IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHIRLEY J. BAUDLER
AND RONALD A. BAUDLER

FILED
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CLERK SUPREME COURT

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Upon the Petition of)
SHIRLEY J. BAUDLER,)
Petitioner-Appellant,)
And Concerning)
RONALD A. BAUDLER,)
Respondent-Appellee.)

Filed January 28, 1987

6-386
85-1877

Appeal from the Iowa District Court for Adair County (No. DM 6-1) - M C Herrick, Judge.

Petitioner wife appeals from several provisions of the judgment and decree dissolving the parties' marriage. **AFFIRMED.**

Paul J Boysen, Jr., of Camp, Harsh, Boysen, James & Mackaman of Creston for petitioner-appellant.

Richard G. Howard of Howard & Rutherford Law Office of Atlantic for respondent-appellee.

Heard by Oxberger, C.J., Snell and Schlegel, JJ.

OXBERGER, C.J. 13

At issue in this appeal are several provisions of the decree dissolving the parties' marriage. Appellant Shirley Baudler maintains that the trial court erred: (1) in granting respondent Ronald Baudler physical care in the joint custody arrangement concerning the parties' three minor children; (2) in dividing the marital assets in an allegedly inequitable manner; and (3) in requiring Shirley to pay an allegedly excessive amount of child support. We affirm.

The principles governing our review of a dissolution decree are well established. Our standard of review is de novo. Iowa R. App. P. 4. Accordingly, we review the facts and the law and determine the parties' rights anew where the issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985). Although we give weight to the trial court's findings of fact, particularly where the credibility of witnesses is implicated, we are not bound thereby. In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa Ct. App. 1984).

I. PHYSICAL CUSTODY OF THE CHILDREN

We first address Shirley's contention that the trial court erred in granting physical custody of the children to Ronald. In resolving issues concerning chid custody, the primary and governing consideration is the best interest of the child. Iowa R. App. P. 14(f)(15); In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa Ct. App 1985). The factors considered in awarding custody are delineated in section 598.41(3) of the Iowa Code and in In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974). The pivotal issue in ascertaining the child's best interest involves a determination of which parent is capable of administering more effectively to the long-range best interests of the child. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982).

We agree with the trial court's finding that both Shirley and Ronald have been responsible parents, and that either is capable of ministering effectively to the needs of the children. The trial court concluded, however, that the best interests of the children would be served if Ronald were named physical custodian. After carefully reviewing the record in light of the criteria set forth in Iowa Code section 598.41(3), we are persuaded that this determination is correct.

The record discloses that although Shirley assumed primary care of the children in their tender years, Ronald has played an increasingly active role in their lives. It is significant to note that approximately eight months before trial, Shirley left the family home and Ronald assumed primary responsibility for the children. Ronald introduced the testimony of the children's teachers which indicated that they continued to flourish academically during this period Conspicuously absent from the record is any evidence explaining Shirley's decision to leave. Shirley presented no evidence indicating that the situation between her and Ronald had become intolerable and that she consciously decided to leave because she felt it was in the children's best interest. The only available inference is that Shirley left the family home for personal reasons In these circumstances, we are compelled to give weight to Shirley's implied conclusion that Ronald is a capable single parent.

In addition, we agree with the trial court's finding that Ronald will be able to afford the children greater physical stability than Shirley; the record reflects that while Ronald plans to continue farming the family farm, Shirley plans to relocate as necessary to take advantage of promotions in the postal department. Relatedly, the record reveals that Ronald's occupation on the farm allows him to adjust his schedule in order to accommodate the children's needs; by contrast, Shirley's schedule would necessitate that she be away from

the children both when they wake up in the morning and when they return from school in the afternoon. In these circumstances, we conclude that Ronald is more capable of providing the children with a suitable and stable environment which will serve their long-range best interests. Accordingly, we affirm the trial court's decision naming Ronald physical custodian.[1]

II. DIVISION OF PROPERTY

We next address Shirley's contention that the property division made by the trial court was inequitable. The principles governing the division of a marital couple's assets are well settled. The factors to be considered in ascertaining whether the trial court's determination was appropriate are set forth in Iowa Code section 598.21(1)(1985). The critical inquiry is whether the court's division was equitable given the particular circumstances of the case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980). Our decisions do not mandate a precisely equal division of property; rather, the "division. . . is based on each marital partner's right to a just and equitable share of the property accumulated as a result of their joint efforts." In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981).

