

IN THE COURT OF APPEALS OF IOWA

No. 0-356 / 89-1938

IN RE THE MARRIAGE OF CHERI RAE VANCE
AND CRAIG STEVEN VANCE

FILED

OCT 23 1990

CLERK SUPREME COURT

Upon the Petition of

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CHERI RAE VANCE,

Appellee,

And Concerning

CRAIG STEVEN VANCE,

Appellant.

Appeal from the Iowa District Court for Pottawattamie
County, Keith E. Burgett, Judge.

Husband appeals a dissolution decree. **AFFIRMED.**

Deborah L. Petersen and Kenneth Sacks, of Perkins,
Sacks, Hannan, Reilly & Petersen, Council Bluffs, for the
appellant.

Jacob J. Peters, Council Bluffs, for the appellee.

Considered by Oxberger, C.J., and Donjelson and Hayden,
JJ.

OXBERGER, C.J.

Cheri and Craig Vance were married in 1982 and one child, Jessica, was born of the marriage in 1984. In addition, Craig's son Brad, from a previous marriage lived with Craig and Cheri throughout their marriage.

Craig works as a printer earning a gross income of approximately \$500 per week with substantial overtime pay on an irregular basis. Cheri works as a janitor for a railroad, earning a gross income of approximately \$2100 per month.

In its dissolution decree of November 14, 1989 the district court placed Jessica in joint legal custody and Cheri's physical care. The district court directed Craig to pay Cheri child support of \$275 per month.

The parties' home valued at \$65,000, subject to a \$44,000 mortgage, constitutes their only substantial asset. The court awarded Cheri the home subject to its mortgage debt and a \$9,000 lien in favor of Craig. The lien bears no interest and becomes payable when Jessica is no longer eligible for child support.

The court awarded Craig a pickup truck he brought into the marriage and awarded Cheri a relatively new automobile subject to a large debt. Each party also retained various personal effects. Craig was ordered to assume approximately \$3,500 of debts acquired by the couple during their marriage.

Craig has appealed from the dissolution decree.

Craig contends Jessica should be placed in his physical care. He also argues the decree should be clarified to show the district court's intention to provide for joint legal custody.

Craig also challenges the decree requirement that he name Jessica the sole beneficiary of a life insurance policy purchased by the couple covering his life. He contends that at the least he should be permitted to name Brad as an additional beneficiary.

Finally, Craig challenges the division of property and debts. He argues his lien against the house should be larger, should become payable sooner, and should bear interest. He also urges that Cheri assume some of the debts.

We review this case de novo. Iowa R. App. P. 4. 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).

CHILD CUSTODY. After reading the district court's decree of dissolution of marriage, we agree with the parties that the court clearly intended to place Jessica in their joint legal custody. Since the parties do not dispute the intention of the court and we find the decree unambiguous on its face with respect to the issue of joint custody, we see no reason to alter it.

Next we turn to Craig's contention Jessica should have been placed in his physical care. In child custody cases, the best interests of the child is the first and governing consideration. Iowa Code section 598.41(3) and in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983) and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974) enumerate the factors to consider in awarding custody. All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrbanc, 359 N.W.2d 420, 424 (Iowa 1984). Which parent will do better in raising the child represents the critical issue in determining the best interests of the child. Gender is irrelevant and neither parent shoulders a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

In the Vances' situation, the factor of separating half siblings must also be considered. In the dissolution decree the trial court found:

Both parties were well qualified to have physical custody of Jessica, and they both love her and enjoy her affections. Through the years, the Petitioner has had the primary responsibility for child care, considering respondent's work schedule, as well as caring for his child. The long range best interests of Jessica will best be served by providing for joint custody with both parents and placing the primary physical care with the Petitioner.

Iowa courts express a strong interest in keeping children of broken homes together. In re Marriage of Orte, 389 N.W.2d 373, 374 (Iowa 1986)(citations omitted). "In order for a court to depart from this general rule, it must appear that separation 'may better promote the long-range interests of children.' We believe these general principles should govern awards of physical care in cases of half siblings as well as others." Id. (quoting In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981)).

Upon evaluating the record as a whole we find that the trial court heard ample testimony about the relationship between Brad and Jessica as well as Jessica's relationships with her parents. The court found Jessica's long-term best interests called for her primary physical care placement with Cheri and we find no reason to disturb the district court's decision. The district court heard the testimony and had the opportunity to evaluate the witnesses while testifying.

LIFE INSURANCE. Craig contends that the district court went beyond its power in requiring him to name Jessica as the sole beneficiary of a life insurance policy purchased during the marriage with a cash value of \$2,000. Additionally, he asserts the court failed to take into account his responsibility for his son Brad for whom, he also must provide future security. A decree providing for the maintenance of a life insurance policy must be viewed

in light of all other economic provisions of the decree including the provision for child support. In re Marriage of Weidner, 338 N.W.2d at 360.

Viewed in the totality, the provision regarding the maintenance of life insurance appears reasonable. The requirement is not so egregious as to foreclose Craig's ability to provide alternative means for securing Brad's future. Additionally, even though the court has a duty to consider other child-related obligations, including the needs of other children, in this case the court's foremost concern was providing for Jessica as a result of her parent's impending dissolution. See Moen v. McNamara, 272 N.W.2d 438, 441 (Iowa 1978). We affirm the district court's order that Craig maintain the insurance policy at issue with Jessica named as the sole beneficiary so long as Respondent shall continue to have an obligation for the support of said child.

DIVISION OF MARITAL ASSETS AND DEBTS. Craig contends that the trial court did not equitably divide the parties' equity in their home and debt responsibility as well as improperly failing to award immediate payment or interest on his portion of the home equity. 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 Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be

that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

After looking at the decree in its totality we find the property division ordered by the district court equitable. Both parties received both advantageous and disadvantageous awards after the court provided for Jessica's future support.

With respect to the noninterest-bearing lien on the home, it appears to further the parties' intent that Jessica be able to reside in the family home. In re Marriage of Richards, 439 N.W.2d 876, 883 (Iowa App. 1989). Considering the overall economic situation of the parties, this arrangement seems most geared towards providing for the needs of the parties after insuring that Jessica can continue to have a stable, familiar home environment. Accordingly, we affirm the trial court's property division.

CONCLUSION. We affirm the district court's decree dissolving the marriage of Cheri and Craig Vance in all respects.

AFFIRMED.