FILED
JUL 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-214 / 89-835

IN RE THE MARRIAGE OF JULIE KAY GARDNER AND JOHN GORDON GARDNER

Upon the Petition of
JULIE KAY GARDNER,

Appellee,

And Concerning
JOHN GORDON GARDNER,

Appellant.

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Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

The respondent husband appeals various economic and child visitation provisions of the trial court's decree of dissolution dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Guy P. Booth of Booth & Chapman, Cedar Rapids, for appellant.

Franklin R. York of White, Stone, Aasgaard & York, Marion, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J. 271

Julie and Jack Gardner were married on February 14, 1981. The parties had two children born of the marriage, M.G., age 8, and Phillip, age 6. After the parties' marriage the couple moved to Michigan. Julie was a school teacher. Jack was an operator of an auto restoration business in East Lansing. In 1985, Julie and Jack decided to sell Jack's business and embark on a two-year sailing trip through the Great Lakes, eventually ending in the Caribbean. The parties also made plans to sail up the west coast to Seattle.

Shortly after the odyssey began, Julie decided she did not want to participate. She moved to Lisbon, Iowa, with the children. Jack remained with the boat during the winter, but visited several times that winter and the following summer. By late 1986 Jack moved back to Iowa, intending to start a new business and reunite the family.

In the summer of 1987, the parties purchased a home in Mount Vernon. Jack borrowed $6000 to help make the down payment. The parties lived together until February 1989, though Julie had filed a petition for dissolution in June 1987. When their attempt at reconciliation failed, Julie moved out of the home.

Trial was held on March 22, 1989. In its decree, the trial court ordered Jack to pay $250 per month child support. Julie was awarded the Mount Vernon homestead, and Jack was awarded the parties' previous home in Michigan.

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The trial court awarded Julie all the furniture and household goods at the Mount Vernon home, along with a car, some antiques, and all interest in an irrevocable trust agreement, secured by a parcel of property owned by Jack, to be used for their children's education. Jack also received a number of the antiques and related artifacts, as well as some automobiles, trailers, and all interest in the motor car business. Jack was also required to pay $3,000 to Julie as a property settlement, and $3,000 towards Julie's attorney fees.

Jack was granted visitation of four weeks in the summer, to be exercised in two separate two-week periods. Jack also was awarded one weekend visit per month, and alternating Christmas holidays. Jack filed a motion for new trial and motion for expanded findings of fact. The trial court denied both motions. Jack has appealed.

Jack contends the court erred in awarding Julie $3,000 for attorney fees. Jack argues that Julie earned $19,748 per year as a teacher, plus earnings of $3,600 per year from rent from the apartment in the house. Jack maintains his income is very erratic, especially since the beginning of the boat trip, and due to his borrowing in attempts to rekindle his automotive business interests. Jack contends Julie's statement her attorney fees totaled $3,000 was not based on any concrete proof of work done or bills received. Jack also points out he spent considerable sums of money setting up the trust for the children.

Jack next argues many of the antiques and other items awarded to Julie were his prior to the marriage, and are of great sentimental value since his first wife, now deceased, bought those items. Jack argues Julie loaned out many valuable pieces, and some turned up missing. Jack wishes all such items returned. Jack next contends he is entitled to more than two two-week periods of summer visitation. Jack also believes the trial court erred in awarding Julie the home in Mount Vernon, and ordering him to pay the debt, without giving Jack any credit for his $6000 contribution. Jack maintains the division of property and debts is grossly inequitable, since he made major contributions to keep the family together. Jack lastly points out though he was supposed to be paying $400 per month to the friend of court for temporary payments, Julie and the children were actually living with him. He should therefore be credited for support for that period.

Our review of this case is de novo. Iowa R. App. P. 4. We will address each of the appellant's arguments in the order presented.

First, we see no need to disturb the trial court's award of attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In

re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa 1982). We do not find the award of $3,000 attorney fees to be unreasonable nor an abuse of the trial court's discretion. We affirm the trial court on the award of attorney fees.

Second, Jack complains much of his premarital property remains in the possession or control of Julie. Julie claims much of this same property has been lost or dissipated. "Property inherited by either party or gifts received by either party prior to or during the course 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." Iowa Code § 598.21(2). The court is further directed to consider "property brought to the marriage by each party." Iowa Code § 598.21(1)(b).

No inequity has been shown to warrant the trial court's refusal to grant Jack his premarital property. The trial court erred by allowing Jack's premarital property to remain with Julie. Therefore, the trial court's decree is hereby modified to grant Jack his premarital property. Julie will return all Jack's premarital property which she still retains in her possession. This order to return Jack's premarital property is limited to only those items which she presently has or can regain possession or

control. As a practical matter, any items Julie can no longer regain or are lost she can not return. No restitution shall be made for lost or missing items.

Third, Jack should be granted more extended consistent visitation with the children. Liberal visitation rights are in the best interests of the child. Iowa Code § 598.1(6); In re Marriage of Muell, 408 N.W.2d 774, 777 (Iowa App. 1987). Both parents, as joint custodians, are charged with maintaining those interests. Unless visitation with the noncustodial parent will in some way injure the child, it is not to be prohibited or curtailed. Fitch v. Fitch, 207 Iowa 1193, 224 N.W. 503 (1929).

Jack and his first wife had three minor children. After her death Jack raised these children, ages one, five, and six. for a number of years. He adequately cared for those children. Julie's main objection to more extensive visitation is Jack's inadequate supervision and care. However, our review of the record does not justify such stringent visitation rights. One is not required to be perfect to be a parent.

Julie claims as a school teacher she needs the summer to spend quality time with her children. However, the children live with Julie. They are with her most of the year. Jack needs summer visitation to spend almost any time at all with his children.

Additionally, Jack now lives in Michigan. He is six hundred miles from the children in Iowa. The two separate

visitations of two weeks each are too limited in time and the traveling involved too onerous to justify such time restrictive visitation. Iowa's policy is to encourage maximum continuing parent-child relations with each spouse. Iowa Code § 598.41(1). The two separate two-week visitation periods clearly fail in this regard. We modify the trial court's decree to grant Jack six weeks of continuous visitation in the summer. The other visitation provisions are to remain as presently laid out in the trial court's decree.

Fourth, Jack objects to the trial court failure to award him credit for child support payments for the period when he lived with the family. However, appellant presents no legal authority in support of his position. This failure constitutes a waiver of the issue. Iowa R. App. P. 14(a)(3). We therefore affirm the trial court in granting Jack no credit for unpaid child support.

Fifth, Jack claims the trial court erred by refusing to credit him with the $6,000 down payment he made on the family residence. The house was awarded to Julie. The parties had entered into a written stipulation crediting Jack with the $6,000 down payment. This stipulation, while not binding on the court, may be considered by it. We determine Jack should be awarded $6,000 credit for the down payment. A judgment lien for this $6,000 credit shall be impressed upon the residence in Jack's favor. This judgment shall bear interest at the rate of ten percent per annum. We modify the trial court's decree accordingly.

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Cost on appeal are assessed one-fourth to Jack and three-fourths to Julie.

AFFIRMED AS MODIFIED.