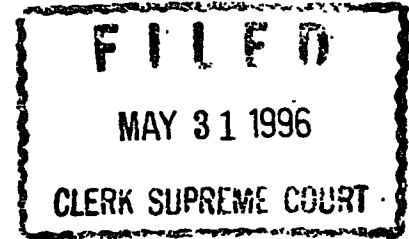


IN THE COURT OF APPEALS OF IOWA

No. 6-267 / 95-1391



**IN RE THE MARRIAGE OF SHERWIN EUGENE COOK
AND JEANIE MAE COOK**

Upon the Petition of
SHERWIN EUGENE COOK,

Appellant,

And Concerning
JEANIE MAE COOK,

Appellee.

Appeal from the Iowa District Court for Polk County, Michael Streit, Judge.

Sherwin Cook appeals the parties' dissolution of marriage decree.

AFFIRMED.

Daniel R. Marvin of Handley & Block, Ankeny, for appellant

Amy L. Walsh, Des Moines, for appellee

Heard by Sackett, P.J., and Habbab and Huitink, JJ. Streit and Vogel, JJ., take

no part

HUITINK, J.

Sherwin Cook appeals the child custody provisions of the decree dissolving his marriage to Jeanie Cook. We affirm.

Sherwin and Jeanie Cook were married in 1988. They have two children, Douglas, born May 7, 1990, and Cheri Danielle, born May 10, 1991. Throughout the parties' marriage, Sherwin enjoyed a careless and unruly lifestyle. He used drugs, drank excessively, and essentially lived "the life of a biker." Although Jeanie participated in some biker activities with Sherwin, she assumed primary responsibility for the care of the children during the marriage. Both parties also had extramarital affairs which contributed to the break down of their relationship.

The parties separated in October 1993, and Sherwin filed a petition for dissolution of marriage. Sherwin was awarded temporary physical care of the children, and a court-ordered custody evaluation conducted from May through July 1994 recommended Sherwin retain primary physical care.

At trial in June 1995 Sherwin testified that although he had lived a reckless life during the parties' marriage he had stopped associating with motorcycle gangs and had become more responsible since his separation from Jeanie. Jeanie also claimed to have adopted a more stable lifestyle and testified she had secured a home for herself and the children. She noted the quality of her living environment had changed substantially since the 1994 custody evaluation and testified she was much better equipped to

provide a good home for the children than she had been in 1993 when Sherwin was awarded temporary custody. Jeanie also attempted to distinguish herself as the preferred primary care giver based on Sherwin's violent temper and relayed several instances where Sherwin had exhibited violent behavior in front of the children.

The district court awarded the parties joint legal custody and Jeanie primary physical care of the children. While the court noted the contrary recommendation of the custody evaluation, it determined the evaluation was not based on current information. The court further found there was insufficient proof for the conclusions in a founded Child Protective Investigation child abuse report against Jeanie's live-in boyfriend, Paul. Sherwin appeals.

Our review in this matter is de novo Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N W 2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court especially when considering the credibility of witnesses, but are not bound by them Iowa R. App. P. 14(f)(7).

The best interests of the children dominate our consideration in child custody cases *In re Marriage of Braumard*, 523 N W 2d 611, 614 (Iowa App. 1994). Numerous factors exist to supplement the best interests standard, which are enumerated in Iowa Code section 598.41(3) *Id.* The critical issue in determining the best interests of the child is which parent will do better in raising the child into a healthy, content,

well-adjusted young adult. *Id.* Moral misconduct does not preclude the erring parent from custody but should instead be considered in weighing all factors implicating the children's interest. *Jones v. Jones*, 175 N.W.2d 389, 391 (Iowa 1979).

We find the district court correctly determined Jeanie is the preferred primary physical care giver for the children. While we do not condone the actions of either parent, we believe Sherwin and Jeanie offer distinct environments for the care of Doug and Danielle. Sherwin has a history of violent behavior and has on more than one occasion displayed his violent temper in the presence of the children. His involvement in the children's lives was limited to nonexistent during the marriage, and he has only recently taken an active role in parenting

Jeanie was the children's primary care giver while the parties were married and was able to adequately meet their physical, psychological, and emotional needs during this time. She has continued to improve her parenting skills through participation in parenting classes and is able to offer the children a safe and stable home. While we do not favor Jeanie's decision to live with Paul, we do not believe this conduct should disqualify her as the children's primary care taker. Because our concerns regarding Sherwin's history of violence outweigh those pertaining to Jeanie's association with Paul, we find Jeanie to be the preferred care giver for Doug and Danielle.

We have considered all of the arguments raised by Sherwin and find them to be covered by this opinion or without merit. We affirm the decision of the district court.

AFFIRMED.