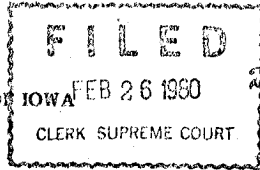


IN THE COURT OF APPEALS OF IOWA



205

CHARLOTTE ANN CARL,

)

Petitioner-Appellee,

)

Filed February 26, 1980

vs.

)

THOMAS CLIFFORD CARL,

)

Respondent-Appellant.

)

27
3-63912

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Respondent appeals from child custody and child support determination contained in the decree dissolving his marriage to petitioner. AFFIRMED.

James W. Carney of Carney, Hudson & Williams, Des Moines, for respondent-appellant.

Harry Perkins, III, of Des Moines, for petitioner-appellee.

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

PER CURIAM

Respondent Thomas Clifford Carl appeals from child custody and child support determination contained in the decree dissolving his marriage to petitioner, Charlotte Ann Carl. Charlotte, age 30, and Clifford, age 32, were married on February 14, 1970, in Oklahoma City, Oklahoma, Charlotte's home town. They have resided in Des Moines, Iowa, Clifford's home town, throughout their marriage. Charlotte is a registered nurse who has worked full-time since 1971. Clifford has held several different sales, construction and flying jobs during the marriage.

The only child born of the marriage is Clifford Sean, whose date of birth is September 7, 1972. He will hereinafter be referred to as Sean.

During the pendency of the dissolution proceeding, the parties successfully cooperated in a joint custody arrangement for Sean. During this time both Clifford and Charlotte resided in Polk County, Iowa. At the final hearing, however, it was established that Charlotte planned to move to Oklahoma City where she has strong family ties and good employment opportunities. For this reason, the trial court found, and we agree, that a permanent joint custody arrangement is not in Sean's best interest.¹

Although the trial court found the issue to be an extremely close one, and that Clifford was more than adequately equipped to parent Sean, it granted custody of Sean to Charlotte. While Clifford argued for joint custody in the trial court, his argument on appeal is that the evidence indicates that he is the parent who should have custody. As the trial court recognized, the evidence of parenting potential in this case, in light of the criteria established in In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974), is nearly evenly balanced. Our review of the record convinces us that Clifford, while a fine parent, has not shown that he is superior to Charlotte in this ability. Under such circumstances, we apply the rule found in In re Marriage of McDowell, 244 N.W.2d 238, 239 (Iowa 1976), and tip the scales in the direction of the trial court's finding as to what is in the best interest of the child. We do not disturb the trial court's custody decree.

Clifford also argues that, in the event he does not prevail on the custody issue, the amount of his court-ordered child support obligation is excessive. The trial court required Clifford to contribute \$50 per week for Sean's support. Considering the

¹ Such determination is based upon tests for appropriateness of joint custody which were established in In re Marriage of Burnham, 283 N.W.2d 269, 274 (Iowa 1979).

relative earnings of the parties and Charlotte's support needs for Sean, we cannot say that the trial court's support order is inequitable.

Lastly, we consider Clifford's claim that the trial court erred in not receiving, as evidence at the trial of this case, the transcript of evidence presented at an earlier hearing held on the issue of temporary custody. No necessity for the use of the prior testimony has been demonstrated, nor has any prejudice been shown. Under these circumstances, the trial court did not err in rejecting the offer in bulk of the entire transcript. If parts of the transcript were admissible for a particular purpose, it was incumbent upon Clifford to demonstrate that such was the case. For all of the reasons herein stated, the decree of the trial court is affirmed.

AFFIRMED.