FILED
MAY 31 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF LARRY R. MILLER AND NANCY M. MILLER

Upon the Petition of	)	
LARRY R. MILLER,	)	
Petitioner-Appellant,	)	Filed May 31, 1983
And Concerning	)	
NANCY M. MILLER,	)	3-124 3-69547
Respondent-Appellee.	)	

Appeal from Carroll District Court - R. K. Richardson, Judge.

Petitioner-husband appeals from the child custody provisions of the parties' dissolution decree. AFFIRMED.

Raymond O. Snook, Glidden, Iowa, for petitioner-appellant.

William W. Ranninger of the Crandall Law Firm, Manning, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., Donielson, Snell and Schlegel, JJ. Hayden, J., takes no part.

SCHLEGEL, J.

Petitioner-husband appeals from the child custody provisions of the parties' dissolution decree. We affirm.

Larry and Nancy Miller were married in Iowa on September 27, 1964. At the time of trial, Larry was 41 years old and Nancy was 38. The parties have four children: Vicki, Lonnie, Suzette, and Mary Beth, whose respective ages at trial were 17, 11, 9, and 8. Larry left the family home in April, 1982. Since that time the boy has been living with Larry and the three girls have been living with Nancy. The parties' marriage was dissolved by decree filed on November 24, 1982. The trial court awarded custody of all the children to Nancy. The parties agree that Vickie should live with her mother, and Vickie's custody is not at issue on appeal. Custody of the three younger children was the primary issue at trial and is the only issue on appeal.

At trial Larry attempted to show that Nancy was not a proper person to care for the children. He claimed that in the privacy of the family home Nancy was ill-mannered, vulgar, and abusive toward him and the children. In an attempt to show this, Larry secretly tape recorded some of Nancy's conversations and tirades. These tapes were admitted into evidence at trial.

In awarding custody of all the children to Nancy, the trial court largely discounted the tape recordings, concluding that there was no showing of the circumstances under which the tapes were made and that it appeared that Nancy had been goaded into her tirades. The court also stated that it thought the attorney representing the children was overly influenced by the tapes. Finally, the court concluded that the evidence was insufficient to show that Nancy "has not in the past and could not in the future properly take care of the children."

Keeping in mind that our primary concern is the long-run best interests of the children, Iowa R. App. P. 14(f)(15), as well as the criteria listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), we agree with the trial

court that custody of the three younger children should be awarded to Nancy. The record indicates her greater care and concern for the children and ability to meet their needs. We also note the contradictory nature of much of the testimony given by the parties. The trial court's findings with regard to witness credibility, although not binding, are entitled to special weight. Iowa R. App. P. 14(f)(7). We see no reason to disturb the court's apparent conclusion that Nancy's testimony was more credible than Larry's. Like the trial court, we give little weight to the tape recordings allegedly showing Nancy's violent and abusive temper. The record indicates that Larry may have turned on the tape recorder only after provoking Nancy to anger.

Finding no reason to disturb the custody provisions, we affirm the decree in its entirety.

AFFIRMED.

Oxberger, C.J., concurs; Donielson and Snell, JJ., specially concur.

DONIELSON, J. (specially concurring)

It is with great trepidation that I concur with the result reached by the majority. I would give more credence to the tapes than did the trial court or the majority. Having read the transcript and listened to the tapes, I find nothing to justify the conclusion that Nancy was goaded into the tirades recorded by Larry. On the tapes it is clear that Nancy was yelling at, and using abusive language toward her children—not Larry. Even if she were angry at her husband, I find nothing to justify the extreme verbal abuse which she directed toward her children. The tapes reveal that Nancy's conduct was far below that necessary for the development of a decent home environment. I am also impressed with the recommendations made by the attorney for the minor children; there is nothing to substantiate the trial court's impression that the attorney was overly influenced by the tapes.

On the other hand, I do not believe the father has shown any particular ability to be a better parent to these children. He, too, has been hostile to and has used abusive language toward the children. However, where the parenting abilities of the parties are equal under the Winter criteria, the scales are tipped in the respondent's favor by the rule that we give weight to the findings of the trial court. See In re Marriage of McDowell, 244 N.W.2d 238, 239 (Iowa 1976). Accordingly, I concur in the custody award to Nancy, but do so with the hope that she will improve her conduct and will provide the children with a more civil and loving home environment.

Snell, J., joins in this special concurrence.