A brief discussion of the parties' financial predicament will aid in understanding the assignments of error which Shirley has raised in this context. The record discloses that Ronald and Shirley were married in 1974. At the time of the marriage, Ronald's possessions included an automobile and approximately $3,000 in savings. Shirley also owned an automobile and in addition

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[1]Parenthetically, we note that the trial court adopted the recommendations of Ronald's attorney almost verbatim. As such, we are less inclined to view the court's decree with the usual discretion. Nevertheless, on our de novo review of the record, we have reached a result identical to that of the trial court.

held a two-thirds interest in a real estate contract which she inherited from her father.

Shortly after the marriage, Shirley's real estate interest was sold, and she received approximately $40,000. In 1975, Shirley and Ronald used $16,000 of this amount to purchase a jointly held one-third interest in Ronald's father's farming operation. Several years later, Ronald and Shirley executed a joint note for $50,000 and made a down payment on a 272 acre tract of land. They then borrowed an additional $12,000 to remodel the home located on the tract. Thereafter, Ronald farmed the 272 acres and continued working in the one-third farm operation with his father. In 1982, Shirley used an additional $15,000 from her inheritance to help replant the parties' 1982 soybean crop which had been destroyed by hail. The remainder of Shirley's inheritance was used for family expenses.

Due to the declining farm economy, Ronald and Shirley's financial condition plummeted. At the time of the trial, the value of their assets totaled $325,940, and the value of their liabilities $392,575, leaving a negative net worth of $66,635. In distributing the marital property, the trial court awarded Shirley assets totaling $6,800. In addition, the court required Shirley to assume debts stipulated as her own which totaled $10,980. This left Shirley with a negative net worth of $4,180. Ronald was awarded the remaining property, including the farm and the homestead, and was required to assume all of the marital debts. The effect of this distribution left Ronald with a negative net worth of $62,455.

Shirley's first assignment of error is that the trial court improperly refused to set the amount of her inheritance aside from the distribution. We cannot agree. Iowa Code section 598.21(1) provides that the court in a dissolution

action "shall divide all property except inherited property or gifts received by one party. . . ." Section 598.21(2) further provides as follows:

> Property inherited by either party or gifts received by either party prior to or during the cause of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

(emphasis added).

The trial court predicated its refusal to set aside Shirley's inheritance upon the latter portion of this statute. We think that, in the circumstances of this case, this determination was proper. Initially, we note that both the one-third interest in Ronald's father's farming operation and the crops grown by the parties are jointly held assets. In In re Marriage of Butler, 346 N.W. 45 (Iowa Ct. App. 1984), we quoted with approval several other jurisdictions' recognition that "the separate property of one spouse is transformed into marital property when it is placed in some form of joint ownership." Id. at 47. Although the issue in Butler did not concern gifted or inherited property, but rather the appellant's workmen's compensation award, we do not think that property acquired from the former source dictates a different result. Undergirding our decision in Butler is the rationale that a transfer of one spouse's separate funds to the marital estate is presumed to be a gift to the marriage and results in a "transmutation" of those funds into marital property; this transmutation occurs irrespective of the source of the property. See In re Marriage of Rogers, 85 Ill.2d 217, 219, 422 N.E.2d 635, 637 (1981) (court refused to set aside as separate property amount of husband's inheritance used to purchase marital assets); see also Farmer v. Farmer, 398 So.2d 723, 726 (Ala. Civ. App. 1981) (where both parties contributed separate funds to purchase of household, court held that this was a "contribution to the marital estate" and refused set off); Carter v. Carter, 419 A.2d 1018, 1021-23 (in-depth discussion of transmutation

theory effecting a change in character from separate to marital); Conrad v. Bowers, 533 S.W.2d 614, 622 (Mo.App. 1975) (presumption of gift where separate property is contributed to marriage or placed in joint ownership)[2].

