FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DEBRA K. VAN WYK AND GARY VAN WYK

Upon the Petition of)

DEBRA K. VAN WYK,)

Petitioner-Appellant,)

And Concerning)

GARY VAN WYK,)

Respondent-Appellee.)

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Filed August 26, 1987

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86-889

Appeal from the Iowa District Court for Polk County (No. CD 44-26073), Ray A. Fenton, Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

Melodee Hanes of Scalise, Scism, Sandre & Uhl, Des Moines, for appellant.

Thomas P. Hyland and Timothy G. Pearson of the Hyland, Laden & Pearson, Des Moines, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

In this appeal, petitioner Debra Van Wyk challenges several provisions of the trial court's decree in the underlying dissolution proceeding. Specifically, Debra argues that the trial court erred: (1) in failing to award her sole custody of the parties' minor child, Lee; (2) in granting respondent Gary Van Wyk joint custody and liberal visitation rights; (3) in failing to award her alimony; (4) in ordering Gary to pay an inadequate amount of child support; and (5) in dividing the parties' marital assets in an inequitable manner. For the reasons that follow, we conclude that the child custody and visitation aspects of the decree should be affirmed, but modify the economic provisions.

We first address Debra's contention that the trial court erred in providing for the joint custody of Lee and in failing to award her sole custody. In any case where a question concerning child custody is involved, our first and foremost consideration is the best interest of the child. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983); Iowa R. App. P. 14(f)(15). In ascertaining how the child's best interests will be served, we review the record de novo. Iowa R. App. P. 4. Accordingly, we are not bound by the findings of fact made by the trial court, but we do give them weight, particularly where the credibility of witnesses is implicated. Iowa R. App. P. 14(f)(7).

The factors to be considered in determining what custodial arrangement will best suit the needs of a particular child are delineated in section 598.41(3) of the Iowa Code. Because we endeavor to make a custody award "which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents," Iowa Code § 598.41(1)(1985), we favor granting joint custody whenever reasonable and in the child's best interest. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985). Consequently, if it is determined that joint custody should not be granted in a particular case, it is incumbent

upon the court so deciding to cite "clear and convincing evidence . . . [indicating] that joint custody is unreasonable and not in the best interest of the child." Iowa Code § 598.41(2)(1985).

We have reviewed the record in the present case and conclude that it does not contain clear and convincing evidence indicating that a joint custodial arrangement was contrary to Lee's best interests. Hence, we hold that the trial court committed no error in refusing to grant Debra sole custody. The record reflects that although Lee was only two months old at the time of Debra and Gary's separation, both parents enjoy a close and successful relationship with him. Although Debra argues that Gary is emotionally immature and incapable of caring for Lee, this allegation is simply not borne out by the record. Although the record reflects that Gary has a learning disability, there is no evidence indicating that his parental attributes have been substantially impaired. Moreover, we think that the report prepared by the child custody investigator who assisted with the case, Ann Mindelle Levine, lends support to the establishment of a joint custodial arrangement. Although Ms. Levine expressed her concern that Gary may face certain emotional difficulties as the demands of parenthood increase, she nevertheless recommended that Lee be placed in the "care custody and control of his mother . . . with frequent visitation rights . . granted to [Gary]." Contrary to Debra's assertions, we do not think that this recommendation reflects a hesitance to grant joint custody; rather, the tenor of the report indicates Ms. Levine's recognition of the fact that the number of hours Gary worked as a farmer made it extremely difficult for him to serve as physical custodian of Lee. Similarly, it is apparent that Ms. Levine recognized that Gary was given only restricted opportunities to visit with Lee during the parties' separation. Finally, we think that two additional items bear mentioning in this connection. Initially, we note our concern with Debra's allegation that Gary is prone to violence. We have

