FILED
OCT 28 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MICHAEL LEE COMER
AND MARY KATHLEEN COMER

201

Upon the Petition of)

MICHAEL LEE COMER,)

Petitioner/Appellee/ Cross-Appellant,) Filed October 28, 1982

And Concerning)

MARY KATHLEEN COMER,) 2-277 / 3-67727

Respondent/Appellant/ Cross-Appellee.)

Appeal from Polk District Court - Ray A. Fenton, Judge.

Respondent wife appeals and petitioner husband cross-appeals from the decree dissolving the parties' marriage. AFFIRMED IN PART; REVERSED IN PART.

Allan A. Herrick and William R. Clark, Jr. of Herrick, Langdon & Langdon, Des Moines, for respondent-appellant.

William J. Trout of Coppola, Trout, Taha & Gazzo, Des Moines, for petitioner-appellee.

Considered en banc.

DONIELSON, J.

Respondent wife, Mary Comer, appeals from the parties' dissolution decree asserting (1) that the child support award is inadequate; (2) that the trial court should have provided for automatic cost of living adjustments to the child support award; (3) that petitioner husband was awarded too much visitation; and (4) that the court should have awarded her one-half interest in the parties' boat and trailer. On cross-appeal, petitioner husband, Michael Comer, asserts that the trial court should have granted his application for joint custody. We affirm in part and reverse in part.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. It is our responsibility to review the facts as well as the law to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give great weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7); In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974).

I.

Michael and Mary Comer were married in 1978 and have one child, Kathleen, who was born in 1980. Michael works at John Deere Tractor Works where he handles parts and earns $20,000 per year. Mary teaches at Simpson College and earns $15,750.00 annually. She is also doing postgraduate work to complete a doctorate degree.

While the trial court found that both parties would be fit parents, it denied Michael's application for joint custody of Kathleen and awarded sole custody to Mary. The court ruled that Michael would be entitled to reasonable visitation rights including, "but not necessarily limited to" the following:

A. Because of [Kathleen's] age, [Michael] should

be entitled to visit her every Wednesday evening for a period of two hours, said hours to be agreed upon by the parties, and every Sunday afternoon for a period of four hours.

B. When Kathleen reaches the age of three, [Michael] shall be entitled to visit her every Wednesday evening for three hours and every other weekend from Saturday at 9:00 A.M. to Sunday at 6:00 P.M.

C. [Michael] shall be granted visitation with Kathleen on alternate holidays, a couple hours at a time for the next year and a half and then longer visits thereafter.

D. [Michael] shall be granted visitation with Kathleen, beginning when she reaches the age of three, some days during the summer months, to be arranged by the parties.

In addition, Michael was directed to pay $60 per week child support.

In its property division the trial court awarded each party the household goods and other personal property in his or her possession. Michael was awarded the diamond ring his mother gave him, the parties' Volkswagen automobile, and a boat and trailer. He was also directed to pay the debts on the latter three items. Mary was awarded her engagement and wedding rings and the parties' Firebird automobile. The parties' house was sold before the decree was entered, and the $7,000 realized from the sale was used to pay two debts and then divided equally between the parties. Mary was directed to pay her personal doctor bill, and the parties were each to pay half of the hospital bill for Kathleen's birth. No alimony was awarded.

II.

Mary's first contention on appeal is that the child support award of $60 per week is inadequate. Having reviewed the criteria governing child support awards set forth in Iowa Code § 598.21(4) (1981), we find the support award to be equitable and justified. As a general rule,

[p]arents are equally obligated to support their

> children. Gerk v. Gerk, 259 Iowa 293, 296-299, 144 N.W.2d 104, 107-108 (1966). Disparity in the amount each parent is required to contribute toward child support results from differences in ability of parents to contribute.

In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974). It appears to us from the record that both parties are able to discharge their legal obligation of support toward Kathleen without hardship. Moreover, we do not believe the support award places a disproportionate share of the obligation on Mary. She estimates Kathleen's separate monthly expenses to be $85 per week. She must pay the $25 sum above the $60 child support she receives. We do not find this unreasonable.

III.

Mary also contends that the court erred in failing to include in the decree a provision providing for the automatic adjustment of child support to reflect increases in the consumer price index. While the Iowa Supreme Court in In re Marriage of Stamp, 300 N.W.2d 275, 277 (Iowa 1980), indicated that a trial court in its discretion could incorporate a fair provision providing for a cost of living adjustment, it did not make such a provision a requirement. The provision is often desirable though since it reduces the loss of purchasing power to the custodial parent while eliminating the need for the parent to incur additional legal expenses at modification proceedings. Id. Whether the provision is appropriate should be determined on a case by case basis after considering various factors including:

> . . . the income history and employment stability of both parents, whether future significant fluctuations in income are likely, whether significant changes in other factors affecting child support such as health, job changes and special needs of the children are foreseeable, and whether the custodial parent's income, along with projected expenses, will require significant sacrifices by that parent in the absence of child support adjustments.

