FILED
JAN 27 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF NORA K. SPRENGELMEYER
AND JOSEPH E. SPRENGELMEYER

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Upon the Petition of	)	
NORA K. SPRENGELMEYER,	)	
Petitioner-Appellee,	)	Filed January 27, 1988
And Concerning	)	
JOSEPH E. SPRENGELMEYER,	)	7-457 87-524
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Dubuque County (5575), Robert J. Curnan, Judge.

Respondent husband appeals the decree dissolving the parties' marriage. **AFFIRMED.**

James A. Trannel of Hughes & Trannel, Dubuque, for appellant.

Larry R. Kurt, Dubuque, for appellee.

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

SCHLEGEL, J. 193

The petitioner, Nora K. Sprengelmeyer, and the respondent, Joseph E. Sprengelmeyer, were married in 1974. They have three children: Laurel, born in 1977; Neal, born in 1980; and Lily, born in 1984. During the marriage, Nora was the primary caretaker of the children. After this action was commenced in 1986, however, the trial court gave Joseph temporary custody of the children. In its dissolution decree, the trial court set up a joint custody arrangement and gave Nora physical care of the children. Joseph has appealed the dissolution decree, challenging only the physical care provision. Our scope of review is de novo. Iowa R. App. P. 4. We affirm.

The governing consideration in determining a custody award is the best interest of the child. Iowa Code § 598.41(1) (1985). In this case, both parties have exhibited behaviors and characteristics weighing against an award of custody in their favor. Joseph argues that Nora has demonstrated moral misconduct, is emotionally unstable, and does not always exercise good judgment in her care of the children.

Specifically, Joseph claims that Nora's involvement with a man named Tom Smith, who Nora admitted was potentially dangerous and a "creep," constitutes moral misconduct warranting denial of placement of the children with Nora. See In re Marriage of Dawson, 214 N.W.2d 131, 132 (Iowa 1974). The evidence, however, indicates that Nora's relationship with Mr. Smith has completely ended. We therefore give such past misconduct less weight than Joseph argues for.

Furthermore, Joseph himself has exhibited a past history of moral misconduct by being involved in drug usage and dealing. He was involved in the drug trade and was arrested and convicted in 1974. He returned to dealing drugs from 1977 to 1980. The record reflects that on occasion Joseph has engaged

in drug usage since 1980, although not in the two and one-half years prior to trial. Joseph admitted that during the marriage, he sometimes kept drugs in the family residence. Joseph claims that his drug usage and dealing is a problem that he has overcome and therefore should be given lesser weight in our custody decision. See In re Mann, 293 N.W.2d 185, 190 (Iowa 1980). Although we do not dispute Joseph's testimony that he has not used or dealt drugs for approximately the past three years, in light of his history of drug usage we are not fully persuaded it is a problem that he has completely overcome. Joseph has made attempts to end his drug usage and dealing on several occasions in the past. Prior to his marriage to Nora, he assured her that he would not engage in such activity. He has, however, displayed a history of returning to drug usage. Such a life-style would most certainly not be in the best interests of the minor children.

Joseph also claims that Nora is emotionally unstable and therefore, unfit for custody of his children. The record does contain instances reflecting emotional problems of Nora. We are not convinced, however, that Nora's past problems render her unfit for an award of custody. She is employed at a child development center where she is involved in the care of children with behavioral problems. Nora's supervisor described her work at the center as excellent. In light of Nora's work, which indicates her ability to care for and accept responsibility for children, we are inclined to assign less weight to Joseph's claim that Nora is emotionally unfit to have physical custody of the children.

Finally, Joseph contends that Nora does not always exercise good judgment in her care of the children. Nora was the primary caretaker of the children during the marriage. Both parties agree that the children are good and normal. It appears that primary responsibility for the rearing of these good and normal children rests with Nora. We are of the opinion that Joseph has not established

a picture sufficient to warrant a finding that Nora's judgment is so questionable that custody of the children would be unwise.

We conclude that it is in the children's best interest to have their primary physical care placed with the petitioner and therefore, the trial court is affirmed.

AFFIRMED.