



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KRISTY LYNNE COX AND GREGGORY LYNN COX

|                       |   |                        |
|-----------------------|---|------------------------|
| Upon the Petition of  | ) | 312                    |
| KRISTY LYNNE COX,     | ) |                        |
| Petitioner-Appellee,  | ) | Filed October 22, 1986 |
| And Concerning        | ) |                        |
| GREGGORY LYNN COX,    | ) | <u>6-305</u>           |
| Respondent-Appellant. | ) | 86-500                 |

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Appeal from the Iowa District Court for Pottawattamie County (No. 328)  
- J. C. Irvin, Judge.

Respondent husband appeals from a dissolution decree, contending the district court erred by placing the parties' one child in the wife's custody and challenging various economic provisions of the decree. **AFFIRMED.**

Bradford L. Davis, Council Bluffs, for respondent-appellant.

Michael J. Winter, Council Bluffs, for petitioner-appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

**PER CURIAM****313**

The parties to this appeal, Greg and Kristy Cox, were granted a dissolution of their marriage by the District Court for Pottawattamie County on March 5, 1986. The district court, in its dissolution decree, awarded custody of the couple's then-two-year-old daughter, Bonnie, to Kristy. By virtue of the dissolution decree, Greg was obligated to pay \$390.00 per month in child support and \$200.00 towards Kristy's attorney fees. As part of the district court's division of the marital property, Kristy was awarded a minibike. Greg timely filed his notice of appeal alleging error with respect to each of these determinations by the trial court. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the fact findings of the district court, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

Greg challenges the district court's custody award of Bonnie to Kristy in several respects. We begin our analysis by noting that in child custody cases, the best interests of the child is the first and governing consideration. Iowa R. App. P. 14(f)(15); In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). The general principles applicable to the custody issue are summarized in In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974), and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and need not be repeated here.

Greg first contends that the district court erred in finding that Kristy's testimony should be given greater credibility than Greg's. In support of this claim, Greg directs our attention to portions of the trial transcript that he maintains illustrate a comprehensive attempt by Kristy to deceive and defraud the district court. Because of this attempt, Greg argues, the district court erred in crediting Kristy's testimony.

As we noted above, our crediting of the district court's findings of fact is particularly appropriate when those findings deal with the credibility of wit-

nesses. The rationale behind this proposition is that the district court has the opportunity to observe the demeanor of the witnesses as they testify and to formulate an appropriate impression, based on that demeanor, as to the credibility of that testimony. In re Marriage of Vrban, 359 N.W.2d 420, 423 (Iowa 1984). We have reviewed the testimony given by the parties at trial and certainly find much of it to be contradictory and conflicting. Given this, we are persuaded that the best course is to accept the district court's determination of credibility. Situations such as the present one which present us with irreconcilable testimony are precisely those situations where our deference to the district court's ability to see and hear the witnesses as they testify is most appropriate. Accordingly, we find that weight should be given the district court's determination to credit Kristy's testimony.

Greg next maintains the district court erred in finding that Kristy could adequately provide for the health, welfare, and education of Bonnie. Upon our de novo review of the record, we find ourselves in agreement with the district court's finding in this respect. Kristy is employed with K-Mart, works from 7:30 a.m. to 4:00 p.m., and is paid \$3.65 an hour. She resides in a two-bedroom apartment in Council Bluffs, Iowa. Although the testimony is in conflict as to Greg's and Kristy's respective abilities to provide for these aspects of Bonnie's care, we think that Kristy can adequately provide for Bonnie's health, welfare, and education. Although we agree with Greg's contention that the determinative issue is not the narrow question of which party can adequately provide for Bonnie, but the comprehensive query of "which parent can minister more effectively to the long range best interests of the [child]." Bowen, 219 N.W.2d at 687-88; see Iowa R. App. P. 14(f)(15), we see no inconsistency, as Greg does, in the trial court's separate determinations that Kristy can adequately provide for

Bonnie and that Bonnie's best interests are better served by awarding custody to Kristy.

