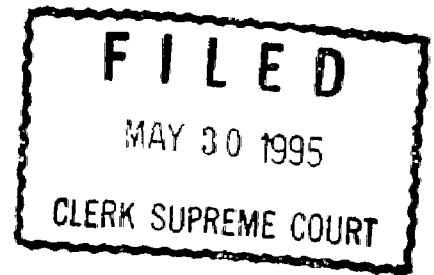


IN THE COURT OF APPEALS OF IOWA

No. 5-158 / 94-0831



IN RE THE MARRIAGE OF SANDRA LYNN LANE AND
STEVEN K. LANE

Upon the Petition of
SANDRA LYNN LANE,

Petitioner-Appellee/Cross-Appellant,

And Concerning
STEVEN K. LANE,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Jefferson County, James D. Jenkins,
Judge.

Steven Lane appeals and Sandra Lane cross-appeals from the various
provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Michael C. Vinyard of Vinyard & Curran, Ottumwa, until his withdrawal, and
then Steven Gardner of Kiple, Kiple, Denefe, Beaver & Gardner, Ottumwa, for
appellant.

Thomas M. Walter and R. E. Breckenridge of Johnson, Hester & Walter,
Ottumwa, for appellee.

Heard by Habhab, P.J., and Cady and Huitink, JJ.

HABHAB, P.J.

Sandra and Steven Lane were married in September 1982. It was Sandra's second marriage. She had a daughter, Kristin, by her first marriage who resided with her and Steven. In 1984, Sandra and Steven had a son, Parker.

Sandra is a high school graduate with some secretarial skills. She has worked as a receptionist, secretary, sales clerk, and administrative assistant. She did not work outside the home for several years during the marriage in accordance with Steven's wishes. She did provide child care in the home for part of that time. She is currently unemployed.

Steven has a BA degree in business administration. He has worked in the banking industry and farmed. He is currently employed by the State Central Bank in Keokuk and has farming income. His net monthly income is about \$2800. Steven insisted that the parties' finances remain separate and Sandra was not informed about his farming operations.

Sandra filed a petition for dissolution of marriage in 1992. The matter was not tried until 1994. During that two year period Steven incurred credit card and other debts. He also disposed of property in violation of an injunction.

At the beginning of the trial, the parties stipulated they had agreed to joint legal custody with physical care of Parker being awarded to Sandra. The matter then proceeded concerning property distribution, visitation, and child and spousal support. After several days, the parties again stipulated Sandra was to be awarded physical care of Parker. Sandra and Steven each testified about their wishes concerning visitation.

The district court entered a decree awarding joint custody with Parker being placed in Sandra's physical care. Sandra was awarded a car, household goods, and a cash settlement of \$69,642. She was to assume the responsibility of about \$10,000

in debt. The court found the parties had not been married long enough to warrant an award of alimony.

The district court set aside to Steven the homestead and forty acres of farm land he received as a gift from his mother. Steven was awarded vehicles, property, and farm machinery, which the court valued at \$224,472. He was held responsible for \$85,326 of debt. Steven was ordered to pay \$706 per month in child support, \$10,000 toward Sandra's attorney fees, and the costs of the action.

The district court noted that Sandra might move to Florida. It, therefore, made alternative visitation awards: one if Sandra resided within 150 miles of Fairfield and another if she resided outside that area. Two days after the decree was filed, Sandra moved to Florida with Parker and her live-in boyfriend. Steven sought a new trial alleging the parties' custody agreement was based on Sandra's assertions she had no present intent to move. The motion was overruled. The district court found the allegations were contrary to Sandra's testimony.

Steven appeals and Sandra cross-appeals. Steven contends Sandra's misrepresentation regarding her intent to remain in the state voids the parties' agreement with respect to child custody. He also contends the district court erred in failing to adopt all the parties' agreements with respect to visitation and in awarding Sandra \$10,000 in attorney fees.

On cross-appeal, Sandra contends the attorney fee award was insufficient. She also contends the district court erred in failing to award her rehabilitative alimony. She asserts the district court erred in valuing the marital property and, consequently, inequitably divided the property.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give

weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Primary physical care. Steven contends the parties' stipulation regarding joint custody and primary physical care, and the trial court's subsequent adoption of the stipulation, should be set aside and the issue should be remanded to the district court for a hearing. Steven claims Sandra did not deal in an open manner during negotiations. Steven contends Sandra intended to move to Florida all along, and if she had been completely honest about this during negotiations, then Steven would never have agreed to the stipulation.

A stipulation between parties is a contract between the parties. *In re Marriage of Lawson*, 409 N.W.2d 181, 183 (Iowa 1987). The contract becomes final when it is accepted and approved by the court. *Id.* The stipulation, when incorporated into the decree, becomes the court's language. *In re Marriage of Sylvester*, 412 N.W.2d 624 (Iowa 1987). Once the stipulation is merged in the dissolution decree, "it is interpreted and enforced as a final judgment of the court, not as a separate contract between the parties." *Prochelo v. Prochelo*, 346 N.W.2d 527, 530 (Iowa 1984).

The district court may only render judgment by consent if there is consent by the parties at the time the agreement receives the sanction of the court. *Van Donselaar v. Van Donselaar*, 249 Iowa 504, 508, 87 N.W.2d 311, 313-14 (Iowa 1958); *In re Marriage of Hansen*, 465 N.W.2d 906, 908 (Iowa App. 1990). The consent must exist at the very time the court undertakes to merge the agreement into the judgment of the court, and the parties must have manifested mutual assent to the terms of the agreement. *In re Marriage of Bries*, 499 N.W.2d 319, 321 (Iowa App. 1993). Whether such assent has been given must be determined objectively. *Id.* at 321-22.

