IN THE COURT OF APPEALS OF IOWA

No. 1-321 / 90-1915

FILED
OCT 29 1991
CLERK SUPREME COURT

IN RE THE MARRIAGE OF RODNEY LEE WASCHKAT and COLLEEN RAE WASCHKAT

Upon the Petition of

RODNEY LEE WASCHKAT,

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Petitioner-Appellee/Cross-Appellant,

And Concerning

COLLEEN RAE WASCHKAT,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Black Hawk County, William Klotzbach, Judge.

Colleen appeals from the custody provisions of the parties' dissolution decree. Rodney cross-appeals from the property division. **AFFIRMED.**

Gene Yagla and John A. Stitely of Lindeman & Yagla, Waterloo, for appellant.

Jay P. Roberts and Carter Stevens of Beecher, Rathert, Roberts, Field, Fister, Walker & Morris, Waterloo, for appellee.

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

DONIELSON, P.J.

Rodney and Colleen Waschkat were married on October 12, 1984. The district court dissolved their marriage on November 20, 1990. At trial Rodney was thirty-two years old and Colleen was thirty-seven. The marriage was Rodney's first and Colleen's third. Both are, and have been, gainfully employed. Rodney is a plumber; Colleen is a clinical instructor of radiology at Convent Medical Center in Waterloo, Iowa.

The parties have two children: Wade, born April 22, 1985, and Drew, born February 25, 1987. Finding that Rodney would provide a better role model for the children, the court placed the children with Rodney and ordered Colleen to pay child support of $400 per month.

In dividing the parties' property, the trial court awarded each party his or her own personal items, pension fund, and automobile. Colleen was awarded the household furnishings she had brought to the marriage, and the remainder of the furnishings was divided evenly. In disposing of the parties' home, the trial court valued the equity in the home at $17,500 and awarded the house to Rodney. However, the award to Rodney is subject to a $5,000 divorce lien in Colleen's favor.

Colleen has appealed from the decree challenging the physical placement provisions. She argues that she has provided the bulk of the care for the children while Rodney

has hunted and fished. She believes the evidence of her moral misconduct should be given relatively little weight when considering the children's long-range best interests.

On cross-appeal, Rodney complains that the trial court erred by requiring him to pay to Colleen $5,000 as her equity in the parties' homestead. He believes he should receive the entire value of the equity in the home.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. **Physical Placement.** In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3) and in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983) and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child is which parent will do better in raising the child;

gender is irrelevant and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

After examining all of the considerations, we find the parties to be equally capable in all but one respect. All other things equal, we find the factor of stability to be dispositive of the custody issue.

The record in this case indicates that both parties are decent, caring parents. The record also establishes that both parents love and support their children. However, it does seem that both parents have too often chosen to pursue their social activities in lieu of their family responsibilities. The only relevant difference between the two parents involves the relative stability of their lifestyles.

Rodney has apparently spent most of his spare time in recreational pursuits. He has, perhaps, spent less than an optimal amount of time with his children. Colleen has spent a substantial portion of her non-working hours caring for the children. However, Colleen, too, has spent considerable time away from the family.

We are primarily concerned with Colleen's seeming inability to create stable, lasting relationships. Colleen has a long history of numerous transitory relationships. She has had three short-lived marriages and has apparently had numerous fleeting relationships, concurrent with her

marriages and otherwise. Several of these relationships have been clandestine and deceitful.

While we find nothing of substance in the record to indicate that these relationships have directly affected the children, Colleen's behavior has surely, and understandably, upset the family unit as a whole. The record shows that the resultant family discord has indirectly affected the children.

We believe that the nature of these relationships is much less relevant to our decision than is the pattern of lies and deceptions Colleen has woven to conceal them. Surely, this behavior must inform our assessment of Colleen's stability.

Rodney, on the other hand, appears to demonstrate a greater degree of stability. The record proves Rodney to be an honest, reliable and hard working man. He is described as possessing a strong work ethic and conservative values as it relates to his lifestyle. Rodney is an avid outdoorsman and is interested in sharing his hobbies of hunting and fishing with his children as they grow older. For now, he has cut back on his recreational activities in order to spend more time with the children. Rodney is clearly a solid and stable individual.

We believe that the placement of the two children with Rodney is in their long-term best interests. We believe that Rodney can best minister to the needs of the children

and provide them with a strong, positive role model. We affirm the custody and placement provisions of the trial court's dissolution decree.

II. **Property Distribution.** Rodney, in his cross-appeal, challenges the trial court's property distribution. He contends the trial court failed to properly consider that he brought more assets to the marriage and that he was awarded placement of the children. He argues that the trial court should have awarded him all of the equity in the home.

The partners in the marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

Having considered all of the relevant factors, we find the trial court's property distribution to be fair and equitable.

The costs of this appeal are taxed equally between the parties.

For all the reasons stated, the district court's judgment is affirmed.

AFFIRMED.