FILED
FEB 2 2 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-631 / 89-968

85

IN RE THE MARRIAGE OF CHARLES NEAL HARRINGTON AND LINDA KAY HARRINGTON

Upon the Petition of
CHARLES NEAL HARRINGTON,

Appellee,

And Concerning
LINDA KAY HARRINGTON,

Appellant.

Appeal from the Iowa District Court for Fremont County, Keith E. Burgett, Judge.

Appellant appeals a district court decree of dissolution. **AFFIRMED.**

Vicki R. Danley, Sidney, for appellant.

Jennifer J. Rose, Shenandoah, for appellee.

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

SCHLEGEL, P.J.

Linda Harrington appeals the decree of dissolution awarding custody to Charles and the property division. We affirm.

Charles and Linda Harrington were married on June 19, 1982, and are the parents of one child, Jeanette, born February 2, 1983. Charles has custody of one child from a previous marriage while Linda has custody of two children from a previous marriage. The parties separated in August 1988 and Charles filed a petition for dissolution on October 6, 1988. On October 31, 1988, a temporary custody order was entered giving Charles liberal visitation over the weekends but awarding the primary physical care of the child to Linda. At this time, Charles lived in Sidney while Linda had moved to Shenandoah and had enrolled the children in that school system.

Following trial, the district court entered its decree of dissolution. The court found that Charles had done a considerable amount of the child raising and appeared to be the more responsible and organized of the parents. As such, the court awarded primary care of the parties' daughter to Charles. In addition, the parties' property and debts were divided.

Linda has filed this appeal. Linda seeks custody as well as a debt-free car and a determination that Charles be responsible for the VISA debt. Charles seeks attorney fees on appeal.

Our review in this matter is de novo. In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974); Iowa R. App. P. 14(f)(15).

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) and in In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983), and 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; gender is irrelevant and neither parent 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).

The long-term best interests of Jeanette require that she be placed with Charles. The record shows that Charles has been a good and stable parent. He has provided most of the care for Jeanette. Charles accepts all of the children while Linda has problems treating all of the children equally. Another important factor is that the trial court apparently believed Charles' version of the facts. There

is nothing in the record to cause us to dispute this finding. We affirm the trial court's finding of custody.

Linda also contends the property division is inequitable. Each partner in the marriage is "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). An examination of those factors and of the record shows that the property division was equitable. Both parties have other children to support and Charles has a substantial debt remaining on the house. The debt is not nearly as one sided as Linda would have us believe. We affirm the trial court's division of property.

Charles requests attorney fees on 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 Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). Charles is entitled to some assistance from Linda in paying for this appeal. We award Charles $350 in attorney fees.

AFFIRMED.