carefully reviewed the record in light of this allegation. Certainly, we are disturbed by Gary's substantiated outburst of violence on the night of the parties' separation, and we have weighed this evidence against him; nevertheless, we do not feel that an isolated outburst in circumstances of extreme pressure requires a denial of joint custody. See In re Marriage of Bolin, 336 N.W.2d 441, 446 (Iowa 1983) ("Tension between the parents is not alone sufficient to demonstrate [joint custody] will not work."). Similarly, although Debra asserts that Gary may have sexually abused Lee, we have found this allegation wholly unsupported by the evidence in the record. In addition, we note that after careful investigation, Ms. Levine explicitly concluded that "these accusations [were] untrue." Moreover, the record contains no additional evidence supporting Debra's accusations. In these circumstances, we are particularly disinclined from disturbing the credibility assessments made by the trial court. See In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). All of the parties were before the trial court and from observation, consultation, and testimony, it occupied a superior position in considering the evidence and examining the credibility of the witnesses. See Lamansky v. Lamansky, 207 N.W.2d 768, 771 (Iowa 1981). In summary, we have found no evidence indicating that a joint custodial arrangement is inappropriate in this case; accordingly, we affirm this aspect of the trial court's decree.

We similarly dispose of Debra's contention that the trial court erroneously granted Gary excessive visitation rights. It is well recognized that the courts of this State are encouraged to grant liberal visitation rights when permitted in the circumstances. See In re Marriage of Weidner, 338 N.W.2d 351, 356-59 (Iowa 1983); see also Iowa Code § 598.41(1)(1985). Furthermore, the supreme court has stated that when the parties appear capable of cooperating and honoring their mutual responsibilities, appellate court's should be reluctant to alter the visitation terms formulated by the trial court. See Tschappat v. Kluver, 193

N.W.2d 79, 82 (Iowa 1971). We think that this is such a case.

The trial court granted Gary visitation on alternate weekends from 5:00 p.m. on Friday evening until 7:00 p.m. on Sunday evening. In addition, the court awarded Gary visitation for three weeks during the summer until Lee attains age six, at which time Gary's summer visitation increases to four weeks. The court further granted Gary visitation on certain holidays. We think that this arrangement is fully suitable; it allows Lee to spend a sufficient amount of time with Gary, thus enabling them to formulate a strong relationship, without unduly disrupting Lee's environment. Moreover, although Debra again asserts that Gary lacks the necessary potential capabilities to allow him to properly care for Lee, we reassert our prior conclusion that the record contains ample evidence to the contrary. Consequently, we conclude that the visitation schedule formulated by the trial court should be affirmed.

This brings us to the challenges which Debra has levied against the economic aspects of the dissolution decree. Initially, Debra argues that the trial court ordered Gary to pay an insufficient amount of child support. The principles controlling our review of this contention are well settled. In determining a parent's child support obligation, it is incumbent upon a trial court to consider both the needs of the child or children in question and the financial resources of each parent. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). A number of factors relevant to this inquiry are set forth in Iowa Code section 598.21(4)(1985).

After examining the record in light of the considerations enumerated in section 598.21(4), we find the trial court's decision on child support is reasonable under the current circumstances. Gary also pays $200.00 per month for medical insurance.

At this juncture, we also address Debra's contention that the trial court erred in allowing Gary to claim the income tax exemption for Lee. Section 152(e)(1986) of the Internal Revenue Code provides that, absent certain exceptions, the custodial parent receives entitlement to the exemption for dependent children. Finding none of the exceptions applicable in the case at bar, we must agree with Debra's assertion. See I.R.C. § 152(e)(2)-(5)(1986). Hence, we modify this portion of the trial court's decree.

