IN THE COURT OF APPEALS OF IOWA

No. 1-361 / 91-220

IN RE THE MARRIAGE OF JANINE KAY WARD AND SCOTT DELOY WARD

FILED
SEP 24 1991
CLERK SUPREME COURT

Upon the Petition of

JANINE KAY WARD,

Petitioner-Appellee,

465

And Concerning

SCOTT DELOY WARD,

Respondent-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

Husband appeals the district court's dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Scott D. Brown of Brown, Kinsey & Funkhouser, Mason City, for appellant.

Richard J. Hanson of Sarno & Hanson Law Offices, Lake Mills, for appellee.

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

SACKETT, J.

The primary issue in this appeal is the award of physical care of three children.

Petitioner-appellee Janine Kay Ward and respondent-appellant Scott Deloy Ward were married in September 1971. They have three children: Joshua born in August 1973, Jessie born in April 1977, and Brandy born in October 1981.

Janine filed a dissolution petition in December 1989, and temporary custody of the three children was granted to Scott. The matter was tried in October 1990, and on January 31, 1991, the trial court filed a decree awarding physical care of Joshua to Scott, and the physical care of the two younger children to Janine. The decree was stayed by supreme court order.

Scott contends the physical care of all the children should have been awarded to him. He contends Janine should be ordered to pay child support. He also challenges the property division.

The problems in the marriage surfaced when in October 1989 Janine took a job that required her to be away from home for extended periods. Shortly thereafter she established a relationship with another man, and she filed the dissolution in December. Scott has cared for the children since October 1989. While in Scott's care, the children have done reasonably well. They have suffered

some emotional trama as a result of their parents' separation, but there have been no serious problems. The oldest child, Joshua, is a bright young man. He has assumed substantial responsibility for the family and has an excellent relationship with his younger siblings. He was vocal about his desire to remain in his father's custody and to have his younger brother and sister also remain in their father's custody. The second son, Jessie, is a below-average student and has had some difficulties in school. The problems became more serious after his mother's absence. The younger child, a daughter, Brandy, appears to be a good student and is fairly well adjusted.

A guardian ad litem was appointed at the trial court level. The guardian ad litem engaged the services of Mark Peltan to interview the children and parents and make recommendations on the custody issue. Peltan has a PHD in Clinical Psychology and is employed at St. Joseph Mercy Hospital as the Director of the Clinical Psychology Department. Peltan met with all the family members and administered a series of tests. He testified at trial. His evaluations were entered in the case. He determined both parents basically were immature and depressed. Scott consumed more alcohol than he should. Janine lacked self-esteem and tended to become involved in unhealthy relationships. Peltan determined they were both adequate parents.

The trial court determined Joshua should be in his father's physical care, while the younger children should be in their mother's care. The trial court reasoned Janine was more attuned to Jessie's educational needs and had a greater capacity to recognize and address the children's essential needs. The trial judge also considered Brandy needed feminine influence. Peltan indicated a slight preference for Scott, as did the guardian ad litem for the children. The boys voiced a preference to remain in their father's care.

Our review is de novo. Iowa R. App. P. 4. We are directed that the first and governing consideration is the best interests of the children. See Iowa R. App. P. 14(f)(15). The question is which parent will do the better job in raising the child. See In re Marriage of Bowen, 219 N.W.2d 683, 689 (Iowa 1974). Gender is not an issue, and neither parent has a greater burden in gaining custody. See Hodson v. Moore, 464 N.W.2d 699, 700 (Iowa 1990); In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985). The children need input from both parents. We do not consider, as the trial court did, that Brandy needs the influence of a female in assessing which parent is better. We give careful consideration to the desire of the oldest child, Joshua, that the children remain with their father. Joshua is bright, mature, and a considerate child and has valuable insight into the family relationships. We look

also to the need of the children to stay together. Siblings should only be separated for compelling reasons. See In re Marriage of Grandinetti, 342 N.W.2d 876, 878 (Iowa App. 1983). The children here have been together, have a close relationship, and depend on each other. We recognize by the time this decision is filed, Joshua will be eighteen years old and may no longer be living in his father's home. We recognize his strong relationship with his father, as opposed to a more hostile one with his mother.

We agree with the children, the psychologist, and the guardian ad litem, that the balance seems to be in favor of Scott receiving custody. We modify the decree to award him physical care.

We agree with Scott that Janine should be ordered to pay child support. The child support guidelines should determine the child support she should pay. Although the trial court allegedly considered the guidelines, it made no determination as to net income as defined by the guidelines. We are unable from this record to make that computation. We remand for that purpose. We do not retain jurisdiction. See In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990).

Scott has also challenged the property division. He contends he should have certain items of personal property not awarded to him. He also asks that he be allowed to

stay in the family home with the children. We reject his argument that a different division should be made of the personal property. We agree, however, that the children will be best served by giving them the stability of staying in the family home. We modify the trial court's decree and provide that Scott is awarded the right to occupy the personal residence as long as one or more of the children are regular high school students. Scott shall be responsible for all taxes, insurance and maintenance, and mortgage payments. When the last child ceases to be a high school student, the house should be sold and the proceeds divided equally between the parties.

Costs on appeal are taxed one-half to each party. Each party shall pay his or her own attorney fees.

AFFIRMED AS MODIFIED, AND REMANDED.