



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF LAURA L. BEAUCHAMP AND JEFFREY L. BEAUCHAMP

UPON THE PETITION OF
LAURA L. BEAUCHAMP,

)

Filed January 26, 1982

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Petitioner-Appellant,

AND CONCERNING

)

1-424
3-66813

JEFFREY L. BEAUCHAMP,

)

Respondent-Appellee.

)

Appeal from Cass District Court, Leo Connolly, Judge.

Petitioner-wife appeals from the parties' decree of dissolution contending: (a) the trial court should have awarded custody of the parties' two children to her; (b) the visitation rights awarded petitioner were inadequate; (c) the property division was inequitable; and (d) petitioner should be awarded attorney fees on appeal. AFFIRMED.

Victoria L. Meade of Marks, Marks & Marks, for petitioner-appellant.

Ronald D. Bonnett, Lenox, for respondent-appellee.

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

Petitioner-wife appeals from the parties' decree of dissolution contending: (a) the trial court should have awarded custody of the parties' two children to her; (b) the visitation rights awarded petitioner were inadequate; (c) the property division was inequitable; and (d) petitioner should be awarded attorney fees on appeal. We affirm the trial court on all issues and deny petitioner's request for attorney fees she incurred on appeal.

Petitioner, Laura L. Beauchamp, and respondent, Jeffrey L. Beauchamp, were married on October 5, 1975. Two children were born of the parties' marriage, Justin, born on March 19, 1976, and Jason, born on April 2, 1978. At the time of marriage, Laura was sixteen or seventeen years old and Jeffrey was eighteen or nineteen years old. At the time of their divorce, Laura was twenty-two and Jeffrey was twenty-four years of age.

The trial court awarded Jeffrey custody of the two minor children. Laura was granted "reasonable rights of visitation" in addition to minimum visitation of one weekend per month, two weeks during the summer vacation period and alternate Independence Days, Thanksgiving, Christmas, New Years and Easter holidays, unless the parties agreed otherwise. Laura is to pay Jeffrey twenty-five dollars per month towards the support of each child. No alimony to either party was awarded.

The trial court awarded each party his or her respective personal property. All of the household goods and furniture was awarded to Jeffrey. Jeffrey was also awarded the family residence free of any interest of Laura. Laura was awarded a 1975 Nova automobile, and Jeffrey was to complete all payments on the car loan. Jeffrey was also required to satisfy all the liabilities listed on the parties'

financial statements. Obligations of either party not listed on the statements were to be satisfied by the party who incurred the obligation. Costs were taxed to Jeffrey.

Laura appeals the trial court's order, contending she should be awarded custody of the children, the visitation rights are inadequate, the property settlement is inequitable and argues she should be awarded attorney fees incurred on the appeal.

Our review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing a child custody determination, we apply the criteria set out in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). Our primary concern is the best interest of the children. Iowa R. App. P. 14(f)(15). In reviewing the property provisions of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and section 598.21, The Code 1981.

L. Custody

We agree with the trial court's conclusion Jeffrey, under the record presented, will "minister more effectively to the long-range best interests of the children." In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). Accordingly, we affirm the trial court's award of custody of the parties' minor children to Jeffrey.

The record indicates Laura had significant experience with drugs. There was also evidence of Laura's often indiscreet sexual behavior in front of the children. Jeffrey, on the other hand, offers significantly more maturity and stability than does Laura. The record establishes Jeffrey has more of an inclination to remain

at home with the children than does Laura. Jeffrey has reliably provided for his family's needs throughout the parties' marriage. Jeffrey offers firm and reasonable discipline in appropriate situations. While we think Laura could minister to the children's needs, we feel Jeffrey will more effectively execute the obligation and responsibility of providing a calm, stable and wholesome environment to raise the children. We affirm the trial court's decision placing custody of Justin and Jason with Jeffrey.

II. Visitation

The trial court granted Laura minimum visitation rights of alternate Independence Days, Thanksgiving, Christmas, New Years, and Easter holidays and two weeks of visitation during the summer vacation period. In addition, Laura was granted other "reasonable rights of visitation." Laura claims the visitation provisions are inadequate, relying upon In re Marriage of McBee, 244 N.W.2d 327 (Iowa 1976), and In re Marriage of Roff, 228 N.W.2d 98 (Iowa 1975). As we have stated, precedent is generally of little value in these types of cases. In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa 1981), and this case is no different. After reviewing the facts presented, we conclude the trial court's visitation provisions were adequate and affirm its order.

Our decision is made without consideration of the petition for modification of the decree of dissolution and the application for citation of contempt. Any further action thereon as may be appropriate shall be determined by the district court.

P III. Property Settlement

Laura contends the trial court unfairly divided the parties' assets. We disagree. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976);

Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); § 598.21, The Code 1981. The trial court awarded the family residence to Jeffrey, subject to his assumption of the outstanding balance due on the mortgage. Each party received his or her personal property. Laura received the family car, and Jeffrey is to make all of the payments. We think the trial court made an equitable and just award under the circumstances. The property division is, therefore, affirmed.

IV. Attorney Fees

Laura 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, we conclude no provision for awarding Laura attorney fees should be made in this case.

AFFIRMED.