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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF DYRDA

UPON THE PETITION OF)

HESTER JO DYRDA)

Petitioner-Appellant,)

AND CONCERNING)

DONALD MICHAEL DYRDA)

Respondent-appellee.)

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2-204
3-67637

Appeal from Black Hawk District Court, William G. Klotzbach, Judge.

Petitioner-wife appeals and respondent-husband cross-appeals from various provisions of their dissolution decree relating to child custody and disposition of property. AFFIRMED IN PART, MODIFIED IN PART, VACATED IN PART AND REMANDED.

C. A. Frerichs, Waterloo, for petitioner-appellant.

Samuel T. Beatty of Mosier, Thomas, Beatty, Dutton, Braun & Staack, Waterloo, for respondent-appellee.

Heard en banc.

Petitioner-wife appeals and respondent-husband cross-appeals from various provisions of their dissolution decree relating to child custody and disposition of property. The wife claims that she should have been awarded custody of the parties' only child; both of them claim that the economic provisions are unfair in different respects. Our review is de novo. Iowa R. App. P. 4. We affirm in part, modify in part, vacate in part and remand.

Donald and Hester Dyrda were married in Illinois on August 24, 1968. This was Hester's first marriage and Donald's second; he has three children by his first marriage who are living with him, all of whom are now in their mid-to-late teens. Donald and Hester had one child—Cindy, born in 1972. Hester is a physician whose specialty is hand surgery. Donald is a former cartographer who has not been successful in maintaining steady employment since the family moved to Waterloo in 1975, although he is currently attempting a painting business.

Hester filed her petition to dissolve the marriage on August 7, 1980. In an order filed May 27, 1981, the court found that she was almost the sole source of income for the family unit and was ordered to make house payments ($945 per month) as well as any payments necessary to preserve the parties' real equity in a boat purchased by Donald in 1979 for $78,000. He was awarded temporary custody of Cindy; Hester was ordered to pay $125 per week in support (Donald was allowed to keep the $589-per-month social security survivors' benefits paid for use and support of his three children after the death of his first wife). As a result of various allegations of contempt from both sides, a new temporary order was issued on July 29, 1981, in which Hester received temporary custody of Cindy until September 8. In addition, her temporary support obligation was reduced to $50 per week.

After the hearing, the court issued its findings, conclusions and judgment on October 26, 1981. It found that Cindy had developed a close relationship with Donald's three children by his first marriage and that his extra-marital

relationships had no harmful effect on Cindy. The court then fashioned what it termed a joint custody arrangement whereby Donald was to have custody of Cindy until either June 1 or July 1, 1983 (the decree is ambiguous on this point), at which time Hester is to regain custody. Liberal visitation privileges were granted to both parties. Hester was ordered to pay $75 per week in child support until July 1, 1983.

Donald was allowed to live in the triplex (having a present value of $150,000 with an encumbrance of nearly $100,000), but may occupy only one unit after Feburary 1, 1982 (at which time his son will have entered the military). The rental income from the other two units was to be paid to Hester who in turn was ordered to maintain all payments and expenses in connection with the triplex. The court further ordered the sale of the triplex after September 1, 1983, with Donald getting $25,000 from the proceeds and the remainder to Hester. The parties' personal property (including several motor vehicles) was distributed; Hester was made responsible for most of the parties' debts in addition to her attorney fees, $3000 toward Donald's fee and court costs (including $2000 in fees for the attorney representing Cindy's interests). Hester's appeal and Donald's cross-appeal followed. On December 21, 1981, the Iowa supreme court stayed the custody provisions of the decree during pendency of the appeal and ordered that Cindy shall remain with Hester.

I. The main issue in this case involves the question of who is to have custody of Cindy. The legal principles concerning child custody have been stated many times; see, e.g., In re Marriage of Castle, 312 N.W.2d 147, 149 (Iowa App. 1981), and need not be repeated here. We do, however, call attention to one of those principles which is especially applicable in this case; that is, the status of children should be determined quickly and, thereafter, little disturbed. Id.

The trial court justified its decision to give custody to Donald for a short time and then to Hester on a permanent basis on the basis of the idea of joint custody as set forth and sanctioned in In re Marriage of Burham, 283 N.W.2d 269

(Iowa 1979) and section 598.21(6), The Code. Initially, we are not convinced that what the court did was in fact to establish a joint custody situation. The Burhan court did not precisely define what is meant by joint custody, but we believe it means more than what was decreed in this case—in effect, a temporary custody award to Donald to be changed permanently at a later date.

This precise question, however, is ultimately not important in this case because, regardless of whether the court's decision can be termed "joint custody" or not, we do not believe that decision can stand. Donald admitted at trial that Cindy should ultimately be with Hester. It appears to be generally conceded by all that Hester is better able to minister to Cindy's long-term best interests. Donald argued, and the trial court agreed, that Cindy should be with him in the immediate future in that he can provide more of a family environment since his children from his previous marriage were still living with him. There is little question that Cindy has a close relationship with her half-siblings. We believe, however, that the court gave too much consideration to this factor and not enough to the impact on Cindy of changing custodial parents. In fact, the court's decree may be doubly harmful—when the last of Donald's three other children leaves home, Cindy will be subjected to the sudden and complete loss of that sibling relationship as well as having to move away from Donald to Hester.

We do not think this arrangement suits Cindy's best interests. See Iowa R. App. P. 14(f)(15). Instead, we hold that she should be placed in Hester's permanent custody with reasonable and liberal visitation granted to Donald. This will better ensure that Cindy's status will be fixed while still allowing her to maintain her close relationships with her half-siblings. Since Hester is to have custody, the child support award to Donald is vacated. We impose no such obligation upon him.

II. Both parties argue that the division of property is inequitable. After considering the relevant factors listed in section 598.21(1), The Code, we agree with Hester that the provisions of the decree unfairly impose on her almost all of

the marital debts. This is especially the case since many of those debts were incurred by Donald in his various business ventures, none of which met with much success. We also realize, however, that Donald does not have the resources himself to pay off any significant portion of those debts. We think the most equitable solution would be to sell the triplex now and divide the net proceeds equally between Donald and Hester after deducting the expenses of such sale and the joint debts of the parties including the indebtedness owed on Hester's life insurance (which indebtedness was incurred to help finance Donald's ill-fated trucking business) as well as amounts owing to Sears and Mastercard. We also believe that all court costs, including the fee for the attorney representing Cindy's interests, should be deducted and paid from the gross proceeds from sale of the triplex. We believe this arrangement more fully recognizes the relatively equal contributions of the parties toward this marriage.

We affirm those provisions of the decree relating to distribution of the motor vehicles (and any accompanying indebtedness) and personal property. We award the boat to Donald, but he is to be solely responsible for any losses or indebtedness in connection therewith (including any which may result from foreclosure proceedings commenced by the lending institution). We also affirm the award of attorney fees at trial, but each party is responsible for his or her own attorney fees accruing from this appeal. Costs of this appeal are assessed equally against the parties. We remand to the trial court for entry of a decree in conformity with this opinoin.

AFFIRMED IN PART, MODIFIED IN PART, VACATED IN PART AND REMANDED.