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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-602 / 90-861

IN RE THE MARRIAGE OF MARY JANE NOLTING
AND GARRY EDWARD NOLTING

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Upon the Petition of

MARY JANE NOLTING,

Petitioner-Appellee,

And Concerning

GARRY EDWARD NOLTING,

Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, John Bauercamper, Judge.

Husband appeals from certain provisions of the decree of dissolution entered for the parties in district court. **AFFIRMED AS MODIFIED, AND REMANDED.**

Donald B. Redfern of Redfern, Mason, Dieter, Larsen & Moore, Cedar Falls, for appellant.

Mary Jane Nolting, Waterloo, pro se appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

SACKETT, J.

Respondent-appellant Garry Edward Nolting appeals from the decree dissolving his marriage to petitioner-appellee Mary Jane Nolting. Garry contends he should have been given physical care of the parties' two younger daughters and Mary should pay him child support. He also challenges a trial court order directing him to pay attorney fees to Mary's lawyers. We modify.

The parties were married in 1972. Garry had custody of two daughters from his first marriage born in 1970 and 1971. Mary has adopted these children. They are both now past high school age. The parties have two younger daughters born in 1978 and 1981. The trial court awarded the parties joint custody and Mary physical care. Garry contends he should have physical care of these two younger daughters.

The parties apparently have limited funds. Garry is represented by counsel. He did not include applicable parts of the transcript in the appendix. References in his brief are to the transcript. His filings do not conform to the rules. See Iowa R. App. P. 14(g) and 15. This makes our review more difficult, particularly because we must share one transcript.

Mary appears on appeal pro se. Her brief does not include references to the transcript or appendix. She does not cite any authority. She too has failed to comply with

the required rules. See Iowa R. App. P. 14(b), (e), and (g). Mary has included in her briefs statements which are contrary to the evidence and have no support in the record. She prepared the brief, and the statements are her own. We therefore consider these statements in addressing her credibility.

Garry contends he should have been awarded physical care. We look to the best interests of the children. Iowa R. App. P. (14)(f)(15). Both parties are loving and caring parents, and either parent would make an adequate custodial parent. The question is which parent will do the better job. See In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985); In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). Both parents are supportive of the other's relationship with the children.

At the time of trial the trial court determined the children had been in Garry's custody. Mary had one witness testify on the custody issue. Garry called three witnesses to testify, including one of the parties' older daughters.

Mary's witness, Louise Benson, a coemployee and friend of Mary's for the last seven or eight years, testified Mary is a good mother and loves and encourages the girls. She also testified Garry is a good dad and shows signs of really loving the girls. Mrs. Benson said the girls have always been a priority with Mary, and Mary is reliable, very responsible, and a hard worker.

Jerry O'Donnell and Anna Marie Tippett testified for Garry. O'Donnell, a teacher for five years and a neighbor across the street for the past fourteen years, testified he has known Garry and Mary for nine or ten years. O'Donnell testified Garry is an outstanding father, a caring person, gives his children quality time, and is well respected by everyone in the neighborhood. O'Donnell said Mary does a great job as a nurse, and as a homemaker is neat and clean. O'Donnell said the girls want to live with their dad.

Tippett, a neighbor for the past four years, has had substantial contacts with all four children. She testified Garry is a good father, very responsible, very stable, and very secure. She said he is himself at all times. Tippett also testified Garry is close to the children, and they are close to Garry, and the girls want to live with him. Tippett said Mary loves the girls, and they love Mary, and the girls want to spend time with Mary. She also testified Mary is a good mom, a responsible person, and is especially close to the two younger girls. Tippett stated that right now the girls would be best with Garry.

The older daughters' have a closer relationship with their father and are of the opinion the younger girls would prefer to be in Garry's care.

Mary feels Garry is not responsible financially. Garry is concerned about the effect on the children of a relationship Mary has with a male next door neighbor.

We review 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. Iowa R. App. P. 14(f)(7). Garry has been an attentive and conscientious parent. Those persons closest to the younger girls, namely two neighbors and their older sisters, are of the opinion the girls should be with their father. This evidence is very persuasive. Furthermore, the older girls spend substantially more time with their father than they do with their mother. By awarding Garry physical care, the younger girls will have more time with their older sisters.

We modify the decree to award physical care to Garry. Mary's right to visitation shall be the same as those granted to Garry under the trial court's decree.

Garry contends the property division did not leave him with a fair share of the parties' property. We review to determine if it was equitable. See In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Havron, 406 N.W.2d 450, 452 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). Garry contends Mary received $27,925 in property, and he received $4,500 in property. We find Mary was given property with equities of about $21,000, and Garry received properties with equities of about $5,000.

We modify the decree to award the family home with an equity of about $10,000 to Garry, and a lien be established

against the house in Mary's favor for $2,000, with interest at five percent, payable annually. The lien shall be paid to Mary on or before January 1, 1998.

Garry contends he should have child support from Mary. We agree. We remand to the trial court to assess child support under the applicable guidelines. See In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). We do not retain jurisdiction.

Garry challenges a $100 attorney fee award to Mary. We find no reason to disturb it. See In re Marriage of Dahl, 418 N.W.2d at 361; In re Marriage of Orgren, 375 N.W.2d 710, 714 (Iowa App. 1985).

AFFIRMED AS MODIFIED, AND REMANDED.