Greg next contends that the district court erred in finding that a close bond and loving relationship has developed between Kristy's daughter from a previous marriage, Melinda, and Bonnie and that the latter's best interests would be better served by keeping the two together. Greg maintains that in cases like the present one, where the children involved are only half-sisters, the presumption employed by our courts against splitting siblings, see, e.g., In re Marriage of Hagge, 234 N.W.2d 138, 139 (Iowa 1975), should not apply. As we read the district court's dissolution decree, the court did not rely upon this presumption in awarding custody of Bonnie to Kristy, but merely considered the relationship between Bonnie and Melinda as one factor in its determination of where Bonnie's best interests lie. We agree with the district court that this relationship should be taken into account. See In re Marriage of Orte, 389 N.W.2d 373, 374 (Iowa 1986).

In contrast to the above contentions urged by Greg with respect to particular findings of fact made by the district court, he next asserts a general claim that the district court erred when it awarded custody of Bonnie to Kristy. In support of this contention, Greg presents us with a series of allegations disputing Kristy's fitness as a parent and a corresponding list of his salutary parental attributes. Not surprisingly, Kristy presents us with a similar set of lists with, of course, the parties reversed. These allegations, and the proper inferences to be drawn from them, are contested by both parties. We note in this regard that our determination of what custodial arrangement will serve the best interests of a child frequently becomes a matter of choosing the least detrimental available alternative for safeguarding the child's growth and development. Winter, 223 N.W.2d at 167. We have already noted the wisdom of our deference to the district

court's credibility assessment in the face of such conflicting testimony. Accepting that assessment as we do, our de novo review of the record in this case leads us to agree with the district court's custody award of Bonnie to Kristy.

Greg also disputes a portion of the district court's distribution of the parties' marital property. Specifically, he contends that the trial court erred in awarding a minibike to Kristy. The factors we consider to determine if property division is equitable are set forth in Iowa Code section 598.21. The crucial issue in reviewing property division in a dissolution decree is whether the distribution under the particular circumstances was equitable. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980). We reject any rule based on a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976).

In the present case, we agree with the district court's award of the 1970 Honda minibike to Kristy. Kristy testified at trial that the minibike was a gift to Melinda. The court's award of the minibike to Melinda's custodial parent is therefore rational and is part of a comprehensive equitable property division. Accordingly, we reject Greg's argument to the contrary.

Greg next contends that the district court's award of \$390.00 per month in child support is excessive. We must consider the factors enumerated in Iowa Code section 598.21(4) (1985) to determine the propriety of an award of child support. Both parties have an obligation to support their children, but this obligation is not necessarily to be borne equally by them. It should be apportioned according to the fair ability of each to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa Ct. App. 1984).

Greg filed an affidavit of financial status indicating that his gross wages in 1985 were \$27,000.00. He listed his monthly net income at \$1,400.00. His

financial affidavit also shows monthly expenditures of \$1,093.00. As the affidavit points out, this latter amount includes expenses both for Greg and for the support of Bonnie. Kristy's affidavit of financial status shows a net monthly income of \$594.00 and monthly expenses for the support of herself and Melinda of \$1,044.86. Given this disparity in the ability of Greg and Kristy to contribute to the support of Bonnie, and considering Greg's salary, we think that a child support award of \$390.00 per month is reasonable.

Finally, Greg argues that the district court erred in awarding Kristy attorney fees. The court, in its dissolution decree, ordered Greg to pay \$200.00 toward Kristy's attorney fees. Recognizing that the district court is vested with considerable discretion in allowing attorney fees to be awarded in dissolution cases, In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa 1983), we think the allowance of attorney fees here is reasonable and should not be disturbed.

Kristy requests attorney fees for this appeal. In evaluating such a request, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa 1981). We find that Kristy is entitled to an award of \$525.00 for attorney fees incurred in the present appeal. Costs are assessed to Greg.

**AFFIRMED.**