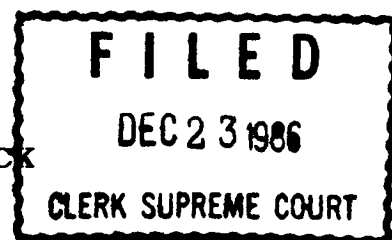


IN THE COURT OF APPEALS OF IOWA
IN THE MARRIAGE OF DANIEL MARTIN SCHOLBROCK
AND PATRICIA J. SCHOLBROCK



Upon the Petition of)

DANIEL MARTIN SCHOLBROCK,)

Petitioner-Appellant,)

Filed December 23, 1986

And Concerning)

6-293
85-1533

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PATRICIA J. SCHOLBROCK,)

Respondent-Appellee.)

Appeal from the Iowa District Court for Linn County (Eq. No. 12044)

- Ansel J. Chapman, Judge.

Petitioner husband appeals from the decree dissolving the parties' marriage, asserting that the trial court failed to consider respondent wife's work schedule when it fixed her visitation with the parties' child, and that the trial court's property division is inequitable. **AFFIRMED.**

Stephen B. Jackson of Hines, Pence, Jackson, Day & Powers of Cedar Rapids for appellant.

Darrell M. Walters, Jr., of Cedar Rapids for appellee.

Heard by Oxberger, C.J., Donielson, and Sackett, JJ.

OXBERGER, C.J.

The petitioner in this appeal challenges the trial court's decree dissolving the parties' marriage. He first asserts that the court failed to consider the respondent's work schedule when it fixed her visitation rights in the joint custody arrangement concerning the parties' minor child. In addition, he maintains that the division of property formulated by the court is inequitable. We affirm.

Initially, we note that our standard of review is de novo. Iowa R. App. P. 4. Thus, it is our responsibility to review the facts and the law, and to determine anew the rights of the parties where the issues have been properly presented and preserved. In re Marriage of Phipps, 379 N.W.2d 26, 27 (Iowa Ct. App. 1985).

In its decree, the trial court awarded the respondent, Patricia Scholbrock, visitation rights every other weekend. In addition, Patricia was granted visitation for eight weeks during the summer, and one full week during Christmas. Furthermore, the court alternated the remaining holidays between the parties in odd and even numbered years.

The record discloses that Patricia is employed on a rotating schedule, pursuant to which she is required to work any of three shifts, and works weekends and holidays on a rotating basis. In addition, she is given two weekends off every five weeks. The petitioner, Daniel Scholbrock, argues that as a result of the trial court's decree, Patricia will have visitation rights when she is required to work, thus causing the parties' daughter to spend excessive amounts of time with a babysitter. As a result, he has requested that the parties alter visitation on the major holidays; that Patricia have visitation two weekends out of five, when she has the weekends off; and that she have four weeks of visitation in the summer.

We have repeatedly recognized that in deciding issues concerning child custody, the controlling consideration is the best interest of the child. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa Ct. App. 1985). Iowa Code section 598.41 (1985) provides in pertinent part as follows:

Custody of children.

1. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure a minor child frequent and continuing contact with both parents....

This statutory language encourages courts to consider and grant liberal visitation rights when permitted in the circumstances. See In re Marriage of Weidner, 338 N.W.2d 351, 356-59 (Iowa 1983); Daniel's requested alteration would have the effect of significantly reducing Patricia's visitation opportunities. Furthermore, we think that the trial court recognized the concerns adhering in Patricia's work schedule, but left it to the parties to arrange weekend visitation appropriately. In its decree, the court stated:

Because of her job requirements, Patricia may have to work certain weekends and may not be able to exercise visitation on a regular alternate weekend basis. If this occurs the parties shall cooperate in seeing that Patricia does have weekend visitation in accordance with the intention of this decree.

This provision addresses Daniel's concern while at the same time allowing Patricia liberal visitation. We have previously acknowledged the trial court's superior position in determining when, and the conditions under which, visitation is proper. Lamansky v. Lamansky, 207 N.W.2d 768, 771 (Iowa 1973). When, as in the instant case, the parties appear capable of cooperating and honoring their mutual responsibilities, we are reluctant to alter the trial court's decree. See Tschappat v. Kluver, 193 N.W.2d 79, 82 (Iowa 1971). Accordingly, we conclude that the visitation provisions specified by the trial court are affirmed.

We next address Daniel's contention that the property division made by the trial court was inequitable. The principles governing the division of property in a dissolution proceeding are familiar and well established. The factors we consider in determining whether the district court's division was equitable are set forth in Iowa Code section 598.21(1). The critical inquiry is whether the division was equitable in the particular circumstances of the case. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980).

First, Daniel argues that because he owned real estate which constituted seventy-one percent of the parties' net equity at the time of the marriage, he is entitled to receive seventy-one percent of the value of the real estate at the time of the trial. We disagree. The record reflects that after the marriage, the real estate was placed in joint tenancy between the parties. In In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa Ct. App. 1984), we explicitly noted that, "A transfer of property into joint tenancy where one party furnishes all of the consideration is presumed to be a gift to the other party of one-half interest in the property." We further recognized that:

Other jurisdictions which have considered similar situations have recognized that the separate property of one spouse is transformed into marital property when it is placed in some form of joint ownership.

Id. As such, we find no error in the trial court's decree which ordered an equal division of the value of the real estate held in joint tenancy between the parties.

We agree with Daniel's contention, however, that the personal property which he owned prior to the marriage should be set aside from the calculation of the marital assets. See Iowa Code § 598.21(1)(b); In re Marriage of Sparks, 323 N.W.2d 264, 266-267 (Iowa Ct. App. 1982). Accordingly, the \$748 in Adventureland stock which Daniel owned prior to the marriage, Daniel's motorcycle which is valued at \$500, and the \$5,000 in savings which Daniel held prior to the

marriage are offset to him. In addition, we do not think that the \$1,950 which Daniel expended for Angela's care during the separation should be credited to Patricia. Moreover, in In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa Ct. App. 1984), we specifically refrained from adjusting the parties' assets by any expenditures made during the separation, noting that the crucial time of determining the assets is at the time of trial.

Assessing the trial court's division in conjunction with the principles set forth above, the personal property awarded to each party is as follows:¹

Daniel		Patricia	
Chev. Truck	\$ 2,400	Plymouth Duster	\$ 100
Nova Automobile	100	Savings Bonds	13,000
Sears Insurance	1,407	Joint Stock	187
Savings Bonds	13,000	<u>Furniture/Appliances</u>	<u>1,587</u>
Jointly Held Stock	187	TOTAL	\$14,874
Furniture/Appliances	1,634		
IRA/Pension Plan	2,000		
<u>Tractor/Tools</u>	<u>1,500</u>		
TOTAL	\$22,228		
savings at time of marriage	<u>- 5,000</u>		
	\$17,228		

The trial court additionally awarded Patricia a \$3,275.00 judgment against Daniel. We have carefully considered the factors enumerated in Iowa Code Section 598.21, and conclude that the parties are entitled to a nearly equal division of the marital assets. See In re Marriage of Byall, 353 N.W.2d at 106.

¹These figures exclude the value of the real estate, which was divided equally between the parties.

Cognizant of the deference which we give to the trial court, we conclude that its division of property is equitable, and should be affirmed.

Finally, both parties have requested the recovery of attorney's fees and costs incurred in connection with this appeal. Such an award depends upon the relative financial circumstances of the parties. In re Marriage of Burham, 283 N.W.2d 269, 278 (Iowa 1979). We have examined the parties' relative finances and their respective costs, and conclude that each should pay his or her individual obligations.

AFFIRMED.