IN THE COURT OF APPEALS OF IOWA

No. 7-781 / 97-741

000215

IN RE THE MARRIAGE OF MARK ALAN McMAHON AND RENAE LOUISE McMAHON

FILED
FEB 25 1998
CLERK SUPREME COURT

Upon the Petition of
MARK ALAN McMAHON,

Appellant,

And Concerning
RENAE LOUISE McMAHON,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, James Beeghly, Judge.

Mark McMahon appeals from the decree dissolving his marriage to Renae McMahon. **AFFIRMED.**

Joseph R. Sevcik and Richard A. Knock of Snow, Knock, Sevcik & Betterton, Cedar Falls, for appellant.

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, P.L.C., Cedar Falls, for appellee

Heard by Cady, C.J., and Sackett, and Vogel, JJ.

CADY, C.J.

The single question we confront in this appeal is which parent should be designated the primary caretaker of their child following divorce. We affirm the decision made by the district court on our de novo review.

Mark and Renae McMahon were married in 1989, a few years following their graduation from high school. They began dating in high school and continued dating until their marriage. They had one child, Trevor, born April 1, 1994.

Mark and Renae lived in Raymond, Iowa, near several members of Mark's family. Mark was close to his family and frequently participated in various family activities and gatherings during the marriage.

Mark worked at a cabinet manufacturing business throughout the marriage. He also did occasional drywall work in the evenings. Renae worked as a clerk at the Black Hawk County Sheriff's office.

Renae was the primary caretaker of Trevor. She was also, for the most part, very devoted to Trevor. She would read to him, sing to him at bedtime, arrange activities, and play games with him. Renae and Trevor were very close. It was not unusual for Mark to be absent from the home in the evening, either visiting family or doing drywall work with his brother. Mark was, however, a good father.

Renae and Mark separated in the Spring of 1996 after Renae moved from the family home. The separation followed a relationship Renae began with a man named

Duane. Renae continued her relationship with Duane up to the time of trial. Mark and Renae shared the caretaking responsibilities of Trevor during the separation. Renae eventually moved into a duplex.

Mark produced evidence at trial that following the separation, Trevor woke from a nap one early afternoon while under Renae's care and walked into a room where Renae and Duane were engaged in sexual intercourse. There was another occasion when Trevor walked into the bathroom while Renae and Duane were sharing the bathtub.

Renae eventually acknowledged she did not truthfully answer questions at trial and at a prior deposition concerning her relationship with Duane. In particular, she had testified the relationship began later than it actually did. Outside Renae's efforts to hide or minimize her relationship with Duane, there was no evidence she was an untruthful person.

The trial court designated Renae as the primary caretaker of Trevor. Although both parties had been good parents, the trial court determined Renae would give more attention to Trevor and provide him with a more stimulating and nurturing environment.

Mark appeals. He argues Renae's untruthfulness and her moral misbehavior, as well as the stable environment he could provide for Trevor, support making him the primary physical caretaker.

I.

Our review is de novo. Iowa R. App. P. 4. We consider the facts anew, but give weight to the findings of the trial judge. Iowa R. App. P. 14(f)(7).

Our governing consideration in custody determinations is, of course, the best interests of the child. Many statutory factors have been identified for courts to consider in determining the child's best interests. *See* Iowa Code § 598.41(3)(1995). Additionally, our prior appellate decisions have offered other factors. *See In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997). The critical issue is which parent will do the better job in raising the child. *Id.*

Moral misconduct by a parent is a factor to be weighed in determing the primary caretaker. *In re Marriage of Roberts*, 545 N.W.2d 340, 343 n.1 (Iowa App. 1996). The type of transgressions within this factor include untruthfulness and illicit relationships outside the marriage. *See In re Marriage of Gutermuth,* 246 N.W.2d 272, 274 (Iowa 1976) (disregard for the truth and sanctity of an oath). Moreover, added weight is given when the moral misconduct occurs in the presence of children. *Roberts,* 545 N.W.2d at 343 n.1. At the same time, moral misconduct does not preclude an award of primary care, but must be considered together with all other relevant factors and characteristics. *Lovett v. Lovett*, 164 N.W.2d 793, 802 (Iowa 1969).

A parent's role in raising the child during the marriage is also an important consideration when fixing primary care. *In re Marriage of Volding,* 544 N.W.2d 457, 459 (Iowa App. 1995). The role of primary caretaker is critical in the development of a child. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995). It not only can reveal a track record of parental care and interest, but its continuation provides stability in the lives of the children. *See In re Marriage of Knight*, 507 N.W.2d 728, 730 (Iowa App. 1993). Additionally, primary custodians can develop close relationships with their children, which the best interests standard is slow to curtail. *See In re Marriage of Love*, 511 N.W.2d 648, 650 (Iowa App. 1993); *see also Ford*, 563 N.W.2d at 633 (close relationship with children identified).

Considering all relevant factors, we agree the district court correctly designated Renae as the primary caretaker. Admittedly, the decision is close. Nevertheless, Renae has been Trevor's primary caretaker from birth and has shown an ability to meet his needs. They have a close relationship. Her transgressions appear uncharacteristic, and she acknowledged her untruthfulness. Mark's claim that Renae's moral misconduct was repeatedly visited upon Trevor was not supported by the evidence.

We have considered all other evidence and claims raised. We affirm the district court.

AFFIRMED.