IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF SUSAN C. BRUCE AND TERRY C. BRUCE

Upon the Petition of **SUSAN C. BRUCE,**	)	Filed December 23, 1986
Petitioner-Appellee,	)	6-390 86-17
And Concerning **TERRY C. BRUCE,**	)	43
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Grundy County (No. 2-29) - George L. Stigler, Judge.

Respondent husband appeals from the dissolution decree contending (1) the trial court should have given him physical care of the parties' child, (2) the property division is inequitable, (3) his child support obligation is excessive, and (4) the trial court should not have awarded petitioner rehabilitative alimony. **AFFIRMED.**

Robert W. Thompson, of Rickert, Thompson & Kazragis, Reinbeck, for appellant.

Kirby D. Schmidt, of Kliebenstein, Heronimus & Schmidt, Grundy Center, for appellee.

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

SACKETT, J.

Respondent Terry Bruce appeals from the decree dissolving the parties' marriage. He contends (1) the trial court should have awarded him physical care of the parties' child in the joint custody arrangement, (2) the property division is inequitable, (3) the child support obligation is excessive, and (4) the trial court should not have awarded petitioner rehabilitative alimony. We affirm.

Petitioner Susan Bruce and Respondent Terry Bruce were married in 1973. They have one child, Dennis, born in 1975.

Susan and Terry were both teachers when they were married. After the marriage Terry obtained his master's degree in industrial arts.

Terry is currently employed as an engineer with John Deere. Susan had worked in various jobs throughout the marriage, including part-time and substitute teaching, sales clerk, substitute postal letter carrier and free-lance art sales.

In summer, 1985, the parties separated. Susan is working on a master's degree in counseling and occasionally works as a substitute teacher.

In July, 1985, the present action was filed. The trial court divided property. The trial court set up a joint custody arrangement with Susan having physical care of Dennis. Terry was directed to pay child support of $100 per week and rehabilitative alimony of $200 per month for two years, to be reduced to $100 per month after one year if Susan is employed full-time at 175 percent of minimum wage. Terry appeals from the decree.

I. Scope of Review

On review of a dissolution involving property division, child support and alimony, the entire record is examined and the parties' rights determined anew based on all credible evidence of properly presented and preserved issues. Iowa R. App. P. 4. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984).

We accord weight to the trial court's findings of fact since the trial court has had the unique opportunity to hear and observe the witnesses firsthand; however, we are not bound by them. Iowa R. App. P. 14(f)(7); In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984).

II. Custody

Terry contends that he should have been awarded physical custody of Dennis.

The overriding concern in awarding custody is the best interests of the child. Iowa R. App. P. 14(f)(15); Iowa Code §598.41(1) (1985). Statutory criteria for awarding custody are found in Iowa Code §598.41(3) (1985):

> a. Whether each parent would be a suitable custodian for the child.
> b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.
> c. Whether the parents can communicate with each other regarding the child's needs.
> d. Whether both parents have actively cared for the child before and since the separation.
> e. Whether each parent can support the other parent's relationship with the child.
> f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.
> g. Whether one or both the parents agree or are opposed to joint custody.
> h. The geographic proximity of the parents. (emphasis added).

The ultimate question is which parent can minister more effectively to the long-range best interests of the child. In re Marriage of Ellerbroek, 377 N.W.2d 257, 258 (Iowa App. 1985).

The trial court's decree awarded joint custody of Dennis to both parties. After finding either party would be a dedicated parent, the trial court made

Susan the physical custodian. The trial court determined Susan had been more concerned with Dennis' welfare, especially his educational needs.

The trial court found Susan first discovered Dennis had a learning disability. She persisted in having school authorities perform tests to confirm Dennis' disability. The record shows Susan took the initiative to secure specialized tutoring and other programs to assist Dennis. During the summer of 1985 Susan arranged to have Dennis tested further at a Minneapolis clinic specializing in learning disabled children in order to specifically identify the cause of Dennis' disability. The trial court also determined Susan had been more involved than Terry in meetings and conferences with Dennis' teachers and AEA staff to develop educational plans which meet his needs.

Terry contends he also took an active part in caring for Dennis, ministering to his needs and working with Dennis on his studies and outside interests. Terry asserts he and Susan jointly agreed to have Dennis tested and enrolled in specialized learning disability programs. In addition, Terry asserts he initiated the idea of purchasing a computer to help Dennis develop his language arts skills. Terry argues the reason Susan spent more time with Dennis on school work was because she voluntarily quit her job to remain at home. Terry also argues Dennis is well-adjusted and Susan has exaggerated the severity of Dennis' learning disability.

The custody decision in this case is not easy. We commend both parties for the love and concern they have for Dennis. We determine, as did the trial court, that both Susan and Terry are loving and dedicated parents. However, we consider the factors enumerated in §598.41(1) and we also agree with the trial court that Susan has been the primary caretaker of Dennis throughout

the parties' marriage and it is in Dennis' best interest that physical care be with Susan.

We determine the record shows Susan has educated herself about learning disabilities and has an excellent understanding of Dennis' disability and how specialized programs can help him. The record also shows Susan has been a tireless advocate in ensuring Dennis receives educational programs which meet his needs. In addition, we determine the record shows Susan has spent more time and demonstrated more patience in working with Dennis. Although Terry does show concern about Dennis' learning disability, he testified he helped Dennis with school only occasionally.

We affirm the trial court in awarding physical care to Susan.

