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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF LYNN MARIE OLLINGER AND GREGORY EVERTTE OLLINGER

Upon the Petition of)
LYNN MARIE OLLINGER,)
Petitioner-Appellee)
And Concerning)
GREGORY EVERTTE OLLINGER,)
Respondent-Appellant.)

Filed March 24, 1981

0-422
3-65137

Appeal from Pocahontas District Court - Albert L. Habhab, Judge.

Husband appeals from dissolution of marriage decree contending that he should have been awarded custody of the parties' two children and that the property division was not fair and equitable. MODIFIED AND AFFIRMED.

Steve Hamilton, of Hamilton Law Firm, Storm Lake, for respondent-appellant.

James C. Hudson, Pocahontas, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

OXBERGER, C.J.

Gregory Ollinger appeals from custody award and property division provisions of parties' dissolution of marriage decree. We modify and affirm.

The decree was filed on April 30, 1980, dissolving the seven year old marriage. Custody of the two daughters, ages six and two, was awarded to Lynn Ollinger. Most of the property was divided equally prior to the proceedings or pursuant to a stipulation between the parties with one exception, a mobile home. The parties were contract purchasers of this property valued at $14,000 with an outstanding balance due on the contract of $5,700. The court provided that when it was sold Gregory was to receive $2,000 if the sale price exceeded $16,000; $1,500 if the price exceeded $13,000; $1,000 if the price exceeded $10,000; and nothing if the price were under $10,000. Gregory appeals the custody award and division of the property in regards to the mobile home. Our review is de novo. Iowa R. App. P. 4.

I. Child Custody

The trial court considered the criteria set forth in In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974) to make its custody determination. The court also recognized the abandonment of the inference that the best interest of young children is served by placement in the mother's custody as stated in In re Marriage of Bowen, 219 N.W.2d 683 (Iowa 1974). We also consider those guidelines. Gregory places great emphasis on the evidence provided by the attorney for the minor children. Based on his investigation prior to hearing the attorney concluded that Gregory should be awarded custody. His investigation consisted of visits with "a number of people who were close to [the parties]" and limited visits with the parties and the children. He never saw the children in Gregory's care. The main reason for the attorney's conclusion was the fact that Lynn spends more time pursuing her own interests than does Gregory. He did not, however, present witness at the hearing to support his conclusion. In our de novo review, we have not considered the recommendations of the children's attorney. See In re Marriage of Gaumer, No. 63541, slip. op. at 5 (Iowa March 18, 1981).

We find the evidence concerning custody reveals that either parent could provide adequate care and affection for the children. We find neither parent possesses parenting abilities superior to the other, nor do we find a detrimental quality of any one party to justify an award of custody to the other. In such a case of equipoise, it is

incumbent upon us to affirm the trial court, it being in a better position to view and assess the parties involved. In re Marriage of McDowell, 244 N.W.2d 238 (Iowa 1976). See also In re Marriage of Sherwood, 240 N.W.2d 699 (Iowa 1976).

II. Property Settlement.

The trial court was empowered to equitably divide the marital property pursuant to § 598.21, The Code 1979. The record reveals the court's attempt to make this division as equal as possible. Based on the criteria in Schantz v. Schantz, 163 N.W.2d 398 (Iowa 1968), this attempt is warranted. We find, however, the result does not reflect this goal. Although the trial court contemplated the depreciable nature of the mobile home in its declining payment arrangement, Lynn will receive substantially more than half the equity in the property. Furthermore, she need never sell the mobile home under the decree, thereby foreclosing Gregory's receipt of any share of this property. Property divisions should reflect and settle the rights of the parties at time of dissolution. Walker v. Walker, 203 N.W.2d 320, 322 (Iowa 1972); Knipfer v. Knipfer, 259 Iowa 347, 144 N.W.2d 140 (1966). Under the circumstances, we find Lynn should be awarded the parties' interest in the mobile home with assumption of obligations as decreed. In this case, Lynn is free to choose between the benefits of remaining in the familiar home or making a greater profit by immediate sale. Therefore, we modify the decree to provide that Gregory's share of this marital asset shall be fixed at $4,000, representing one-half of the equity at the time of dissolution. This award shall constitute a lien upon the property and shall be due upon sale of the mobile home or on or before April 30, 1990, whichever occurs first. Interest at the rate of nine per cent per annum shall be assessed against the unpaid balance and shall be payable to Gregory on or before April 30th of each year.

We modify as herein stated and affirm the trial court's decision.

MODIFIED AND AFFIRMED.