FILED
JUN 24 1977
CLERK SUPREME COURT

240

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHARON KAY BUCHANAN and STEVEN EUGENE BUCHANAN

Upon the Petition of)
SHARON KAY BUCHANAN,)
Appellee-Cross Appellant,)
And Concerning,)
STEVEN EUGENE BUCHANAN,)
Appellant.)

Filed June 24, 1977

206
3-59887

Appeal from the Polk District Court - Dale S. Missildine, Judge.

Respondent-father appeals from child custody provisions of dissolution decree. Petitioner-mother cross appeals from the provisions of the decree establishing child visitation. Affirmed on respondent's appeal; modified and affirmed on petitioner's appeal.

Jane Lee Sandry, of Des Moines, for appellant.

John Heartney, of Marshalltown, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

241

PER CURIAM

Respondent, Steven Buchanan, appeals the trial court's determination of child custody in the decree dissolving his marriage with petitioner, Sharon Buchanan. Sharon cross appeals from the provisions of the decree establishing Steven's rights to child visitation. We affirm on Steven's appeal and modify and affirm on Sharon's appeal.

I. The issue to be resolved on Steven's appeal is whether the best interests of Janie (age two years and eight months at the time of the decree) are served by awarding her custody to Sharon. Rule 344(f)(15), Rules of Civil Procedure. The principles applicable to resolving custody are summarized in In re Marriage of Winter, 223 N.W.2d 165, 166-167 (Iowa 1974). While we accord weight to trial court's findings of fact we are not bound by them, and do not abdicate our responsibility to review the record de novo. Rule 344(f)(7), R.C.P.; In re Marriage of Snyder, 241 N.W.2d 733 (Iowa 1976); In re Marriage of Callahan, 214 N.W.2d 133, 136 (Iowa 1974).

Our examination of the entire record, in light of the *Winter* principles, leads us to the conclusion that the trial court was correct in awarding custody of Janie to Sharon.

There is evidence that Steven is a good parent and would continue to be if awarded custody. There was other evidence, however, that his initial motive in seeking Janie's custody was to hurt Sharon. Sharon had continuous responsibility for the day-to-day care of Janie since birth except for the brief period when Steven exercised self help in retaining the child following a visitation arranged by agreement of the parties.

In reaching our decision, we have considered those portions of the record which reflect Sharon's marital infidelity and occasional possession of marijuana. Moral misconduct is a valid

consideration under the *Winter* principles but is only one of several factors to be considered. The custody question is close but we conclude the trial court's determination of this issue should stand. *See* In re Marriage of Dally, 222 N.W.2d 478, 482 (Iowa 1974).

II. On Sharon's cross appeal we conclude that the weekend visitations afforded Steven under the trial court's decree should include only one evening instead of the two evenings now provided. We direct that these visitations be every other weekend, as provided by the trial court, but the duration of these visitations modified so as to be from noon on Saturday to 6:00 P.M. on Sunday. We otherwise affirm on Sharon's appeal.

Affirmed on Steven's appeal; modified and affirmed on Sharon's appeal. Costs taxed to Steven.