FILED
MAY 25 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-155 / 92-1603

IN RE THE MARRIAGE OF LORI MEYER AND KENTON "JAKE" MEYER

Upon the Petition of
LORI MEYER,

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Appellee,

And Concerning
KENTON "JAKE" MEYER,

Appellant.

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

Jake appeals from the dissolution decree which awarded physical care of the parties' minor children to Lori. **AFFIRMED AND REMANDED.**

Richard D. Zahasky, Decorah, for appellant.

Marion L. Beatty, of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

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OXBERGER, C.J.

Jake and Lori Meyer were married August 28, 1983. They have two children, Benjamin, born December 25, 1983, and Melissa, born November 4, 1985.

At the time the parties married, Lori worked as an egg grader. She continued this employment until the birth of Benjamin, returned to work three months later and continued until one month before the birth of Melissa. A year after Melissa's birth, Lori began working for Monona Wire. She remained there until February 1990, when she took a position at Rockwell Collins. At the time of trial she earned $17,000 annually, but was laid off between the trial and the date she filed her rule 179(b) motion.

Jake was born in 1961. He worked at Nor Eg until 1987 when he began operating a grinder for Camcar. The trial court initially listed his gross earnings of $1445 per month as his net earnings.

The dissolution decree awarded primary care of the children to Lori and ordered Jake to pay $433.50 per month child support. This award was changed to $200 per month per child after the hearing on the 179(b) motion. Jake was also ordered to maintain health insurance benefits for the children.

In dividing property, the court awarded Lori household goods in her possession, valued at $1200, her car, valued at $9000 with a $7680 loan, a $300 savings bond, and ordered Jake to pay her $10,000 in installments of $5000 by

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October 1, 1992, and $5000 by January 2, 1993. Jake was awarded the parties' hobby farm, valued at $61,200 with a $58,867 indebtedness, $9800 worth of horses, tractors and trailers, and his retirement plan at Camcar.

Jake appeals.

In this equity action, our scope of review is de novo. Iowa P. App. P. 4.

I. Child Custody

Jake contends the district court erred in awarding primary physical care of the children to Lori. He claims he is better able to provide a stable, secure environment for the children because of Lori's allegedly unsteady work history.

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), in In re Marriage of Weidner, 338 N.W.2d 351, 355-56 (Iowa 1983), and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). 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 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. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985). Gender is

irrelevant, and neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. Id.

The record is replete with evidence establishing Lori as the primary caretaker of the children. She took significant time from her employment to care for them following their births. She arranged doctor appointments, haircuts and day care. Lori enrolled the children in school and assisted them with homework. She maintained contact with extended family to ensure the children would know their grandparents and other family members. Lori has continuously provided primary care for the children since the parties separation.

On the other hand, Jake was frequently gone from the home, both working and socializing. Much of Jake's interest in the children appears to have been prompted by the parties' separation. Even the children's school counselor testified he believed Jake's chief reason for contacting him was an attempt to obtain negative information about Lori.

We affirm the decision of the trial court awarding primary physical care of the parties' children to Lori.

II. Child Support

Jake contends the district court erred in failing to follow the uniform child support guidelines. We are unable to determine, from the court order dated September 8, 1992,

the amount upon which the district court determined child support. Since the entry of the original decree, both parties filed Iowa R. Civ. P. 179(b) motions regarding, inter alia, child support. Lori had since been laid off from her position and Jake alleged an error had been made on his net monthly income determination. The record does not indicate whether Lori was receiving income while she was laid off. Neither parties' income was listed as the basis for the support determination in the subsequent order.

Accordingly, we remand this issue to the district court. After determining the current net monthly incomes of the parties, child support must be determined according to the uniform guidelines. Deviation from the guidelines must be explained. We do not retain jurisdiction.

III. Property Distribution

Jake contends the property distribution determined by the district court was inequitable.

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 Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division of percentage distribution. Id. The determining factor is what is fair and equitable in each circumstance. Id. The distribution of the property should be made in consideration of the criteria codified in Iowa Code section

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598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

We find the district court's determination of the valuation of the property and subsequent distribution equitable. Accordingly, we affirm the property division.

IV. Attorney Fees

Lori requests appellate attorney fees.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to 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 App. 1981).

Based on these considerations, we award Lori $2000.00 in appellate attorney fees.

AFFIRMED AND REMANDED.