IN THE COURT OF APPEALS OF IOWA

No. 1-126 / 90-1143

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF MELANIE A. LIPOVAC AND RAYMOND J. LIPOVAC

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Upon the Petition of

MELANIE A. LIPOVAC,

Appellee,

And *Concerning,*

RAYMOND J. LIPOVAC,

Appellant.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

Husband appeals custody and economic provisions of divorce decree. **AFFIRMED.**

Thomas M. Zurek and Mark D. Aljets of Smith, Schneider, Stiles, Mumford, Schrage, Zurek, Wimer & Hudson, P.C., Des Moines, for appellant.

Thomas Hyland of Hyland, Laden & Pearson, P.C., Des Moines, for appellee.

Heard by Oxberger, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

Raymond and Melanie began living together in Raymond's home. The couple later moved to what became the family homestead and were married fifteen months after they moved to this residence. Raymond contributed $2,755 for the down payment on the homestead and used his 1983 tax refund to extend the driveway and add a garage at a total cost of $4,600. Melanie contributed by buying groceries, sharing entertainment expenses, and giving Raymond approximately *$100 to $200 per month* to help pay the other bills.

The couple married on March 23, 1985. They have two minor children: Scott, born November 16, 1985, and Lisa, born February 24, 1987. Both worked throughout the marriage. Raymond taught school and coached football. Melanie worked as a secretary.

At trial time Raymond was thirty-eight; Melanie was twenty-eight. Raymond holds a master's degree in education; Melanie completed one semester of college. Both are in good health. Raymond earned $33,528 annually from teaching and coaching in Des Moines. Melanie worked for Iowa Lutheran Hospital and earned $17,680 annually. Prior to their dissolution, Melanie inherited $12,900 from her mother. The parties dispute how much of these monies were placed in the parties' joint accounts.

For the majority of the marriage Melanie was the principle caretaker of the parties' children. Raymond assumed additional child care duties after Melanie filed

the petition for dissolution. Following a several-day hearing, the district court awarded the primary physical care of the parties' children to Melanie. The court set the amount of child support at $500 per month.

In dividing the parties' assets, the district court concluded that the assets brought into the marriage were about equal. Melanie was awarded the family homestead with an equity of approximately $14,000, and its mortgage. Raymond was awarded his IPERS account valued at $13,500, the parties' mutual funds, and life insurance policies. Each party received an automobile and the lien on it. Raymond received the newer car. They divided their other personal effects without the necessity of court intervention. Neither party was awarded alimony. The court ordered Raymond to contribute $5,550 toward Melanie's attorney fees. Raymond now appeals.

I. **Custody.** Our review in this matter is de novo. Iowa R. App. P. 4. In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in 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). All factors there listed 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 Vrban, 359 N.W.2d 420, 424 (Iowa 1984).

The critical issue in determining the best interests of the child is which parent will do better in raising the child; gender is irrelevant and neither parent should have 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 addition, section 598.41 of the Code directs the courts of this state, insofar as it is reasonable and in the best interest of the child, to order the custody award "which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents" after the dissolution. In re Marriage of Athy, 428 N.W.2d 310, 311 (Iowa App. 1988). In attempting to reach this objective, the court puts great weight on whether a parent can support the other parent's relationship with the child. In re Marriage of Downing, 432 N.W.2d 692, 694 (Iowa App. 1988).

The testimony presented reveals Raymond put great effort into undermining the children's relationship with Melanie. He did this by making statements in front of the children such as Mommy doesn't love you anymore, Mommy doesn't want us to be a family anymore, and Mommy has a boyfriend now. Additionally, Raymond testified he had withdrawn all support for Melanie regarding discipline. When Melanie disciplined the children after the petition for divorce was filed, he refused to support her. He justified this by stating that if Melanie wanted the

children she would have to learn to discipline the children without his help.

The record also reveals that Raymond maintained a course of conduct that ignored the best interests of the children. While the couple lived together after the divorce was filed, Raymond would follow Melanie from room to room yelling and discussing issues such as visitation in front of the children. Melanie asked him to stop having these discussions in front of the children for she felt it was hurting them. Nonetheless, Raymond continued to behave in this manner.

Victoria Brunner was the custody investigator assigned to this case. She testified Raymond had a difficult time finding anything good to say about Melanie. On the other hand she stated that Melanie expressed that she wanted her children to be comfortable with both parents and that Melanie did not want to keep the children from Raymond.

Ms. Brunner recommended to the trial court that Raymond have physical custody of the children. However, the trial court found her testimony not to be credible because of certain testimony that came out on cross-examination. It appears that Ms. Brunner made the custody determination before administering the Minnesota Multiphasic Inventory (MMPI). There is some question as to whether she ever intended to administer the test. Additionally, after the tests were administered the results revealed Melanie's score to be within normal limits but Raymond's score was so

high in the scale that it was invalidated. The conclusion the scorer reached was that Raymond was purposely answering questions incorrectly to make himself look good.

It is evident that both parents love their children. Raymond claims to have been the primary caretaker, but the evidence clearly demonstrates that Melanie provided the majority of the care. The record also reveals that from the time Melanie filed the petition for dissolution of marriage Raymond began competing with her in getting the children ready for the care center, taking them, and picking them up. It is clear Melanie still performed these tasks for the majority of the time. Notwithstanding the fact that they were both employed outside the home, Melanie did the vast amount of the household chores and caring for the children.

Upon our review of the record and the facts before us, we agree with the trial court's decision of awarding the physical custody of the children to Melanie and accordingly affirm.

II. **Distribution of Property.** Property division is based on each partner's right to a just and equitable share of the property accumulated as the result of their joint efforts. In re Marriage of Francis, 442 N.W.2d 59, 62 (Iowa 1989). The contributions of each party to the marriage are to be considered when making the property distribution. In re Marriage of Bulanda, 451 N.W.2d 15, 17 (Iowa App. 1989). With these principles in mind, we

address the property issue raised by the appellant. Raymond's primary contention is that the trial court erred in awarding Melanie the full amount of the equity in the home. He supports this contention claiming his pension was overvalued. Therefore he believes he is entitled to a portion of the equity in the home in order to achieve an equitable distribution. We disagree.

We believe the determination of the marital assets and the division of those assets was equitable given all of the facts and circumstances. Moreover, it is not necessary for us to seek mathematical precision in evaluating the proper amount to which a party may be entitled. In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979) (citing In re Marriage of Anderson , 243 N.W.2d 562, 564 (Iowa 1976)).

While Raymond did contribute a greater amount of money in acquiring the home, Melanie did contribute to the living expenses. Additionally, Melanie contributed part of the money she received from her mother's estate to the joint marital account. Also, the record shows Raymond withdrew substantial amounts from the joint account to pay for his attorney fees. In reviewing all of the circumstances, we find the trial court was correct in allocation of the marital assets.

III. **Attorney's Fees.** Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that

the trial court abused its discretion. Id. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). We are unable to find the trial court abused its discretion in awarding attorney fees.

Costs of this action are assessed to the appellant. Each party shall pay his/her own appellate attorney fees.

AFFIRMED.