

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 29 1985

IN RE THE MARRIAGE OF CARYL E. CHRISTIE AND STEVEN B. CHRISTIE

CLERK SUPREME COURT

Upon the Petition of	)	
CARYL E. CHRISTIE,	)	Filed August 29, 1985
Petitioner-Appellee,	)	
And Concerning	)	<u>5-234</u>
STEVEN B. CHRISTIE,	)	84-1381
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Polk County - Luther Glanton,
Judge

Respondent appeals the trial court's award of sole custody of their minor
child to petitioner. **AFFIRMED.**

Philip F. Miller, Des Moines, Iowa, for respondent-appellant.

Michael J. Cunningham of Kirkwood & Cunningham, Des Moines, Iowa,
for petitioner-appellee.

Considered by Oxberger, C.J., Schlegel, and Sackett, JJ.

This appeal primarily involves the custody of the minor child of petitioner, Caryl Christie, and the respondent, Steven Christie. Respondent appeals the trial court's award of sole custody of their minor child to petitioner. Steven also appeals the award of a \$4,000 lien against his home to petitioner, and the order for respondent to pay the amount to petitioner within six months of the decree. We affirm the trial court.

Our review of this equity action is de novo. We give deference to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Custody. The record shows that the parties have had considerable difficulty both before and during their four-year-old marriage. Prior to their marriage, Steven and Caryl lived together in a house they both agreed upon but was mortgaged through the Veteran's Administration under Steven's name. During that time the parties separated, but later they reconciled and were married on March 3, 1979. During the next four years the parties would separate three more times.

Their only child, Melissa, was born October 5, 1979. The record shows that while the parties were together Steven took a very limited role in her care. While the parties were separated, Caryl had custody of Melissa and Steven had little, if any, contact with her.

The final separation occurred due to the events that transpired on Caryl's birthday, May 13, 1983. Three weeks prior to her birthday Caryl informed Steven that the marriage was over but that she would stay in the house until the house payments were current. She also told Steven that she had a date with another man on the thirteenth. Caryl then made arrangements with a girlfriend to take care of Melissa all that night. But later that night, after he found Caryl in bed with her date, Steven went to the babysitter and took Melissa home. He

then changed the locks on the doors in their home, removed the money from their joint checking account, and basically expelled Caryl from their home. Since that time Steven has had temporary custody of Melissa and Caryl has had regular and continuous visitation.

The testimony at trial revealed the shortcomings of each party during their marriage. Caryl's one instance of infidelity has been described already. But the record also shows that Steven, on more than one occasion, had an extra-marital affair, and that he had used drugs both during and after the marriage.

A social worker was appointed by the trial court to investigate the home environment of each party and to also determine the relationship each parent had with Melissa. Based upon this report, the court found that Caryl would provide the best home for the child. We agree.

The trial court recognized that the most important factors in deciding the proper custody of Melissa were the ability to nurture and care for her emotional and educational needs. In child custody cases, the first and governing consideration of the court is the best interests of the child. Iowa R. App. P. 14(f)(15). The issue is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the child. In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 688 (Iowa 1974); Miller v. Miller, 202 N.W.2d 105, 113 (Iowa 1972).

The trial court felt that Steven was not open, honest and forthright with his past and present situation. Throughout the proceedings Mr. Christie denied his own infidelity and his use of drugs and alcohol, while at the same time heavily condemning Caryl's one instance of unfaithfulness. Additionally, the court found troublesome Steven's refusal to see any impropriety in his living with an 18-year-old woman, some fourteen years his junior, in the same house that

his daughter was living. Finally, the record shows that Steven, in contrast to Caryl, reacted immediately against any suggestion of joint custody and is unable to support the further development of the relationship between Melissa and her mother.

Again, based to a large extent on the social worker's report, the court found that Caryl had more of an inviting and encouraging relationship with Melissa. Above all, it appears that the court was convinced that Caryl was able to provide the better emotional support and environment for Melissa. Finally, the trial court noted Caryl's choice to move to Cedar Rapids was a matter of choosing employment rather than going on A.D.C. and an effort to better her own situation as well as provide a better environment for her daughter.

II. Lien Awarded to Petitioner. Respondent, Steven Christie, claims that the court's award of a \$4,000 lien upon respondent's home in favor of petitioner is inequitable in light of all the contributing factors. Iowa Code section 598.21(1) states in part:

The court shall divide all property, . . . , equitably after considering all of the following:

- (a) The length of the marriage.
- (b) The property brought to the marriage by each party.
- (c) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services. . . .

There is no mechanical rule that each spouse be awarded half of the assets, and each division is looked at to see if it is fair and equitable. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983); In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982).

There is ample evidence showing that the parties were living together when the house was purchased and that the costs of remodeling and repair were paid from the combination of funds from both parties. The record also shows

that during the periods of time when Steven was either going to school or not working, Caryl continued to work and pay the household bills. Finally, the court is required to take into consideration the contributions by each party toward the homemaking chores and child care. Here again, the evidence demonstrates that Caryl contributed more in these areas than Steven.

The parties agreed that the value of the house was at least \$28,000, and the mortgage balance is \$19,500. If the property were sold, and the mortgage paid off, the profit would amount to over \$8,000. We cannot say that an award of half of that amount is inequitable.

We agree with the trial court's determination that Caryl should have sole custody of Melissa and also concur in the lower court's award of a \$4,000 lien against respondent's home. The decision of the trial court therefore is affirmed.

AFFIRMED.