

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**IN RE MARRIAGE OF ROSE ANN BYRNES AND DENNIS L. BYRNES**

Upon the Petition of)

ROSE ANN BYRNES,)

Petitioner-Appellant,)

Filed April 8, 1983

And Concerning)

DENNIS L. BYRNES,)

Respondent-Appellee.)

3-30
3-69075

Appeal from Johnson District Court - L. Vern Robinson, Judge.

Petitioner-wife appeals from various provisions of the parties' dissolution
decree. **AFFIRMED.**

Kristin L. Hibbs of Stein & Hibbs, Iowa City, Iowa, for petitioner-appellant.

Robert C. Nelson, Cedar Rapids, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., Donielson, Snell and Schlegel, JJ. Johnson, J.,
takes no part.

PER CURIAM

Petitioner-wife appeals from various provisions of the parties' dissolution decree. She claims that she should have been awarded custody of the three children. She also alleges that the trial court: 1) incorrectly valued the marital home; 2) incorrectly characterized certain cash advances from respondent-husband's father as a loan to the husband instead of a gift to both of them; and 3) should have ordered the husband to pay all of her attorney fees. She also requests attorney fees incurred in this appeal. We affirm.

Rose and Dennis Byrnes were married in 1972. They have three children: Carol, born in 1972; Jeffrey, born in 1975; and Robert, born in 1976. Rose was not employed outside the home until 1980, when she started working part-time at a Hy-Vee deli; she earns about \$7,200 per year. Dennis is an industrial arts teacher in Solon; he earns about \$18,700 per year.

The trial court awarded Dennis custody of the parties' children. It ordered the parties' personal property, with some exceptions, sold at public auction and the net proceeds equally divided. The trial court awarded the parties' house, which it valued at \$75,000, to Dennis, subject to a \$6,000 lien in Rose's favor, and it directed Dennis to pay the mortgage on the house. The trial court found that the \$40,000 the parties had received from Dennis's parents was a loan rather than a gift, and it directed Dennis to repay the loan. The trial court also directed Dennis to pay Rose a \$7,500 cash settlement and to contribute \$300 toward Rose's attorney fees. No alimony or child support was awarded. Rose brought this appeal.

I. The main issue in this case is whether custody of the children should have been awarded to Dennis or Rose. Our primary consideration, as always in cases like this, is the best interests of the children. Iowa R. App. P. 14(f)(15).

Upon our careful *de novo* review of the record, we believe that the trial court properly awarded custody to Dennis. The trial court carefully considered the relevant factors for deciding the custody issue found in In re Marriage of

Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and concluded that Dennis is in a better position to minister to the long-range best interests of the children. No useful purpose would be served by reciting the testimony presented in this case. It is enough to say that we agree with the trial court's analysis of the Winter criteria and conclusion that Dennis should be awarded custody subject to Rose's visitation rights.

We are especially reluctant in this case to interfere with the trial court's findings. A significant amount of the testimony presented by one party directly contradicted that presented by the other and vice versa. Therefore, to a large extent, the critical issue was the credibility of the witnesses. The trial court, which was in a much better position to determine witness credibility than are we, determined that Dennis's testimony was more credible than that of Rose. Although we are not bound by them, we give significant weight to the trial court's fact findings, especially concerning the credibility of witnesses. See Iowa R. App. P. 14(f)(7). We see no reason to disturb the trial court's ruling in this regard.

II. Rose's remaining contentions, addressing specific economic provisions of the decree, can be summarily dispensed with.

First, she claims that the trial court erred in valuing the marital home at \$75,000 instead of \$79,000, the value asserted by one of her witnesses. The record, however, contains another opinion that the home was worth \$70,000 to \$72,000. The trial court's valuation is certainly within these figures; we see no reason to reject the \$75,000 figure.

Rose also claims that the court erred in failing to consider \$21,600 given to the parties by Dennis's father as marital property subject to division. We believe, however, that the record sustains the court's conclusion that these and other monetary advances were considered by the father and the parties as a loan to be repaid with no interest. Dennis was ordered to repay his father for this loan and hold Rose harmless therefrom. We find no merit in Rose's claim on this issue.

Finally, Rose contends that Dennis should pay more than the \$300 ordered by the trial court for her attorney fees incurred before and through trial. Given the other provisions of the decree in her favor, we do not believe the court abused its discretion in ordering Dennis to pay only \$300. See In re Marriage of Schissel, 292 N.W.2d 421, 428 (Iowa 1980).

Rose also asks for attorney fees incurred in this appeal. Such an award depends upon the parties' relative financial circumstances. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). Without determining how much Rose's attorney may charge, we order Dennis to pay \$800 toward that obligation.

The trial court's decree is affirmed in all respects.

AFFIRMED.

All judges concur except Oxberger, C.J., who dissents.