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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DEBRA JO PHILLIPS AND JOHN WILLIAM PHILLIPS

Upon the Petition of)
DEBRA JO PHILLIPS,)
Petitioner-Appellee,) Filed January 27, 1988
And Concerning)
JOHN WILLIAM PHILLIPS,) 7-525 / 87-757
Respondent-Appellant.)

Appeal from the Iowa District Court for Des Moines County (No. CD1807-0786), D. B. Hendrickson, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

T. K. Ford of Ford Law Offices, Burlington, for appellant.

Thomas J. Vilsack of Bell & Vilsack, Mount Pleasant, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ. Schlegel, J., takes no part.

DONIELSON, P.J.

Respondent husband appeals from the decree dissolving the parties' marriage. We affirm as modified.

Petitioner, Debra Jo Phillips, and respondent, John William Phillips, were married in 1973. Debra brought property worth about $1,400 into the marriage; John brought property into the marriage worth about $41,000. The parties have two children: Jeffrey, born in 1976, and Melissa, born in 1980. Debra has a college degree in education. She worked as a secretary until Jeffrey was born, but has not been employed outside the home since. John is a surgeon. He had just completed medical school when the parties were married. During the marriage, John inherited bonds worth about $12,000. Debra is now thirty-six years old; John is forty years old. John's earning capacity is approximately $180,000; Debra's earning capacity is $15,000.

In its dissolution decree, the trial court set up a joint custody arrangement with Debra having physical care of the children. It directed John to pay child support of $1,600 per month and alimony of $1,500 per month for four years. The trial court did not specify which party was allowed the income tax dependency exemptions for the children. The trial court awarded Debra property it valued at about $372,400 and John property it valued at about $413,600. John has appealed from the dissolution decree.

Our scope of review is de novo. Iowa R. App. P. 4.

I. John's first contention is that the trial court should have given him rather than Debra the physical care of the parties' children in its joint custody arrangement. The crux of John's reasoning is that even although the undisputed testimony is that Debra is a loving and caring parent, providing the day-to-day care of the children and that she can "feed them and clothe them and love them and take them to their piano lessons and swimming lessons and do all the things

a loving nanny and a housekeeper can do," she cannot teach them the "sanctity of marriage, honesty, industriousness, and morality." He bases this contention on "character flaws" in Debra because of her affair with another man for nearly five years. Debra replies that she sought the attention of another man due to John's long hours away from home due to his professional responsibilities, which led to a breakdown in communication between them.

Our first and governing consideration is the best interests of the child. Iowa R. App. P. 14(f)(15). The factors upon which we base this determination are set forth in Iowa Code section 598.41(3). We must determine which parent is capable of administering more effectively to the long-term best interests of the child. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982). Moral misconduct is but one factor to consider; it is weighed most heavily where the misconduct occurs in front of the children. In re Marriage of Grandinetti, 342 N.W.2d 876, 879 (Iowa 1983).

Our de novo review of the evidence leads us to find no reason to disturb the trial court's decree. The record demonstrates that Debra has met virtually all the children's needs, except for the material needs which John has met. While we do not condone the clandestine relationship which Debra had while married, we find that she was always available to the children and was very active in their school activities, as well as devoted the affection and support which they needed.

II. John asserts that the child support award, $800 per child per month, is excessive. The factors governing the proper amount of child support are set forth in Iowa Code section 598.21(4). We are in agreement with the trial court's decision, based on the evidence in the record to justify the award and the criteria set forth in section 598.21(4). The trial court found that living expenses for Debra and the two children would be $29,267.71 per year to maintain

a life-style comparable to that of prior years. We affirm the child support award and do not find it to be excessive.

III. John claims that the trial court should have allowed him the income tax dependency exemptions for the children. Debra concedes that as long as John's support obligation is current, he should be entitled to take the children as tax exemptions. Thus, we modify the decree in this respect to allow John to take the children as tax exemptions.

IV. John feels Debra's rehabilitative alimony award, $1,500 per month for four years, is excessive. The factors governing an award of alimony are set forth in Iowa Code section 598.21(3). The Iowa Supreme Court has recognized that under certain circumstances, rehabilitative alimony is the appropriate form of support payment. See In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). We agree with the trial court's award. Debra has a college education and is physically capable of employment. However, she has been out of the job market for many years during the marriage and may need further training to become employed again. It is her desire to obtain a teaching certificate. We affirm the alimony award.

V. John's last assertion is that the property division is inequitable. Section 598.21(1) sets forth the criteria to consider in this regard. We find upon our de novo review the trial court's decision was equitable and we decline to disturb it.

AFFIRMED AS MODIFIED.