FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KEITH BARBER AND KATHLEEN ANNE BARBER

Upon the Petition of	)	
KEITH BARBER,	)	Filed November 30, 1983
Petitioner-Appellant,	)	
And Concerning	)	
KATHLEEN ANNE BARBER,	)	3-325 83-650
Respondent-Appellee.	)	

Appeal from Mills District Court - Keith E. Burgett, Judge.

Petitioner appeals from the custody and child support provisions of the trial court decree dissolving the parties' marriage. REVERSED.

James A. Thomas of Thomas & Pearson, Glenwood, Iowa, for petitioner-appellant.

Michael J. Murphy of the Lyle A. Rodenburg Office, Council Bluffs, Iowa, for respondent-appellee.

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

HAYDEN, J.

Petitioner appeals from the custody and child support provisions of the trial court decree dissolving the parties' marriage.

Petitioner, Keith Barber, and respondent, Kathy Barber, were married in 1975 shortly after both of them received education degrees from Graceland College. They lived in several small towns in southwestern Iowa and finally settled in Malvern where Keith's family resides. Although Kathy had worked outside the home as a secretary and a salesperson early in the marriage, after moving to Malvern her sole occupation was as a farm wife and mother. Keith bought a 30% interest in a farming partnership with his father and brother.

Two children were born to the parties: Jeanette, born in 1978, and Stephanie, born in 1979. Kathy assumed the primary responsibility for raising the children.

Kathy, who grew up in a suburb of Detroit, Michigan, became discontented with small town life. On one occasion she voluntarily admitted herself to the psychiatric unit of a local hospital for several days. She was diagnosed as being a manic depressive, but the condition was considered so mild that no treatment or medication was prescribed.

In September, 1980, Kathy became involved in a local theater production. The musical required extensive night rehearsals for six weeks. This was the first of nine musicals Kathy participated in over a two-year period. In August, 1981, Kathy enrolled as a student at the Unviersity of Nebraska at Omaha working on a degree in music education. During this period the children remained with babysitters during the day. Keith stayed at home at night while Kathy was rehearsing.

Shortly after Keith filed a petition for dissolution, Kathy moved out of the house and began living with another man. Keith assumed full responsibility for raising the children.

The trial court awarded custody of the two girls to Kathy and ordered Keith to make payments of $500 per month as child support. He appeals these provisions of the decree.

Our review of this equitable proceeding is **de novo**. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I.

Child Custody. The primary concern of the court is to determine what is the best interests of the children. Iowa R. App. P. 14(f)(15). The factors listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). aid in making that determination.

The trial court found that both parties were fit to raise the children, but decided that it was in the children's best interests to be with their mother. The court reasoned that the children would be exposed to a broader range of experiences if they remained with their mother.

Keith argues that Kathy's involvement with theater and school keeps her too busy to properly care for the children. Numerous witnesses testified that Kathy's main concern and priority was her music and drama activities and that everything else, including her family, was of secondary importance. The evidence provides much support for these conclusions. Kathy learned early in the marriage that she was ill-suited to rural and small-town life. Beginning in 1980 and lasting at least through 1982, Kathy began involvement in a series of local theater productions which proved to be very time-consuming. She would be involved in practices for six to eight weeks before each play was performed for at least three or four nights per week. For the last two weeks before each performance, she would be away from home nearly every night. She would be gone from approximately 6:30 p.m. until one or two in the morning, although rehearsal itself was usually finished by 10:30 or 11:00 p.m. At that time Kathy and the other members of the cast would

typically go out for a few drinks. In 1982, it became more often the case that she would come home, if at all, at four, five, or six o'clock in the morning.

Through all of this, Keith was exercising primary care for the children. Although they were with a babysitter during the day while Kathy was going to school and Keith was farming, Keith took care of them himself at night while Kathy was working on her plays and music. There is no question that Keith has done and continues to do a good job in caring for the children; in fact, Kathy admitted this to be true.

We believe the record clearly demonstrates that Keith has shown more stability and willingness to care for the children's needs than has Kathy. While we do not dispute the right of a parent to be involved in activities outside the home, in this case Kathy's outside activities became so important to her and so time-consuming that the children became a second priority at best.

Since Keith is better able to minister to the needs of the children, the trial court's decree is reversed and custody of the children is awarded to Keith. Karen is to be given liberal visitation rights at such reasonable times as will not interfere with the health, education, or welfare of the children.

II.

Child Support. Due to our decision regarding custody, the trial court's provision requiring Keith to pay child support is vacated. We make no provision for Kathy to pay child support at this time because of her modest financial situation. However, when it becomes economically feasible for Kathy to contribute to the support of the children Keith may petition the trial court for child support.

III.

Alimony. Kathy is presently employed as a choir director earning $150 per month. Keith is a partner in a farming operation. He draws $10,000 annually as salary and takes a share of the business's profits. His percentage of the profits

has been $16,000 per year for the past three years. Considering the relative needs and abilities of each party, we award Kathy $350 per month alimony for three years. This should allow her time to complete her degree and become gainfully employed.

REVERSED.