III. Rehabilitative Alimony

Terry contends the trial court should not have granted Susan rehabilitative alimony. He contends both parties have substantially equal educational backgrounds and Susan could secure gainful employment at the present time. He also argues Susan is not currently unemployable, but rather she voluntarily chose to the unemployed and continue her education. Terry further argues Susan could get additional education in night school or by correspondence while still working full-time to support herself. Terry points out he obtained his masters degree while working full time.

The trial court awarded Susan rehabilitative alimony of $200 per month for two years and provided payments be reduced to $100 per month after one year if Susan is employed at 175 percent of minimum wage.

Iowa Code §598.21(3)(f) (1985) provides upon every judgment of dissolution the trial court may grant an order requiring support payments for a limited or indefinite length after considering the following:

> (e) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.
>
> (f) The feasibility of the party seeking maintenance becoming self-supporting at a standard comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

The principal purpose of rehabilitative alimony is to establish the capacity for self-support in the receiving spouse by redeveloping previous skills or providing new training to develop potential supportive skills. Pierson v. Rierson, 462 So.2d 613, 614 (Fla. Dist. Ct. App. 1985). Rehabilitative alimony is payable for a short, specific and determinative period of time during which the receiving spouse can seek skills necessary to obtain suitable employment. Turner v. Turner, 158 N.J. Super 313, 385 A.2d 1280, 1280-81 (1978). Rehabilitative alimony is appropriate where a spouse has education but may need further training in order to get back into the marketplace. In re Marriage of Bevers, 326 N.W.2d 896, 900 (Iowa 1982). We also consider alimony and property awards together in determining whether alimony is sufficient and equitable. In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Susan leaves this 12-year marriage at an economic disadvantage. Though there is an equitable property division, we consider the fact Terry's income, at over $38,000 annually, is far in excess of Susan's. In addition, Terry has income

in excess of that necessary for his stated needs. In assessing her need for rehabilitative alimony we also consider Susan's contribution in assuming custodial care of Dennis and the amount of time and energy the responsibility for Dennis takes.

We determine the record clearly shows Susan needs rehabilitation in order to obtain employment which will provide funds sufficient to support herself and Dennis at a level to some degree comparable to that enjoyed during the marriage. We agree with the trial court in its award of rehabilitative alimony. Terry's position with John Deere is secure while Susan's employment record has only been sporadic. The money she now makes from substitute teaching, $1,026 in the past six months, is not sufficient to support Susan and Dennis at this time.

Susan has less than one year to complete her master's degree in counseling. The training she seeks not only will sharpen her prior skills but also provide a profession wherein she is more employable. The education to be undertaken is for a reasonable period and certainly within her capabilities to complete. In addition, the career she seeks will enable Susan to achieve economic independence and allow her to assist with Dennis' future financial and educational needs.

Furthermore, we determine the alimony awarded is short-lived, defined and a reasonable amount. In addition, the alimony award even provides that Terry's responsibility to contribute to Susan's rehabilitation will be lessened sooner if she finds adequate employment by the end of the first year. We therefore affirm the alimony award made by the trial court.

IV. Child Support

Terry next contends the trial court's award of $100 per week for child support is excessive.

Both parents have an obligation to support their children not necessarily equally but proportionately according to their ability and circumstances. In re Marriage of Byall, 353 N.W.2d 103, 108 (Iowa App. 1984). In ordering payments for support of a minor child the court must consider, among other things, the financial resources of the parents and the child's educational needs. Iowa Code §598.21(4)(b) and (g) (1985).

Terry earns in excess of $38,000 at John Deere. We therefore affirm the trial court's award of child support.

V. Property Division

Terry argues the property division, when combined with child support and alimony obligations, is inequitable.

There is no mechanical rule which dictates equal division of marital assets and liabilities. In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984). Rather, the ultimate question is whether distribution is equitable under specified facts of a particular case. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984). All economic aspects of the decree must be viewed as an integrated whole. Id. Iowa Code §598.21(1) sets forth the following criteria for making an equitable property division between the parties:

> a. The length of the marriage.
> b. The property brought to the marriage by each party.
> c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
> d. The age and physical and emotional health of the parties.
> e. The contribution by one party to the education, training or increased earning power of the other.
> f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

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g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.
h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

The trial court ordered the parties' property divided as follows:

Susan		Terry	
Vacant lot	$12,000	Equity in residence	$47,500
1981 Oldsmobile	4,500	Time share condo	9,000
Personal property	16,000	Apartment building ($32,000 Fair Mkt. Value-$45,000 encumbrance)	(13,000)
		Equity in 1985 VW Golf	1,000
		1979 Yamaha motorbike	400
		Personal property	16,000
	$32,500		$60,900
		Court costs	(1,200)
		Susan's atty. fees	(1,000)
			$58,700

To adjust the equities of the property division the trial court ordered Terry to pay Susan $10,000. The trial court provided such payments would constitute a lien on the parties' personal residence awarded to Terry. In addition, the trial court provided payments would not become due until after rehabilitative alimony payments cease and interest would not accrue until December 1, 1987.

The trial court also ordered Terry to assume the parties' debts. According to Terry's statement of affairs those debts include balances due of approximately $9,000.

The trial court's award provided a nearly equal property division which we determine is equitable. The parties were married for 12 years and Terry's alimony obligation to Susan is only for two years. Moreover, the payments on the $10,000 allocated to Susan are deferred until after alimony payments

cease, even though the setoff is presently counted in the value of Susan's property division. Furthermore, Terry received his pension plan in addition to the property division set out above. Susan leaves this long-term marriage without any pension benefits.

We therefore affirm the trial court in all respects.

AFFIRMED.