FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-404 / 94-0690

IN RE THE MARRIAGE OF JOHN EMIL KLUESNER AND JEAN ANN KLUESNER

Upon the Petition of
JOHN EMIL KLUESNER,

Petitioner-Appellee,

And Concerning
JEAN ANN KLUESNER,

Respondent-Appellant.

Appeal from the Iowa District Court for Delaware County, William G. Klotzbach, Judge.

Jean appeals from various provisions of the parties' dissolution decree. **AFFIRMED.**

Stephen B. Jackson of Jackson Law Office, Cedar Rapids, for appellant.

Robert L. Sudmeier of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

John and Jean Kluesner were married on May 19, 1979. John was involved in a farming partnership with his brother and Jean worked in the John Deere office. They have four daughters: Jennifer, born July 14, 1981, Jaclyn, born November 30, 1984, Jamee, born April 8, 1986, and Justine, born April 12, 1988. Jean was laid off in 1981; she did not work outside the home again until 1993. During the marriage, Jean was the primary caretaker of the four girls and helped out on the farm.

In 1984, John and his brother dissolved the partnership. John continued farming on 171 acres (referred to as the home place) he and Jean purchased. John and Jean later bought two 40-acre tracts of land for $118,000 and then a 128-acre tract for $197,500.

In April 1993, Jean moved out of the family home leaving the four girls in John's care. Jean then worked full-time for Ertl, earning a net monthly income of $814.20.

John filed a petition for dissolution of marriage in June, which was heard in December 1993. Jean's brother and sister, as well as several others, testified it was in the girls' best interests that they live on the farm in John's primary care. John and Jean each testified about the valuation of the parties' assets and their liabilities as did a certified public accountant, who testified in Jean's behalf. The parties' valuations varied by as much as one-half million dollars.

The district court awarded the parties joint custody of the children with John being awarded primary physical care. Jean was ordered to pay $283.34 per month in child support. The district court substantially accepted John's valuation of the farm assets and liabilities. The court found Jean and John had $182,765 in net marital assets. Jean was awarded a car, some household goods and furnishings and a cash settlement of $83,382. The district court ordered both parties to pay their own attorney fees. Jean appeals.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Custody. Jean argues the district court erred in giving primary physical care of the four children to John. Jean's two assertions to support this argument are that she was the primary caretaker during the marriage and that John has interfered with visitation. In the alternative to arguing for a change in physical care, Jean asks that her visitation rights be increased.

In issues involving child custody, our first and governing consideration is the best interests of the

children. The factors courts consider in awarding custody are found in our statutes, as well as prior cases. See Iowa code § 598.41(3) (1993); In re Marriage of Weidner, 338 N.W.2d 351, 355-56 (Iowa 1983). These factors essentially bear on 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). Gender is irrelevant and neither party should have a greater burden than the other in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

Consideration is given to allow children to remain with the parent who has been the primary caregiver. In re Marriage of Fennell, 485 N.W.2d 863, 865 (Iowa App. 1992). However, the parent who has been the primary caretaker of the children during the marriage will not necessarily be designated by the court to be primary caretaker at the time of the divorce. Id. at 865. We recognize and John does not dispute Jean's role as the primary caretaker during the marriage.

There was much testimony regarding the children's emotional attachment to John, and the strong relationship John has with the children. Some of this testimony came from Jean's family members. Jean testified the children geniunely loved their father. Testimony was also given, and Jean agreed, that the children loved the farm, enjoyed living on the farm, and were attached to the animals on the

farm. Since the separation, the children have been well cared for and the evidence shows John has a strong support network of family and neighbors to help him around the house when the need arises.

While there have been a few problems in picking up the children for visitation after the separation and prior to the dissolution, these problems have been minimal. While we do not condone behavior which in any way interferes with visitation, we also recognize the scheduled hand-over of the children may not always go as smoothly as the parties wish. Jean has not alleged any significant interference on the part of John. We find the problems alleged in this case lack the severity to mandate an award of primary physical care to Jean.

Considering all the evidence, we agree with the district court that the children's best interests will be served by awarding primary physical care to John.

II. Property division. Jean's sole contention is the district court erred in its valuation of the property that was divided. Jean contends that, after the district court's error is accounted for, she should be awarded a property settlement of $460,000. Jean asserts the district court should have relied on her valuations of the property, rather than John's.

We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of

Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

III. Attorney fees. Jean claims the district court erred in not awarding her trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn the district court's decision on attorney fees, an abuse of discretion must be shown. Id. We find no abuse of discretion and accordingly affirm the district court on this issue.

Both parties request attorney fees for this appeal. 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 Hunt, 476 N.W.2d 99 (Iowa App. 1991). We determine each party should pay for his or her own attorney fees for this appeal.

We affirm the ruling of the district court on all issues.

AFFIRMED.