Id.

We believe that, on the facts of this case, a cost of living adjustment

provision similar to the one set forth in Stamp is appropriate. We therefore conclude that the trial court's decree should be modified to include the following provision:

ADJUSTMENT OF CHILD
SUPPORT PAYMENTS

> On or before each anniversary date of this decree, the parties shall file a stipulation with the Clerk of this Court providing for increased or decreased child support payments based upon the following: Child support payments shall be increased or decreased by the same percentage as the percentage change in the National Consumer Price Index as published by the United States Department of Labor for the most recent twelve month period for which data is available, provided that Respondent's gross salary for the like period has increased by at least the same percentage. If Respondent's gross salary increased by a lesser percentage, then the payments to Petitioner shall increase by this lesser percentage. In the event Respondent claims the benefit of the above limitation, he shall submit sufficient proof of income to Petitioner for the relevant years. If the parties are unable to stipulate to the correct adjustment amounts, either may request that the Court determine the same, either itself or by appointment of a special master. The cost of such proceedings shall be shared equally by the parties and any adjustment made shall relate retroactively if necessary to the appropriate anniversary date.

IV.

Mary's next contention is that the visitation rights granted Michael are unreasonable and unduly burdensome in light of Kathleen's young age and length of the visits. She claims that allowing Michael visitation rights every Sunday for four hours deprives her of the opportunity to enjoy her own weekend activities with her daughter. She also challenges the expanded visitation set to commence when Kathleen reaches the age of three.

Unless the contrary is shown, the best interests of a child requires a continuing association with the non-custodial parent. In re Marriage of Morton, 244 N.W.2d 819, 822 (Iowa 1976). We find nothing in this case to suggest that the

best interest of Kathleen would be better served by reducing the amount of visitation time with Michael. While it may be harder for Mary because of her job to make sure Kathleen is available and ready at the court ordered times, we do not believe it to be unduly burdensome. On the contrary, we find it to be a small obligation on her part. Indeed, we believe she should work to implement the court's ruling that the amount of visitation "shall include but not necessarily be limited to" the times specified. While they may appear somewhat restrictive, the specified times establish the minimum amount of visitation and we see no reason to alter it here. We are confident that satisfactory adjustments in scheduling visitation can and will be made by parties who have the child's best interests in mind.

V.

Mary challenges the property division to the extent that she was not awarded an interest in the parties' boat and trailer or cash payment in lieu thereof. Our analysis of the property division is governed by Iowa Code § 598.21 (1981), 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)). Applying these criteria, we find Mary's contention without merit.

The trial court's allocation of indebtedness and items of personal property was equitable and justified. Various items, including Mary's Pontiac automobile, were purchased and paid off during the marriage. There was, however, still a balance on the boat and trailer, which is now Michael's responsibility. While the payments on the boat and trailer made during the marriage were paid from marital assets, we do not feel compelled to award her an equity interest in these items. We believe the unencumbered household items she received have a value in excess of the boat and trailer and, therefore, affirm the trial court's division of the assets.

VI.

On cross-appeal, Michael contends that the court erred in denying his application for joint custody. We disagree.

The factors the court is to consider in weighing whether joint custody is feasible are set forth in In re Marriage of Burham, 283 N.W.2d 269, 274 (Iowa 1979). Those weighing against joint custody in the instant case include:

> (2) Do the parents agree to joint custody, or is one or both opposed?
>
> (3) Have the parents demonstrated that they are able to communicate and give priority to the child's welfare such that they are capable of reaching shared decisions in the child's best interests?
>
> (4) Is there geographical proximity such that there will be no substantial disruption of the child's schooling, association with friends, religious training, or other routines?
>
> . . .
>
> (7) Are the work hours and routines of both parents such that child care will be suitable with either parent?

Mary is opposed to joint custody and the parties, while each appears to be a suitable custodial parent, have demonstrated that they were not capable of reaching shared decisions concerning visitation arrangements in the past. The distance between the parties' homes is also a potential problem; Michael lives in the northwest Des Moines area and Mary lives in Indianola. In addition, Mary's teaching responsibilities and postgraduate coursework may make her work routine unstable and unsuitable for a joint custody arrangement. Under these circumstances, we believe the trial court correctly denied Michael's application for joint custody. In so ruling, we reiterate our belief that the parties should strive to comply with the trial court's conclusion that:

> . . . both parents should be considered in making the major decisions concerning Kathleen as they pertain to her schooling, medical needs and

> religion. The Court finds that the best interests of the child will be served by permitting her to be in the custody of the respondent, subject to liberal visitation by the petitioner. Both parties should make an effort to cooperate for the purposes of encouraging harmony in the family and assuring that the visitation privileges are handled smoothly.

Having found that the decree should only be modified to include a cost of living provision, it is affirmed in all other respects.

AFFIRMED IN PART; REVERSED IN PART.