Debra additionally maintains that the trial court erred in failing to award her alimony and in dividing the parties' marital property in an allegedly inequitable manner. The criteria governing the granting of alimony are set forth in section 598.21(3) of the Iowa Code. When determining the appropriateness of alimony, we must consider (1) the earning capacity of each party, and (2) their present standards of living and ability to pay balanced against their relative needs. In re Marriage of Estlund, 344 N.W.2d 276, 281 (Iowa App. 1983). Our examination of the record in light of these principles persuades us that Debra is entitled to a temporary award of rehabilitative alimony to compensate her for the time that she devoted to the marriage rather than to pursuing her career, see In re Marriage of Sanders, 255 N.W.2d 109, 111 (Iowa 1977), and to allow her to attain an earning capacity enabling a standard of living comparable to that enjoyed during the parties' marriage. The record discloses that although Debra is a licensed cosmetologist and beautician, she was out of the job market during the five years that she and Gary were married. Debra testified that as a result of her absence from the job market, she may need additional training in order to secure employment in this field; at the time of the trial, she was working in a school cafeteria earning just over $500 per month. Given the fact that Debra is only thirty years of age and her extant skills, it is apparent that she is capable of obtaining secure employment in the future. In these circumstances, we think that a temporary

alimony award of $200 per month for a period of two years is appropriate. This amount adequately addresses Debra's needs without unduly burdening Gary.

Finally, Debra argues that the trial court divided the parties' marital property in an inequitable manner. Our review of this contention is governed by familiar principles. The factors to be considered in ascertaining whether a trial court's division of a marital couple's assets was appropriate are set forth in Iowa Code section 598.21(1)(1985). Our crucial inquiry in this connection is whether the distribution formulated by the trial court is equitable in the particular circumstance of the case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa App. 1980). We reject any rule based strictly upon a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa App. 1982). Moreover, we are not required to attain a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976). Rather, the "division of property is based on each marital partner's right to a just and equitable share of the property accumulated as the result of their joint efforts." In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). In addition, we note that the economic provisions of the decree must be viewed together as an "integrated whole" rather than in isolation. In re Marriage of Behn, 385 N.W.2d 540, 543 (Iowa 1986).

Turning to the record, we note that the trial court properly segregated the assets owned by each party prior to the marriage before determining the value of their marital property. See In re Marriage of Wallace, 315 N.W.2d at 831. In doing so, the court found that Gary owned the following premarital assets with a total value of $214,090.67:

$144,381.64	In various bank accounts
22,000.00	Mobile home (retail value new)
1,507.88	Hogs
3,000.00	Farm equipment
13,395.00	1978 crops
29,805.82	1979 crops
$214,090.67	TOTAL

The court similarly concluded that Debra owned $1,000 in savings prior to the marriage, and set this amount aside to her. The court then calculated the parties' assets at the time of trial as follows:

$237,559.28	In various bank accounts
8,500.00	Depreciated value mobile home
1,791.66	Depreciated value of farm equipment brought into the marriage
26,381.66	Crops on hand, equipment purchased during marriage and liquidated assets since separation
$274,232.60	

The court then subtracted the value of the parties' premarital assets in determining that their marital property should be valued at $50,642.000. The court divided these assets by ordering Gary to pay Debra as property settlement of $23,788.90.

In challenging this distribution, Debra first argues that the trial court incorrectly valued both the farm equipment owned by Gary prior to and after the marriage, and the mobile home. We have reviewed each of these allegations and conclude that the values determined by the trial court were well within the permissible range of the evidence. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). Moreover, Debra's challenges in this regard are not supported by the record. For example, Debra argues that the trial court erred in valuing Gary's premarital farm equipment at $3,900. In support of this assertion, Debra argues that the $3,900 value listed by Gary on his financial affidavit represents the total value of farm equipment in which Gary owned only a one-third interest. The record however, does not support this assertion. In such circumstances, we are particularly disinclined from disturbing the value determined by the trial

court. Similarly, the record contains no evidence supporting Debra's contention that the value of the mobile home set by the trial court is erroneous. As such, we are similarly disinclined from disturbing the value assigned by the trial court.

Both parties also request the recovery of attorney's fees and costs incurred in connection with this appeal. In evaluating such requests, we consider both the needs of the parties and their respective financial circumstances. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Having done so, we conclude that Gary should pay $1,000.00 toward the attorney fee expense incurred by Debra. Court costs are taxed to Gary.

AFFIRMED AS MODIFIED.