

IN THE COURT OF APPEALS OF IOWA

No. 7-312 / 96-1844

000343

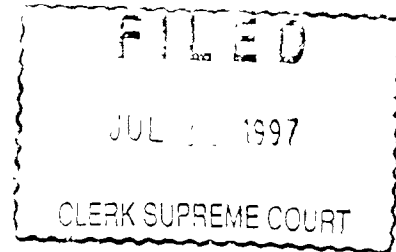
**IN RE THE MARRIAGE OF SCOTT DOUGLAS OETZEL
AND THERESA M. OETZEL**

Upon the Petition of
SCOTT DOUGLAS OETZEL,

Petitioner-Appellee/Cross-Appellant,

And Concerning
THERESA M. OETZEL,

Respondent-Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Scott County, Edward B. de Silva,
Judge.

Theresa appeals and Scott cross-appeals the district court's dissolution decree.

AFFIRMED.

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for
appellant.

Morton A. Teitle and Justin A. Teitle of Teitle Law Offices, Davenport, for
appellee.

Considered by Cady, P.J., Streit, J., and McCartney, S.J.*

* Senior judge from the 2nd Judicial District serving on this court by order of
the Iowa Supreme Court.

McCARTNEY, S.J.

The respondent, Theresa M. Oetzel ("Theresa"), appeals from the district court decree entered in the dissolution of her marriage to Scott Douglas Oetzel ("Scott"). Theresa asserts on appeal that the trial court erred in granting to Scott primary physical care of the parties' minor child, Stephanie. Scott cross-appeals asserting that the trial court erred in distributing certain of the assets and liabilities of the parties.

We affirm the trial court.

The parties were married on August 29, 1992. Their minor child, Stephanie, was born on March 26, 1994.

On August 17, 1995, Scott filed his petition for dissolution of the marriage, and Theresa timely answered such petition.

From the time of the filing of the petition, the parties experienced serious problems in determining who was to provide the primary physical care for Stephanie. Theresa sought an interim order giving her temporary custody. The district court denied this request, but indicated in its ruling that such temporary order did not indicate Scott was to necessarily be considered as the parent who should provide physical care for the little girl upon final trial of the matter. The district court based its interim ruling, in part, upon Theresa's work hours. She is employed in a casino located in Bettendorf, Iowa, and works from Saturday through the following Wednesday. Her work hours are from approximately 2 a.m. until 10 or 11 a.m.

The trial court, in its decree, provided for joint legal custody of Stephanie by both parties. It further provided that Theresa have extended and liberal visitation.

Our review is de novo, but we give deference to the findings of fact made by the district court in view of its opportunity to observe the witnesses firsthand. *In re Marriage of Steele*, 502 N.W.2d 18, 20 (Iowa App. 1993). Both parties have adequate homes and both are interested in Stephanie's well-being and want her best interests served.

Scott has used day care for two days a week and his family has provided some additional care during his flexible daytime working hours. He is employed by his family. Theresa now lives in a home owned by her parents and situated next to their home. She proposes to use her parents, particularly her mother, to provide day care and disapproves of the use of a professional day care as Scott has utilized.

Stephanie has prospered while in day care. Testimony reflects that Scott has been a good and caring father interested in her development, in her day care school, and in her activities at that day care center.

While the testimony is in some dispute as to which parent was the principal care provider when the parties were together, it is evident that both have given Stephanie considerable care. Theresa still has the same hours of employment. She is not only gone from the middle of the night to mid-morning or later four days a week, but it is then necessary for her, during the daylight hours, to obtain necessary

rest for herself. Given Stephanie's continuing development in day care and the support Scott has from his own family in handling problems attendant upon caring for such a little girl, we are not inclined to change the primary care arrangement, particularly in view of the very liberal visitation provisions provided Theresa by the trial court.

The distribution of assets and allocation of debts made by the trial court appear to be fair and equitable. Absolute equality is not required. *In re Marriage of Stewart*, 356 N.W.2d 611, 612 (Iowa App. 1984).

Prior to trial, the parties listed on a joint exhibit the various debts they owed. They agreed upon the amounts of these debts. That exhibit further indicated which party would voluntarily assume which debt. Some eighteen debts are listed, of which thirteen were in dispute as to which party would assume responsibility. The trial court allocated to Theresa approximately \$13,400 of those disputed debts and attributed approximately \$5700 of the disputed debts to be paid by Scott. Of all the debts, it appears as though Theresa is to pay some \$15,900 and Scott will pay approximately \$12,340, and all based upon the listings set forth in their pretrial joint exhibit.

Scott complains about this allocation of debt because included in Theresa's debts is an \$11,000 item representing an unpaid balance due on a car which had been in her possession but which had been taken back by the lender for failure to pay for

the car in accordance with the contract. Presumably, the car when resold will yield some value which will reduce the \$11,000 debt. There does not appear to be any testimony by either party as to what the market value of the car would be, and it was apparent to the trial court that a forced sale of the automobile would yield much less than it would normally be worth. It must further be noted in this regard that Scott agreed to the amount of that debt. The parties were not particularly helpful to the trial court in determining what the net debt would be after the sale of the repossessed automobile. Under the circumstances, we believe the allocation of debt is equitable.

Scott receives the mobile home owned by the parties prior to their dissolution. The court found the value of the mobile home to be \$4000 and Scott appeals the provision whereby he has to pay Theresa \$2000 or one-half of that equity. There was an appraisal submitted into evidence that the home was worth \$2000 which was also the testimony of Scott as to its value. Scott asserts the trial court was obliged to use this appraisal of value, i.e. \$2000, thus presumably reducing his payment to Theresa from \$2000 to \$1000.

The trial court was free to accept or reject this appraisal. *Schantz v. Schantz*, 163 N.W.2d 398, 404 (Iowa 1968). In *In re Marriage of Gaer*, 476 N.W.2d 324 (Iowa 1991), it was held that the trial court properly disregarded a real estate appraisal. *Id.* at 330.

The joint statement of affairs reflected the belief of Theresa that the mobile home was worth \$5000. She was free to assert her belief as to value. *Ruth v. Patrick O'Neill & Capital Implement Co.*, 245 Iowa 1158, 1175-78, 66 N.W.2d 44, 54-55 (1954).

We are not inclined to disturb the findings of the trial court in this regard. The finding was well within a permissible range. *In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973).

Both parties seek appellate attorney fees from the other. Such fees are granted only within the sound discretion of the court. Both parties are gainfully employed and we believe each has adequate funds for such expenses. Therefore, each is required to pay his or her own attorney fees without contribution from the other.

Based upon the foregoing, we affirm the decision of the trial court.

AFFIRMED.