FILED
JUN 28 1983
CLERK SUPREME COURT



**IN THE COURT OF APPEALS OF IOWA**

**IN RE MARRIAGE OF PEGGY ANN WHITE AND RICHARD R. WHITE**

Upon the Petition of )
**PEGGY ANN WHITE,** )
Petitioner-Appellee, )
And Concerning )
**RICHARD R. WHITE,** )
Respondent-Appellant. )

Filed June 28, 1983

3-159
3-69391

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Appeal from Polk District Court - Richard R. Strickler, Judge.

Respondent-husband appeals the child custody, visitation, property division and child support provisions of the parties' dissolution of marriage decree. AFFIRMED AS MODIFIED.

Peter C. Percival of Binford & Percival, Des Moines, Iowa, for respondent-appellant.

Don Stamatelos of Stamatelos & Kenyon, Des Moines, Iowa, for petitioner-appellee.

Heard en banc.

**PER CURIAM**

Respondent-husband appeals the child custody, visitation, property division and child support provisions of the parties' dissolution of marriage decree. On appeal respondent asserts that: (1) the best interests of the parties' two minor daughters require awarding custody to him; (2) alternatively, respondent's visitation should be enlarged to include three months in summer and other reasonable visitation throughout the year; (3) the real and personal property division ordered by trial court is unjust and inequitable; and (4) the $300 per month child support ordered by trial court is excessive considering respondent's income and other financial obligations.

Our review of this equitable proceeding is **de novo**. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

Petitioner, Peggy White, and respondent, Richard White, were married in August of 1970. They have two children, Jenny, who was born in April 1972, and Jill, who was born in July 1975. Both parties are from Jefferson, Iowa, and they lived there until 1978 when they bought a house in Polk City. The parties separated in October 1981, with Peggy and the girls remaining in the family home.

Throughout the marriage Richard has been employed at the VA Hospital in Des Moines as a nurses' assistant. At the time of trial his net salary was $926 per month. He also worked other jobs and attended night school throughout the marriage. He received a bachelor's degree from Drake in 1980 and subsequently took some graduate courses.

Peggy has a high school eduation. She worked for a few years as a beautician, but primarily was a homemaker and mother throughout the marriage. In January 1980, Peggy became employed by Vernon Eden at the Saylorville Marina. She was initially hired as a secretary, but ultimately became involved in management of the marina. At the time of trial she was being paid $345 per week.

There was also considerable testimony at the dissolution proceeding regarding the circumstances of the breakdown of the parties' marriage, which appeared to be precipitated by the parties' general incompatibility, Richard's being absent from the family home so often over the years, and Peggy's job and relationship with Vernon Eden. There was disputed testimony about each parties' relationships with the girls; Peggy claimed that they were afraid of Richard, and Richard claimed that Peggy was prejudicing the girls against him. Peggy contended that she had been primary caretaker of the children throughout the marriage, which Richard conceded except that he claimed he became primary caretaker for the children in 1980 due to Peggy's job schedule and sexual involvement with Vernon Eden. There was considerable additional testimony regarding the parties' real and personal property and financial situation. There was some evidence regarding an incident where Richard misallocated some Jaycee funds, which Richard claimed was a mistake.

In the dissolution decree, trial court awarded custody of both children to Peggy. Richard was granted visitation of every other weekend, four noncontinuous weeks each summer, and alternating holidays. Trial court ordered Richard to pay child support in the amount of $35 per week per child, to maintain life insurance with the children as beneficiaries, and to maintain medical and hospital insurance for the children. There was no alimony award. Richard was awarded several automobiles, certain bank accounts, a boat, furniture in his possession, and certain other personal property. Peggy was awarded the marital

home, which had a value of approximately $63,500 and an equity of approximately $32,000. The court did give Richard a $7,000 lien on the home. Peggy was also awarded an automobile, furniture, a small amount of bonds, and certain other personal property.

II.

Richard contends the trial court abused its discretion by awarding custody of the children to Peggy. We disagree.

In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974), and Iowa Code section 598.41(3) set forth the principles and factors for the court to consider in determining custody of a child or children. The cogent factors important here are: (1) the daughters, Jenny, born April 1972, and Jill, born July 1975, relate well with their mother, Peggy, and have difficulty relating with their father, Richard; (2) Jenny is greatly concerned that her dad will get custody; (3) witnesses agree Peggy is a good mother and that she has been the primary custodian and is close to the girls; (4) the girls have a preference to be with their mother; (5) the independent investigator, who testified at trial, recommended the children's custody be placed with Peggy.

The status of children should be quickly fixed and, thereafter, little disturbed. No hard and fast rule governs which parent should have custody. It is not a matter of reward or punishment. The issue is ultimately decided by determining under the whole record which parent can minister more effectively to the long-range best interests of the children. In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974). Stouwie v. Stouwie, 222 N.W.2d 435, 437-38 (Iowa 1974).

