FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ELAINE MARGARET WARWICK AND WAYNE HOWARD WARWICK

Upon the Petition of)
ELAINE MARGARET WARWICK,) Filed August 25, 1981
Petitioner-Appellee,)
And Concerning) 1-210 / 3-65737
WAYNE HOWARD WARWICK,)
Respondent-Appellant.)

Appeal from Woodbury District Court - George F. Davis, Judge.

Respondent-husband appeals from the child custody and economic provisions of the decree dissolving his marriage to petitioner-wife, contending 1) that custody of the parties' two minor children should not have been divided and he should have been awarded custody of both, and 2) that trial court erred in its division of property and award of alimony to petitioner. AFFIRMED WITH MODIFICATION.

Timothy W. Shuminsky of Shuminsky, Shuminsky & Molstad, Sioux City, Iowa, for respondent-appellant.

Bradford F. Kollars of McQueen, Dandos & Kollars, Sioux City, Iowa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

JOHNSON, J.

Respondent-husband, Wayne Howard Warwick, appeals from the child custody and economic provisions of the decree dissolving his marriage to petitioner-wife, Elaine Margaret Warwick. He contends 1) that custody of the parties' two minor children should not have been divided and he should have been awarded custody of both, and 2) that trial court erred in its division of property and award of alimony to petitioner. We affirm with modification.

The parties' seventeen year marriage was dissolved by decree filed August 20, 1980. Custody of Julie, born April 12, 1964, was awarded to respondent; custody of Kevin, born April 25, 1968, was awarded to petitioner. While respondent sought custody of both children, petitioner, at trial, agreed that Julie's custody should be with respondent. In addition to the determination of custody and a division of property, trial court ordered respondent to pay $100 per month child support, $200 per month alimony until petitioner's death or remarriage, and approximately $130 per month for payments on a car awarded to petitioner. Trial court awarded the family home to respondent but provided that, if the custody arrangement did not work satisfactorily, petitioner could file an application "seeking a change of the custody provisions and of the title to the home if she should thereby get custody of both children."

I. **Divided Custody.** The general principals governing determination of child custody are well settled. Our review is **de novo.** Iowa R. App. P. 4. Although we give effect to the findings of the trial court, we are not bound by them and we make our own determination of the facts. In re Marriage of Jones, 284 N.W.2d 326, 327 (Iowa 1979). Our first and governing consideration is the best interests of the children. Iowa R. App. P. 14(f)(15). The factors to be considered are set forth in In re Marriage of Winters, 223 N.W.2d 165, 166-67 (Iowa 1974).

Respondent's specific challenge to trial court's custody provisions is that divided custody was improper in this case. We are mindful of "the principal that no court should separate siblings absent good and compelling reasons. [citing cases]" In re Marriage of Burham, 283 N.W.2d 269, 276 (Iowa 1979). Nonetheless, we must also consider the least detrimental custodial arrangement available. In re Marriage of Wahl, 246 N.W.2d 268, 271 (Iowa 1976); In re Marriage of Hagge, 234 N.W.2d 138, 139 (Iowa 1975).

Applying these principles, we conclude trial court's custodial arrangement is proper in this case. While split custody deprives the children of the benefit of the constant associations with each other, this benefit is only one factor which must be

considered. Wahl, 246 N.W.2d at 270. Given respondent's working schedule, Kevin's age, the stronger relationship between Kevin and petitioner, the dependency Kevin appears to have upon Julie, and Julie's current struggles for independence, we conclude trial court's custodial arrangement would promote a more harmonious relationship between the children and the parents than would respondent's alternative.

II. Property Division. Respondent alleges, and petitioner concurs, that paragraph eighteen of trial court's decree creates a contingency which places a cloud on the title to the family home awarded to respondent and should be removed. We agree. Thus, the trial court's decree is modified by deleting paragraph eighteen therefrom.

III. Alimony. Respondent also contends that the evidence does not establish petitioner's right to permanent alimony of $200 per month until her death or remarriage. After applying the criteria set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), excluding fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), we disagree. Although allocations for alimony, support, and property have different purposes, the court can properly consider how the property has been divided in assessing the needs and resources of the parties in fixing alimony. In re Marriage of Peterson, 227 N.W.2d 139, 142 (Iowa 1975); In re Marriage of Campbell, 204 N.W.2d 638, 639 (Iowa 1973).

The record reflects that respondent's salary for the fiscal year commencing July 1, 1980, was $19,292. Petitioner's employment skills are limited and she was attending college at the time of the hearing in order to obtain a degree enabling her to become self-supporting. Further, trial court awarded only approximately $5,000 of the parties' total assets, nearly $30,000, to respondent.

We, however, do believe that trial court's provisions for alimony should be modified in one respect. In light of all the circumstances, we conclude respondent's alimony obligations should cease upon the death of either party. See In re Marriage of Rose, 228 N.W.2d 89, 90 (Iowa 1975).

IV. Attorney Fees on Appeal. Petitioner seeks reimbursement for her attorney fees incurred as a result of this appeal. Our primary consideration in making that determination is the parties' resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Assessing the parties' resources in this case, we conclude respondent should pay $750 towards petitioner's attorney fees.

In conclusion, we modify the trial court's decree by deleting paragraph eighteen and by terminating respondent's alimony obligation upon the death of either party. All other provisions of trial court's decree are affirmed.

AFFIRMED WITH MODIFICATION.

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