Furthermore, we think that the same reasoning governs that portion of Shirley's inheritance used toward family expenses. In Butler, we considered a similar issue concerning the portion of the appellant's workmen's compensation award used to purchase furniture. In holding that the amount expended constituted a contribution to the marital estate and was not to be set off to the appellant, we noted that:

> The furniture was used by both parties and their children in the marital domicile. It is jointly owned by the parties. We see no reason to now allow [the appellant] to recover money which was spent to fulfill his legal obligation to support his family.

In re Marriage of Butler, 346 N.W.2d at 47. We think that the same rationale governs the appellant's contention in the present case. Moreover, in Butler, we noted that, had the appellant placed his award in a separate account and retained sole control over it, the result would be different. In that case, as in the case at bar, however, the appellant "made the money available to the marital unit for its unrestricted use and benefit." Butler, 346 N.W.2d at 47. As such, we find no error in the trial court's refusal to set aside the amount of the inheritance. The funds were contributed to the marriage for the benefit of the marital unit; consequently, the "separate" character was lost.

In addition, we think that our refusal to set aside the appellant's contribution can be sustained on another theory. Clearly, setting aside the amount of the inheritance would lead to illogical and inequitable results. Where, as in the instant case, a portion of the inherited funds were used to finance a

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[2]For a detailed discussion of the transmutation theory, see Krauskopf, A Theory for "Just" Division of Marital Property in Missouri, 41 Mo.L.Rev. 157 (1976).

failing business venture, it would be impossible to justify returning to the appellant the amount of her investment while leaving the appellee to absorb the risk. Furthermore, we would be faced with a dubious contradiction if we allowed the appellant to set off her contributions merely because they were inherited, but allowed her to share in the appellee's earned contributions. See Carter v Carter, 419 A.2d at 1022-23 (setting aside such a contribution would contravene the entire notion of the marital relationship).

We now examine the propriety of the division of assets framed by the trial court. As stated earlier, the decree left Shirley with a negative net worth of $4,180; Ronald was left with a negative net worth of $62,455. We have evaluated the equitability of this award in light of the factors set forth in section 598.21(1) of the Code and conclude that, when the decree is viewed as a whole, this division is proper. In In re Marriage of Johnson, 299 N.W.2d 466 (Iowa 1980), we noted that a dissolution decree must provide which party shall receive particular items of property and must also assign responsibility for the satisfaction of the parties' debts. Id. at 467. Accordingly, we conclude that the allocation of marital debts is an integral part of the decree and must be considered in evaluating the property division. Id.

When the marital debts are considered in conjunction with the property division in the present case, the equitability of the trial court's decree becomes apparent. Although Ronald retained a substantial amount of the assets, he was also assigned a disproportionate amount of the marital debt. Shirley, on the other hand, was awarded a very small portion of the assets but at the same time, she was required to assume only her individual liabilities. The record reflects that Shirley is employed at the postal department where she earns approximately $21,000 per year. The trial court's decree is beneficial

to Shirley because it enables her to earn her income unencumbered by the parties' substantial debt; it is beneficial to Ronald because it allows him to retain his means of livelihood. See In re Marriage of Callenius, 309 N.W.2d 510, 515 (Iowa 1981) (acknowledging the "reasonableness of awarding a farm to the spouse who operated it"). In these circumstances, we are disinclined to disturb the decree.

III. CHILD SUPPORT

Finally, Shirley maintains that the trial court erred in ordering her to pay child support of $450 per month. Shirley contends that this amount is excessive and improper both because Ronald has not established that he needs this amount, and because it is unduly burdensome. We disagree with both of these contentions.

Initially, we do not think that $450 per month is an excessive amount of child support for three children. Ronald explicitly testified that his monthly costs, exclusive of debt obligations, were anticipated to total approximately $1,000. We have carefully evaluated the parties' respective resources and obligations and have examined the record in light of the criteria delineated in Iowa Code section 598.1(4), and conclude that the child support award is equitable.

The dissolution decree is affirmed.

AFFIRMED.

Snell, J. concurs; Schlegel, J. dissents.