The trial court did not err in admitting the investigator's report into the record, absent agreement or stipulation by the parties. See Iowa Code section 598.12(2) (1983), and 82 Acts, ch. 1250, § 3, which was enacted and in effect at the time this case was tried to the district court.

Upon considering all of the relevant principles and factors, including those enumerated herein, we hold the trial court did not abuse its discretion by awarding custody of the children to Peggy.

III.

In the alternative, Richard next asserts the trial court erred by not giving him substantially greater visitation rights. We do not agree.

The trial court awarded Richard reasonable rights of visitation of his daughters such as not to interfere with their health, welfare and education, and additionally, shall have said children in his possession every other weekend from Friday at 6 p.m. until Sunday at 6 p.m., four weeks each summer vacation, non-continuous, alternating birthdays of the children, alternating Christmas holidays, Thanksgiving holidays, and spring break holidays. Richard suggests the trial court committed an abuse of discretion in not awarding him more extensive visitation times and seeks three months continuous summer visitation from us here on appeal.

There is no lack of substantial evidence in the record as is required to hold that the trial court abused its discretion. Smiley v. Twin City Beef Co., 236 N.W.2d 356, 360 (Iowa 1975).

The facts in this case indicate it would not be in the best interests of the children to extend their visitation beyond that established by the trial court. "In the best interests of the children," is the standard to use. Remsburg v. Remsburg, 180 N.W.2d 461 (Iowa 1970). In re Marriage of Hubbard, 315 N.W.2d 75 (Iowa 1982). We hold the trial court did not err or abuse its discretion in establishing times of visitation for Richard.

IV.

Richard's next contention is that the property division, as a whole, is inequitable. We agree. Our analysis is governed by § 598.21, which codified many aspects of our prior case law. See Schantz v. Schantz, 163 N.W.2d 398, 405

(Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). Section 598.21 provides that, upon every dissolution of marriage:

> 1. . . . The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering the following:
>
> a. The length of the marriage.
>
> b. The property brought into the marriage by each party.
>
> c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
>
> d. The age and physical and emotional health of the parties.
>
> e. The contribution by one party to the education, training or increased earning power of the other.
>
> f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
>
> g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of any children.
>
> h. The amount and duration of an order granting support payments to either party pursuant to subsection 2 and whether the property division should be in lieu of such payments.

Thus, the ultimate question is, as it has always been, whether the distribution of property was equitable. We reject any rule based on a percentage division of the total assets and must determine what is equitable under the specific facts of this case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

The trial court divided the property and debts of the parties as follows:

| Petitioner | | Respondent | |
|---|---|---|---|
| Homestead | $63,500 | $ 1,500 | Impala |
| Pontiac | 8,350 | 50 | Vega |
| Furniture | 3,000 | 2,800 | Oldsmobile |
| Bonds | 300 | | Cash Value - |
| Tax Refunds | 823 | 2,800 | Life Insurance |
| | $75,973 | 3,650 | Savings Account |
| | | 3,750 | Boat |
| Less lien on | | 7,554 | Retirement |
| House | 7,000 | 7,000 | Lien on House |
| | $68,973 | $29,104 | |

These assets awarded to each party are reduced by the following debts each was ordered to pay:

| Petitioner | | Respondent | |
|---|---|---|---|
| GMAC | $ 3,400 | $ 650 | Dial |
| House mortgage | 31,300 | 14,500 | School loans |
| Mastercard | 1,100 | 1,300 | Parents |
| | $36,150 | $16,450 | |

Thus Peggy received a net value of $68,973 - $36,150 = $32,823, whereas Richard received a net value of $29,104 - $16,450 = $12,654.

In relying upon and applying the criteria above referenced, we determine Richard should and he is hereby awarded the sum of $17,100.00 as a judgment lien against the realty, described as follows:

> Lot 18 in Forest Heights, Plat 2, an Official Plat, now included in and forming a party of the Town of Polk City, Iowa, and locally known as 1205 Westside Drive, Polk City, Iowa.

Said judgment shall draw interest at the rate of ten percent (10%) per annum from date of decree, to wit: September 13, 1982. Peggy is ordered to assume and be solely responsible for the payment of the Dial Plan loan ($650 at $30.00 per month) and hold Richard harmless from any liability thereon. Except as modified herein, the trial court's division of the marital assets and liabilities are affirmed.

V.

The sum of thirty-five dollars ($35.00) per week per child is not excessive as claimed by Richard, and accordingly we affirm the trial court's child support award.

The parties shall be solely responsible for payment of their attorney fees on appeal.

AFFIRMED AS MODIFIED.