parents. During the entire time Douglas and his wife have been married, the child has never lived with them.

While we do not doubt that Douglas is genuinely interest in providing a home for his son, we cannot say it would be in Anthony's best interest. It can hardly be said that Douglas was acting in his son's best interests when he took the child out of state for 27 days.

Based on these considerations, we affirm the trial court's decision.

Douglas also raises an evidentiary question on appeal for this court's consideration. During trial, Rebecca introduced as exhibits two letters. One was from a chiropractor who had been treating one of Rebecca's children; he stated that from his observations of Rebecca with her children he believed she was an understanding and responsible parent. The other letter was from one of Rebecca's nursing instructors at a community college; he stated that from his observations of Rebecca with her patients he believed she was a dedicated and caring person. Neither the chiropractor nor the instructor testified at trial, and no deposition was taken of either. Douglas objected to the introduction of these letters on the ground they were hearsay. The trial court received the exhibits subject to Douglas' objection.

We agree with Douglas's assertion that the exhibits were inadmissible hearsay. However, the admission of the exhibits did not result in an unfair trial. There is no indication that the trial court relied on the exhibits and there is more than sufficient evidence to support its custody determination. We therefore

conclude that the introduction of the exhibits into evidence does not constitute reversible error.

AFFIRMED.