

FILED

APR 26 1979

465

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF RANDY R. PAYNE AND THERESA K. PAYNE

RANDY R. PAYNE,

)

Filed April 26, 1979

Appellant,

)

vs.

)

94

THERESA K. PAYNE,

)

3-62252

Appellee.

)

Appeal from Washington District Court - L. R. Carson, Judge.

Husband appeals child custody, visitation, and economic provisions of dissolution decree. - Affirmed as modified.

Craig Arbuckle, of Day, Meeker, Bates & Arbuckle, Washington, for Appellant.

Patricia C. Kamath, Iowa City, for Appellee.

Earl O. Wright, Kalona, for Child.

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

OXBERGER, C. J.

Respondent Randy Payne appeals child custody, visitation, and economic provisions of decree dissolving his three and one half year marriage to petitioner Theresa K. Payne. We affirm with modification.

Our review of the instant case is de novo. Iowa R. App. P. 4. The parties are the parents of one child, Valerie, who was born August 15, 1976. The record shows that both Randy and Theresa love their daughter, and either would be a proper custodian for the child. We have reviewed with particular concern Randy's accusations of child abuse on the part of Theresa and find that these allegations were not established by the evidence. Applying the criteria enumerated in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), we conclude that Valerie's long range best interests would be most effectively served by placing her in Theresa's custody. The terms of the decree provided Randy with visitation on alternate weekends. We think Randy is also entitled to visitation rights for two weeks each summer and alternate school holidays for one day provided he informs Theresa at least two weeks in advance of his intention to exercise such visitation.

The only substantial property owned by the parties was the equity in their homestead of approximately \$9000. Theresa's father had given the parties \$5000 which was used as a down payment for the house. Trial court awarded Theresa the residence subject to its mortgage, certain household goods and an automobile. Randy received household items which he valued at \$1720, the family's savings of approximately \$800, and he was ordered to assume debts of approximately \$414. He is also obligated to pay child support of \$25 per week. Randy's net earnings approximate \$160 per week. Neither party was awarded alimony. Under the circumstances of the case, we affirm the property settlement decreed by trial court as an equitable distribution of the couple's limited assets. See In re Marriage of Huston, 263 N.W.2d 697, 700 (Iowa 1978).

On consideration of Theresa's application for appellate attorney fees, Randy is ordered to pay \$750 toward those fees. Costs on appeal are assessed to Randy.

Affirmed as modified.

All judges concur, except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

I dissent. I do not believe our appellate role is to monitor every small detail in the dissolution matters that come before this court. I personally would not have given visitation every other weekend as I feel this is too disruptive to a small child with a severe hearing deficiency, and I might have split school holidays and given the appellant some summer visitation. However, these are matters that were properly before the trial judge to determine in a complex set of facts where the appearance and credibility of the witnesses are of more importance than in the normal case. I cannot see that the trial court did not take all of these matters into account in its decision. I prefer to affirm the trial court except in cases where there is a more compelling need for modification than is apparent in the record before us.