FILED
MAY 31 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CHARLES L. GOETTSCH
AND KATHY JO GOETTSCH

Upon the Petition of)

CHARLES L. GOETTSCH,)

Petitioner-Appellant,)

And Concerning)

KATHY JO GOETTSCH,)

Respondent-Appellee.)

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Filed May 31, 1988

8-143
87-843

Appeal from the Iowa District Court for Polk County (No. 50-29433), Rodney Ryan, Judge.

Petitioner appeals from the decision of the district court which granted sole care and custody of the parties' minor child to the respondent. **AFFIRMED AS MODIFIED.**

James R. Cook and James H. Waters of Cook & Waters, Des Moines, for petitioner-appellant.

Kathy Jayne, pro se, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

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OXBERGER, C.J.

Charles Goettsch appeals the trial court ruling granting sole custody of the parties' daughter to Kathy Goettsch. He asserts the trial court erred in awarding custody to Kathy and should have granted the parties joint custody. We affirm as modified.

Charles and Kathy were married in 1979 after living together for several years. Their marriage produced one child, Kendra Goettsch. Charles and Kathy both have an extensive history of drug abuse. In June 1985, Charles was convicted of burglary. He was placed on probation for two years, subject to monthly urinalysis and inpatient chemical dependency treatment. He has never failed a drug test and is now in outpatient treatment. Kathy is currently living with Tom Jayne and is pregnant with his child. She asserts she has quit using drugs. The district court granted the sole custody of Kendra to Kathy.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings, especially where the credibility of witnesses is involved, but are not bound by them. Iowa R. App. P. 14(f)(7).

Charles argues the trial court should not have granted Kathy sole custody of Kendra, and should have awarded the parties joint custody of Kendra. He argues Kathy is still addicted to drugs, and is not able to properly care for Kendra.

Our de novo examination of the record reveals the parties have had considerable difficulties in the past. There have been problems in visitation, at one point Charles forcibly removed Kendra from Kathy's care, and the parties do not communicate on Kendra's needs. There is also a considerable amount of friction between the respective families.

On the other hand, the child custody investigator Eugene P. Krauss recommends that the parents have joint custody of Kendra. He stated that both parties

have "turned their lives around." Dr. Herbert Notch, Clinical Psychologist, said that "Chemotherapy is generally not indicated, in that this patient (Kathy) functions at an average level in most respects." Dr. Frederick B. Tate, Psychologist at the Mental Health Institute, Cherokee, Iowa, said: "Chuck's responses to the psychological tests are characteristic of an individual with average/low average intelligence, who at the present time, is not psychotic."

Section 598.41(2) requires the court to:

> Cite clear and convincing evidence, pursuant to the factors in subsection .3, that joint custody is unreasonable and not in the best interests of child to the extent that the legal custodial relationship between the child and a parent should be severed.

See In re Marriage of Miller, 390 N.W.2d, 596, 598 (Iowa 1986). We are unable to make such a finding.

Although there may be problems between Kathy and Charles in dealing with joint custody, they both love Kendra. We hope this love will help them forget their differences and think of Kendra's best interest. If they are unable to cooperate with each other, this matter may be reexamined by the court upon an application to modify the decree. We modify the trial court's order to provide that joint custody of Kendra is granted to Charles and Kathy.

We must now address the issue of which parent should have custody of Kendra. The record shows that neither party is the most ideal parent. They both have an extensive background of drug abuse and criminal activity. They both have now made efforts to improve their lives. The child custody investigator was of the opinion that Kathy was adjusting better, and was not as emotionally dependent on Kendra as Charles was. The investigator recommended Kendra be placed in Kathy's care. The record also shows that Charles' job causes him to travel extensively. When he is gone, Kendra has to be left in the care of

Charles' parents. Additionally, there is evidence in the record that Kathy has done a good job in raising her other daughter, Tracy.

For these reasons, we affirm the ruling of the district court granting physical custody of Kendra to Kathy.

AFFIRMED AS MODIFIED.