IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

WILLIAM HEATH RILEY,	)	
	)	Obion Chancery No. 18,087
Plaintiff/Appellee	)	
v.	)	
	)	
KAREN DIANA RILEY,	)	Appeal No. 02A01-9503-CH-00039
	)	
Defendant/Appellant	)	

FILED

February 29, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF OBION COUNTY
AT UNION CITY, TENNESSEE
THE HONORABLE W. MICHAEL MALOAN, CHANCELLOR

DOROTHY J. POUNDERS
MARTIN B. DANIEL
47 N. Third Street
Memphis, Tennessee 38103
Attorneys for Appellant

LANGDON UNGER, JR.
P. O. Box 1022
Martin, Tennessee 38237
Attorney for Appellee

AFFIRMED

WILLIAM H. INMAN, SENIOR JUDGE

W. FRANK CRAWFORD, PRESIDING JUDGE

DAVID R. FARMER, JUDGE

O P I N I O N

The issue is whether the trial court erred in confiding custody of the four-year-old son of the parties to his father. We think not, because appellate review is *de novo* on the record accompanied with the presumption that the judgment is correct unless the preponderance of the evidence otherwise preponderates. TENN. R. APP. P., RULE 13(d).

A divorce was awarded to the appellee father because of the inappropriate marital conduct of the appellant mother, which she does not question.

We do not believe a written discussion of the conduct of the appellant would be productive. It is sufficient to observe that her meretricious conduct is admitted, and that she persisted in acts of salaciousness after agreeing not to do so. The agreement was in the form of a Consent Order, pursuant to which she agreed not to entertain men in the marital residence; it was promptly and flagrantly breached and disdained. The Chancellor determined that the appellant's lack of maturity and her consuming, visceral need to be "happy," regardless of all consequences, adversely affected her parental fitness.

The parties were married in 1987, and the child was born September 20, 1989. At the time of marriage, the husband was 20, the wife 19. Neither was married previously. Each is gainfully employed, the wife as a dental hygienist, and the family members are supportive. The appellant argues that the Chancellor placed too much condemnatory reliance on her sexual escapades with older married men, and with the violation of the Consent Order. She urges us that she is as well-suited to have custody of her son as is his father, because none of her immoral behavior occurred in the presence of her son. This argument begs the question.

The overriding concern of the Court is and must be the welfare, that is, the best interest of the child. *Holloway v. Bradley,* 230 S.W.2d 1003 (Tenn. 1950), and scores of cases subsequent. This salutary principle evolved through the years from a legion of cases decided by experienced jurists who saw, first hand, the perils visited upon children whose welfare was subordinated to lesser concerns. Inherent

in doing what is best for a child, in doing the right thing, requires a balancing of the custodial qualities of each parent, sometimes referred to as a comparative test. See, *Bah v. Bah,* 668 S.W.2d 663 (Tenn. App. 1983). On a comparative basis, which the Chancellor applied, there was no contest, because the evidence clearly revealed that the appellant was more concerned with her "happiness," that is, with her sexual encounters, and with her inamorati, than with her son. We recognize that an isolated indiscretion does not necessarily reflect on a parent's fitness, *Sutherland v. Sutherland,* 831 S.W.2d 283 (Tenn. App. 1991), but we are not here dealing with an isolated encounter. Moreover, we agree with the Chancellor who was of the opinion that the appellant's disdain and flagrant disregard of an Order not to entertain men in the family residence to which she had agreed was reflective of her immaturity and irresponsibility to the point of rendering her presently unfit to parent, especially when arrayed against the parental qualities of the father.

The judgment is affirmed at the costs of the appellant and the case is remanded.

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William H. Inman, Senior Judge

CONCUR:

_____
W. Frank Crawford, Presiding Judge

_____
David R. Farmer, Judge