FILED
JUN 15 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LOIS JEAN BURN
AND JAMES DONALD BURN

Upon the Petition of)
LOIS JEAN BURN,) 38
Petitioner-Appellee,)
And Concerning)
JAMES DONALD BURN,) 9-138
Respondent-Appellant.) 88-1265

Appeal from the Iowa District Court for Polk County (CD 58-34254), Michael J. Streit, Judge.

James appeals from the physical care and child support obligation provisions of the decree of dissolution of marriage. **AFFIRMED AS MODIFIED.**

Diane L. Dornburg and Anne M. Preziosi, Des Moines, for respondent-appellant.

Charles A. Coppola of Coppola, Gazzo & Clark, Des Moines, for petitioner-appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

The parties were married June 11, 1983. Their one child, Anna Louise, was born January 25, 1985. Lois and James each have experienced a prior failed marriage.

The trial court awarded joint legal custody of Anna to both parties and placed her primary physical care with Lois. James was ordered to pay $400 per month child support. James earns approximately $2,000 net per month as a plumber. Lois was employed and earns a net take-home pay of approximately $201 per week. James is paying child support of $589 per month for two minor children from his prior marriage. Lois was 31 years of age and James was 41 years old.

The record is replete with testimony about the good and bad traits and characteristics of both Lois and James. It will serve no productive purpose to expressly set out this evidence here. We note, by way of highlight, James has a history of alcohol abuse and a hot temper. He has a propensity to engage in physical fights and acts of violence with others. Lois has a history of alcohol abuse. She has taken the drug Valium by prescription for a heart problem. She left Anna with her next door neighbor while she went with a married truck driver acquaintance to the east coast. Anna was injured while Lois was away.

Our review is de novo because dissolution actions are equitable proceedings, tried in equity. Iowa Code § 598.3

(1983); Iowa R. App. P. 4. Our rule governing review of equity cases provides:

> In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them.

Iowa R. App. P. 14(f)(7).

> There is good reason for us to pay very close attention to the trial court's assessment of the credibility of witnesses. A trial court deciding dissolution cases "is greatly helped in making a wise decision about the parties by listening to them and watching them in person." . . . In contrast, appellate courts must rely on the printed record in evaluating the evidence. We are denied the impression created by the demeanor of each and every witness as the testimony is presented. (Citations omitted.)

In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984).

> No hard and fast rules govern the custody and economic issues in dissolution actions. . . . Because precedent is of little value on those issues, our decision must ultimately depend on the particular facts relevant to each issue. (Citations omitted.)

Id.

In this case the testimony of witnesses was conflicting on the key issues, particularly the question of child custody. We have relied heavily on the trial court's finding of fact. Those findings were candidly and clearly expressed and led to a sound determination as to child custody and visitation.

> General principles applicable to the custody issue are summarized in In re Marriage of Bowen, 219 N.W.2d at 687-88 and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors there listed bear on the "first and governing consideration," the court's

> determination of what will be in the long-term best interests of the children. Iowa R. App. P. 14(f)(15).

Id. at 424.

We agree with the trial court and determine the long-term best interests of Anna will best be served by being in the primary physical care of Lois.

We reject James's claim he should have been given primary physical care of Anna and affirm the trial court on this issue.

James also claims $400 per month child support is excessive for him to pay for the one child, Anna. James reasons he has a preexisting child support obligation of $589 per month. The trial court in this case also ordered James to provide major medical insurance for the child and pay one-half of all medical, optometric, dental, and psychological expenses not covered by insurance.

We fail to find in the trial court's findings, rulings, and decree, or its ruling on motion to amend and modify the decree, any consideration was given to James's support obligation of $589 per month for his two children from a prior marriage. Iowa has long subscribed to the premise both parents have an obligation to support their child, not necessarily equally, but in accordance with their ability. See In re Marriage of Brands, 392 N.W.2d 855, 857 (Iowa App. 1986); In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa App. 1984). Lois is able to work and has been and is

currently gainfully employed. At the time of trial her net take-home pay was $201 per week. She has the ability to provide some support for Anna. We reduce James's monthly child support obligation for Anna to $300 per month. The trial court's decree is modified accordingly.

Each party shall pay his or her own attorney fees on appeal. Costs of appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.

Donielson, P.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I would affirm the trial court.