

IN THE COURT OF APPEALS OF IOWA

No. 1-636 / 91-817

FILED

MAR 24 1992

CLERK SUPREME COURT

IN RE THE MARRIAGE OF CINDY SUE SNAKENBERG AND ROGER
FREDERICK SNAKENBERG

Upon the Petition of

CINDY SUE SNAKENBERG,

Appellee,

And Concerning

ROGER FREDERICK SNAKENBERG,

Appellant.

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Appeal from the Iowa District Court for Keokuk County,
James D. Jenkins, Judge.

Father appeals custody, child support, and visitation
provisions of dissolution decree. **AFFIRMED AS MODIFIED.**

John N. Wehr, Sigourney, and Emil Trott, Jr.,
Des Moines, for appellant.

H. Michael Neary of Keith, Orsborn, Bauerle, Milani &
Neary, Ottumwa, for appellee.

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

PER CURIAM

Cindy and Roger Frederick Snakenberg (Fred) were married in 1977. They have two children, Erica, born December 12, 1978, and Dustin, born September 24, 1981.

The district court dissolved their marriage on April 10, 1991. The decree awarded sole custody and care of their children to Cindy and set visitation on alternating weekends, alternating major holidays, and three weeks in the summer.

The court observed Fred is an admitted alcoholic and that alcoholism caused the marriage to collapse. It did not believe Fred's claim that he was recovering from his affliction.

The court disapproved of Fred's child-rearing techniques. It viewed them foolish and potentially harmful and believed Fred used the children as an indirect means of trying to keep the marriage together. It further found that an award of joint custody would be harmful to the children for they would be caught in the middle of parental strife.

Cindy was employed outside of the home throughout the marriage. Fred worked for the City of Sigourney for seventeen and one-half years as a street superintendent. He was terminated from the City after Cindy filed her petition for dissolution. He then went to work for a local contractor.

At trial time Fred's net earnings were \$962 per month; Cindy's net earnings were \$932 per month. Strict adherence to the child support guidelines would indicate that Fred's child support obligation would be \$68 per week. The court found that figure to be too low. Accordingly, the court directed that Fred pay the sum of \$85 per week in child support until Dustin becomes eighteen or graduates from high school. Fred appeals. We affirm as modified.

Our scope of review is de novo. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985); Iowa R. App. P. 4. We are not bound by the findings of fact of the trial court, but we do give them weight, especially in considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We will address the issues in the order presented. We note we do not have the benefit of appellee's brief. To the extent necessary to this opinion, we rely on the brief filed by the respondent-appellant, Roger (Fred) Snakenberg.

I. Joint Legal Custody.

Fred first argues the trial court erred in awarding Cindy sole legal custody of the children. The trial court also awarded Cindy sole physical care of the children. We note that joint legal custody is favored in Iowa. See Iowa Code § 598.41(2); Ullerich, 367 N.W.2d at 299. Section 598.41(2) provides:

[i]f the court does not grant joint custody under this subsection, the court shall cite clear and

convincing evidence, pursuant to the factors in section 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and the parent should be severed.

Section 598.41(3) provides:

In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:

- a. Whether each parent would be a suitable custodian for the child.
- b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.
- c. Whether the parents can communicate with each other regarding the child's needs.
- d. Whether both parents have actively cared for the child before and since separation.
- e. Whether each parent can support the other parent's relationship with the child.
- f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.
- g. Whether one or both parents agree or are opposed to joint custody.
- h. The geographic proximity of the parents.
- i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

In reviewing these factors, we determine the trial court failed to properly apply these factors. Its result is not supported by the required clear and convincing evidence. The evidence shows the parents presently live only ten miles apart. The children in this case, ages approximately ten and twelve at the time of trial, both indicated a preference to live in the home of their father. The home care study done by the social worker

indicated both parents would be suitable guardians for the children. The home study further reveals that both parents love their children.

Much of the trial court's decision was apparently predicated upon the fact Fred has an alcohol problem. However, Fred testified he has been to the Harold Hughes Center for treatment. The trial court apparently does not feel that Fred's new-found sobriety is a permanent feature of his life.

We have previously ruled alcoholism, without more, is insufficient to deny custody to one of the parents. See, e.g., In re Marriage of Holcomb, 471 N.W.2d 76, 79 (Iowa App. 1991). While we are concerned about the father's alcoholism, the children are entitled to maximum input from him. They are entitled to their father's input in making important decisions in their lives.

We determine there is a failure of clear and convincing proof that joint custody is not in the best interest of the children. We, therefore, modify the trial court's decision on this issue. The parents shall share joint legal custody of the children.

II. Physical Care of the Children.

Fred contests the trial court's award of physical care to Cindy. He concedes that Cindy is a suitable custodian. However, he insists that as between the two, he is better able to care for the children.

The trial court had the opportunity to view the witnesses and hear their testimony. Its conclusion was that Cindy would be better able to care for the children. We determine primary physical care of the children should remain with Cindy. We affirm the trial court on this issue.

III. Visitation.

Fred contends the trial court failed to grant him the liberal visitation mandated by Iowa Code section 598.41(1). The trial court provided for three weeks summer visitation, alternate weekend visitation from 9:00 a.m. Saturday to 6:00 p.m. Sunday, and alternating holidays from 9:00 a.m. to 6:00 p.m. on the holiday itself. The trial court made no provision for Christmas vacation or for spring break.

We have held that liberal visitation rights are in the best interests of the children. Iowa Code § 598.1(c); In re Marriage of Muell, 408 N.W.2d 774, 777 (Iowa App. 1987). Both parents, as joint custodians, are charged with maintaining those interests. Unless visitation with the noncustodial parent will in some way injure the child, they are not to be prohibited. Fitch v. Fitch, 207 Iowa 1193, 1197, 224 N.W. 503 (1929).

We modify the trial court's decree to include visitation of one-half of the Christmas and spring breaks and four weeks visitation during the summer for the

father. We also modify the alternate weekend visitation to extend from after school on Friday to 6:00 p.m. on Sunday for alternate weekends. The midweek visitation shall remain as it is presently in the decree.

IV. Child Support Guidelines.

Finally, Fred asserts the trial court erred in failing to apply the permanent child support guidelines. He asserts the trial court did not find the special circumstances required to justify departure from the permanent guidelines. The Iowa Supreme Court has held the guidelines are mandatory. See In re Marriage of Bergfeld, 465 N.W.2d 865, 868-71 (Iowa 1991). The supreme court stated in Bergfeld the trial court may not depart from the permanent guidelines absent a written finding

that the guidelines would be unjust or inappropriate as determined under the following criteria:

(1) substantial injustice would result to the payor, payee, or child;

(2) adjustments are necessary to provide for the needs of the child and to do justice between the parties, payor, or payee under the special circumstances of the case; and

(3) circumstances contemplated in Iowa Code section 234.39. (Section 234.39 provides for coverage of the cost of foster care or other services provided by the department. That section is not applicable here.)

The permanent child support guidelines are presumed correct. In order to deviate, the trial court must make specific written findings justifying the departure. We conclude the facts of this case do not justify a departure from the child support guidelines.

The trial court found Fred's net income to be \$962 per month and Cindy's net income to be \$932 per month. The trial court further found the proper guideline percentage to be 30.7%, or \$68 per week. We determine this is the correct amount under the permanent child support guidelines.

We, therefore, modify the trial court's decree to provide Fred shall pay \$68 per week for both children under the permanent child support guidelines.

V. Conclusion.

Costs of this appeal shall be divided equally between the parties. Each party shall pay his or her attorney fees on appeal.

AFFIRMED AS MODIFIED.