FILED
JAN 26 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LOREN G. BITKER
AND JEANNINE L. BITKER

Upon the Petition of )
LOREN G. BITKER, )
Petitioner-Appellant, )
And Conerning )
JEANNINE L. BITKER, )
Respondent-Appellee. )

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8-601
87-1630

Appeal from the Iowa District Court for Cerro Gordo County (4119), Ralph F. McCartney, Judge.

Petitioner appeals certain provisions of the decree of dissolution entered for the parties in district court. **AFFIRMED.**

Ray Sullins, Des Moines, for petitioner-appellant.

James J. Stanton of Schuler, Stanton, Grabinski & Sorenson, Clear Lake, for respondent-appellee.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, P.J 19

Petitioner Loren G. Bitker appeals certain provisions of the decree of dissolution entered for the parties on August 5, 1987. He claims: (1) the trial court erred in awarding physical custody of the parties' minor child, Patricia, to respondent, Jeannine L. Bitker; and (2) the property distribution was inequitable. He also seeks attorney fees on appeal.

Our review of this equity action is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

Loren and Jeannine Bitker were married on May 9, 1984. They had one child, Patricia Jean Bitker, born January 19, 1985, who is the subject of the custody dispute. Both parties had previously been married. Loren has four children from his previous marriage. One child, Beth Bitker, born December 22, 1970, lives with him. Jeannine has custody of her eight-year-old child, Jill Morehead, from her previous marriage. The district court awarded the parties joint legal custody. The court placed physical custody of Patricia with Jeannine and set forth specific visitation times for Loren. Loren was ordered to pay $200 per month in child support until 1990, when his payments are to increase to $250 per month, and was also ordered to pay Jeannine $12,500 in property settlement.

I. Loren first asserts that the district court erred in not placing physical custody of Patricia with him. Of paramount importance in determining matters of custody are the best interests of the child. The issue is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the child. In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974). In making our decision, we consider the evidence in light of the criteria set forth in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and Iowa Code section 598.41(3) (1987). Upon our application of these factors, we believe the custody provisions were correctly decided and we affirm the trial court.

In reviewing the record in this case, we are in agreement with the trial court that although both parties have demonstrated their ability to adequately care for Patricia, "each appears to have a singular trait that is not good and does not bode well for the future." The evidence indicates that Loren is to some degree domineering, manipulative, and controlling, and that he is often depressed and prone to sudden outbursts of anger. Jeannine has had some difficulty in setting aside the parties' marital conflicts and agreeing to visitation privileges, both in this case and in her dealings with Jill's father. On balance, however, we agree with the

trial court that Patricia should be placed with Jeannine and her half-sister, Jill, rather than with Loren and her half-sister, Beth. The evidence demonstrates that Jeannine has provided constant quality care to Patricia and maintains a very neat home for both Patricia and her other daughter, Jill. Testimony at trial indicated that Patricia has a close relationship with Jill and Jeannine enjoys a close relationship with both children as well. Although Jeannine is employed full-time as a nursing educator at North Iowa Medical Center, we see no reason to believe that day care placement would adversely affect the best interests of this child.

Loren argues that, since he is unemployed and unable to work, he would be able to provide more quality care for Patricia than Jeannine could. The difficult choice that we are faced with here, however, does not turn or fall on which parent would be better able to spend more time with the child. Determining what custodial arrangement will best serve the long-range interest of a child frequently becomes a matter of choosing the least detrimental available alternative for safeguarding the child's growth and development. Marriage of Winter, 223 N.W.2d at 167. In the face of evidence that Loren is prone to depression and outbursts of anger, which, at times, have been directed towards members of his family, we believe Patricia's best interests lie with physical placement with Jeannine. We

note, however, that Loren appears for the most part to be a caring and devoted father to all of his children.

II. Loren next argues that the trial court's property distribution was inequitable. He asks that the property settlement be eliminated and that Jeannine be ordered to pay back a $3,000 debt she owes him.

In reviewing the record on this issue, we are guided by certain principles. The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1) (1987). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). Under this statute, the ultimate question is whether the distribution of the property is equitable; there is no rule based upon percentage division of assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). Division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

The trial court denied either party permanent support alimony, but found that "Jeannine has contributed to this marriage and should receive some property in the form of a cash distribution." We agree. Although the parties had been married only a short time, "[W]here a party contributes substantially to the marriage, those efforts

should be recognized when the property is distributed." Marriage of Lattig, 318 N.W.2d at 816. Based upon our review of the record, we see no reason to disturb the trial court's equitable distribution.

We deny petitioner's request for attorney fees incurred due to this appeal The primary consideration in making the determination of an award of attorney's fees is the parties' resources In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977). The costs of this appeal are to be divided equally.

**AFFIRMED.**