Steven does not argue and there does not appear to be any evidence that there was not mutual consent to the agreement at the time the district court undertook to make the agreement the judgment of the court.¹ Instead, it was events which took place after the stipulation was accepted by the court and the decree entered, that caused Steven to change his mind regarding the custody provision of the stipulation. We find Steven has failed to provide any grounds for modifying the district court's findings on this issue.

II. Visitation. Steven contends the district court erred in its ruling regarding Steven's rights to visitation. In establishing visitation rights, our governing consideration is best interests of children. *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa App. 1992); *In re Marriage of Farrell*, 481 N.W.2d 528, 531 (Iowa App. 1991). Generally, liberal visitation rights are in a child's best interest. *Stepp*, 485 N.W.2d at 849; *In re Marriage of Kerber*, 433 N.W.2d 53, 54 (Iowa App. 1988); *In re Marriage of Muell*, 408 N.W.2d 774, 777 (Iowa App. 1987). The goal of liberal visitation after dissolution is to afford children the opportunity to maximize continuing physical and emotional contact with both parents. Iowa Code § 598.41(1) (1993); *Farrell*, 481 N.W.2d at 531; *In re Marriage of Deierling*, 421 N.W.2d 168, 171 (Iowa App. 1988). We find the following modifications to the visitation provisions of the dissolution decree must be made.

During each summer vacation, Steven shall be given eight weeks of visitation. This summer visitation shall be given in a continuous eight week block; unless the parties agree otherwise. Steven's child support obligations shall be abated by fifty

¹ Sandra testified regarding the possibility of a move to Florida. The trial court's dissolution decree took this into consideration when it provided for alternative visitation depending upon where Sandra lived. We agree with Steven that Sandra was less than honest when she testified she had no plans "at this time" to move to Florida. The record reveals she moved to Florida within 48 hours after the dissolution decree was entered.

percent during the summer vacation visitation. We affirm the district court's determination regarding which party will be responsible for the costs of transporting Parker before and after the summer visitation.

During Christmas vacations, Steven shall be given one half of the vacation for visitation. Regarding the Christmas vacation visitation, Steven shall receive visitation during the first half of Christmas vacation in years where the vacation begins in an odd-numbered year, and during the second half of vacation in years where the vacation begins in an even-numbered year; unless the parties agree otherwise.

We further modify the dissolution decree to allow Steven to claim Parker as a dependent on his income tax return each year as long as he is current in his child support obligation. Steven is also to be allowed reasonable telephone contact with Parker throughout the year. In addition, Steven shall receive visitation rights during Parker's spring vacation in each odd-numbered year.

The responsibility for cost of transportation for Steven's Christmas and spring break vacations shall be divided in the same manner as is provided for in his summer visitation rights.

III. Attorney fees. The district court directed Steven to pay \$10,000 of Sandra's trial attorney fees. On appeal, Steven contends this amount was excessive. Sandra cross-appeals contending the award should be increased.²

Trial courts have considerable discretion in awarding attorney fees.³ *In re Marriage of Hunt*, 476 N.W.2d 99, 103 (Iowa App. 1991). To overturn a trial court's

² Steven filed a motion to dismiss Sandra's cross-appeal on this issue, and such motion is submitted with the appeal. We find the motion to be moot given our decision on this issue. As a result, the motion is denied. Each party shall pay their own attorney fees related to this motion.

³ Although there may be merit in some of the contentions of Steven insofar as the allowance of attorney fees is concerned, we note that even when those entries are removed Sandra's attorney fee bill is still in excess of \$10,000. We also note that some of the entries complained of were brought about because of Steven's own actions.

award of attorney fees, the complaining party must show an abuse of discretion. *Id.* Both Sandra and Steven have failed to show such an abuse of discretion.

On appeal, Sandra makes a request for appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We determine each party should pay his or her own attorney fees for this appeal.

IV. Alimony. On cross-appeal, Sandra contends the district court erred in failing to award her alimony.⁴ Alimony is an allowance to the former spouse in lieu of a legal obligation to support that person. *In re Marriage of Helmle*, 514 N.W.2d 461, 463 (Iowa App. 1994). Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of Fleener*, 247 N.W.2d 219, 220 (Iowa 1976). The discretionary award of alimony is made after considering those factors listed in Iowa Code section 598.21(3) (1993). *See In re Marriage of Hayne*, 334 N.W.2d 347 (Iowa App. 1983). Upon a de novo review of the case, we find the district court did not err in failing to award alimony.

V. Property distribution. On cross-appeal, Sandra asserts the district court erred in making the property distribution. Sandra contends there were errors in valuation and in distribution between the parties. The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division of percentage distribution. *Id.* The

⁴ Steven filed a motion to dismiss Sandra's cross-appeal on this issue, and such motion is submitted with the appeal. Once again, we find the motion to be moot given our decision on this issue. As a result, the motion is denied. Each party shall pay their own attorney fees related to this motion.

determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. *See In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984). We further find the distribution made by the district court was equitable and will not disturb it on appeal.

We have considered all other issues raised by the parties in their appeal and cross-appeal. We affirm the district court's dissolution decree in all respects except as we have modified in this opinion.

AFFIRMED AS MODIFIED.