IN THE COURT OF APPEALS OF IOWA

No. 1-631 / 91-687

FILED
FEB 25 1992
SUPREME COURT

IN RE THE MARRIAGE OF JANEL WILL AND DWIGHT WILL

Upon the Petition of

JANEL WILL,

Petitioner-Appellee,

And Concerning

DWIGHT WILL,

Respondent-Appellant.

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Appeal from the Iowa District Court for Cass County, Leo Connolly, Judge.

Husband appeals from a dissolution decree. **AFFIRMED AS MODIFIED.**

Jacob J. Peters of the Peters Law Firm, P.C., Council Bluffs, for appellant.

Joanne C. Lorence of Otto, Lorence & Barry, Atlantic, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

SACKETT, J.

Respondent-appellant Dwight Will appeals challenging the economic and custody provisions of his dissolution decree. We affirm as modified.

Dwight and petitioner-appellee Janel Will were married in 1969. They had four children, two daughters born in 1969 and 1974, and two sons born in 1981 and 1983. When the decree was entered, only the three younger children were under eighteen years of age.

The trial court awarded the parties joint custody of the three children. Primary care of the second daughter, Wendy, was awarded to Dwight, and primary care of the two boys was awarded to Janel. The trial court found the split custody provision justified because Wendy was emphatic about her desire to live with her father and Janel has agreed to the decision. The court determined Janel was the better parent for the two boys and, if they were placed with their father, Wendy would attempt to alienate them from their mother. Dwight challenges this decision, contending all three children should be in his physical care.

Janel, in filing for the dissolution, only sought custody of the two younger children. All four children lived with their father during the pendency of the dissolution. During the time the dissolution was pending, Janel took the boys from Dwight's home for visitation and

took them to the State of California without Dwight's knowledge or consent. After she took the children to California, Dwight obtained a temporary custody order from the Iowa courts, went to California, and returned the children to Iowa. Janel recognizes her trying to keep the children from Dwight by taking them to California was not a good idea. She, however, seeks to place the blame for this action on an attorney who represented her earlier in the proceeding. The attorney who allegedly gave her the advice does not represent her on appeal.

The two girls have been alienated from their mother since these proceedings began. They both testified physical care of the boys should be with their father. The trial court, as evidenced by its decision to place physical care of the children with each parent, determined both parents are capable of assuming custody. We agree with the trial court that both parties love their children and are capable of assuming custody. The pivotal question is whether split custody is justified under this record. Split custody deprives children of the benefit of constant association with each other which, as innocent victims, they should not lightly be subjected to. In re Marriage of Grandinetti, 342 N.W.2d 876, 879 (Iowa App. 1983). In attempting to foster children's best interests, the court ordinarily attempts to keep children of broken homes together. In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981); Grandinetti, 342 N.W.2d at 878.

Our review in cases such as this is 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). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

There is a close relationship between the older girls and their younger brothers. The older daughter is a college student and makes her home with her father when not in college. This relationship will continue to be fostered if the boys are in their father's physical care. The girls' very strained relationship with their mother does not justify splitting the physical care of siblings. While we recognize that strained relationships between children and parents are not always the parents' fault, we do recognize when a parent has alienated himself or herself from his or her children to the extent the mother has here, we cannot assume the blame lies with the children. While the record gives us some insight, these girls were privy to the actual family situation. They are of an age and background that we give considerable weight to their strong preference. See In re Marriage of Behn, 416 N.W.2d 100, 101-02 (Iowa App. 1987); In re Marriage of Ellerbroek, 377

N.W.2d 257, 258-60 (Iowa App. 1985). We consider too the mother's attempt to take the children from the father by her ill-advised journey to California. While she contends this was the result of legal advice, we cannot exonerate her from these actions based on this argument. The trial court, in granting Dwight temporary custody when Janel sought to take the children to California, found "the Petitioner (Janel) called from Colorado stating that the boys were with her and that she was fleeing the state of Iowa in an attempt to deprive the Respondent (Dwight) herein of custody and contact with the children." When a parent attempts to isolate or alienate children from the other parent, this is a factor that must be considered in making a custody award. See In re Marriage of Downing, 432 N.W.2d 692, 694 (Iowa App. 1988). We have long said that children of a dissolution need to maintain a relationship with both parents. See In re Marriage of Hopkins, 453 N.W.2d 232, 235 (Iowa App. 1990). We modify the decree to provide that Dwight have physical care of all three children.

Dwight's second complaint is that the property division is not equitable. Dwight's primary concern is with the trial court's valuation of an eighty-acre farm the trial court awarded to him. Both Dwight and Janel filed financial statements. Dwight's financial affidavit was filed in December 1990; Janel's was not filed until

February 11, 1991, the day before trial. The financial statements reflect only two basic differences, namely, the value of the eighty acres and the current indebtedness on the farm. Dwight testified to the value of the eighty acres and valued it at $60,000. Janel did not offer a value in her testimony. The trial court did, over objection, consider a written appraisal signed by a person identified only as Peggy Larson. Larson, without giving specific reasons, valued the eighty acres at $96,500. Dwight objected to the appraisal because it had not been made available in response to interrogatories and because it was hearsay. Iowa Rule of Evidence 801(c) defines hearsay as an out-of-court statement offered to prove the truth of the matter asserted. In re Marriage of Williams, 449 N.W.2d 878, 881 (Iowa App. 1989). Rule 803 provides that hearsay is inadmissible unless it falls within one of the enumerated exceptions. Id. We conclude that this appraisal was inadmissible hearsay. We do not consider it as we determine the value of the farm property. Id. Even if we were to consider the exhibit, it would not justify adopting a $96,500 valuation. The exhibit provides nothing to establish Larson has any expertise in valuing real estate.

The trial court valued the parties' primary asset, an eighty-acre farm, at $96,500. Dwight was awarded the farm, subject to a mortgage of $42,302 and subject to a $35,000

lien in favor of Janel. Dwight was awarded all the farm-related personal property valued at $16,625. Dwight was ordered to assume debts totaling $19,738.31. In addition to Janel's $35,000 lien against the farm, she was awarded a 1978 vehicle, personal effects and household goods and furnishings which she had in her possession. We value the farm at $60,000, that being the only evidence in the record of value. We modify the decree to provide that Janel shall be paid $20,000, rather than $35,000. The $20,000 shall be a lien against the farm and shall draw interest at the rate of 7 percent per annum from the date of the entry of the decree. Dwight shall have the right to pay the lien at the rate of $2,000 per year plus accrued interest; the first payment to be due on the date of the entry of the decree and subsequent payments to be due, together with accrued interest, on that date in each subsequent year. We affirm the balance of the property division and the provision that Dwight pay alimony to Janel of $200 per month.

The child support fixed by the trial court was based on split custody of the children. It is no longer correct, we having modified custody. We apply the child support guidelines and order that Janel shall pay child support of $299 per month for three children, $264 per month for two children, and $199 per month for one child.

Costs on appeal are taxed to Janel.

AFFIRMED AS MODIFIED.