FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BILLIE JOE TOW AND LARRY C. TOW

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Upon the Petition of	)	
BILLIE JOE TOW,	)	Filed February 26, 1986
Petitioner-Appellee,	)	
And Concerning	)	
LARRY C. TOW,	)	5-488 84-731
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Marshall County (D-3286) - Carl D. Baker, Judge.

Respondent husband appeals the decree dissolving the parties' marriage. **AFFIRMED.**

Donald G. Juhl, Nevada, Iowa, for respondent-appellant.

Charles F. Fairall of Fairall, Fairall, Kaplan & Condon, Marshalltown, Iowa, for petitioner-appellee.

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

HAYDEN, J.

Respondent husband appeals the decree dissolving the parties' marriage. He asserts: 1) the trial court should not have divided custody of the two minor children; 2) the property division is inequitable; 3) alimony and child support are excessive; and 4) the court should not have awarded petitioner wife attorney fees. We affirm.

Larry and Billie Jo Tow were married in 1962; at the time of trial they were 42 years old and 38 years old, respectively. The parties have three children, one of whom is an adult. Since the commencement of the action, Michael, age 16, has been living with his father while Christopher, age 10, has been living with his mother.

Billie Jo and Larry have operated a 104-acre dairy farm since 1962. As reflected in the parties' tax returns, from 1978 through 1982, the gross profits from this operation almost doubled. In 1982 gross profits totaled $242,443. The deductions equalled $196,233, including $28,087 in depreciation.

In addition to helping with the milking operation, Billie Jo has worked outside the home. She sold Mary Kay Cosmetics for several years and also sold real estate. Presently, she owned two Diet Centers which the trial court valued at $12,000. In 1982 her net profit plus depreciation was $5,230.

The trial court awarded Larry custody of Michael and Billie Jo custody of the youngest child, Christopher. Larry was ordered to pay $400 per month in child support and $400 per month in alimony.

With respect to the property division, the trial court determined the parties had assets totaling $648,000 and debts of approximately $242,000. Larry was awarded the family farm, the house, farming equipment, bank accounts, stock, and crops, subject to his payment of all indebtedness. As her share of the property, Billie Jo received $150,000 payable over 13 years; $20,000 was due

within 45 days of the decree with the remaining balance to be paid at the rate of $10,000 per year plus interest. Petitioner also received the two Diet Center franchises subject to indebtedness. However, respondent was ordered to pay a $5,000 debt on one of the franchises.

The trial court also ordered respondent to provide medical and hospitalization insurance on Christopher, pay his own attorney fees, and contribute $7,500 to petitioner's attorney fees. Larry has appealed.

Our review of this proceeding is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court although we are not bound by them. Iowa R. App. P. 14(f)(7).

I.

The parties do not dispute the fact that Larry should have custody of Michael. Larry, however, argues that it was improper to award custody of their youngest child, Christopher, to Billie Jo. He claims that the two minor children should not be separated and that Christopher's best interests require placement with his father. We disagree.

The paramount consideration in determining custody is the best interests of the child. Iowa R. App. P. 14(f)(15). No hard and fast rule governs which parent should have custody. Rather, it is necessary to view the record as a whole and consider the characteristics and needs of the children, the characteristics of the parents, their respective abilities to provide for the emotional, social, moral, material and education needs of the children, the nature of each proposed environment, available alternatives, and any other relevant matters disclosed in the particular case. In re Marriage of Bowen, 219 N.W.2d 683, 688 (1974). In custody determinations,, weight may be given to the preferences of the child if the child is of sufficient age and maturity. In re Marriage of Grandinetti, 342 N.W.2d 876, 879 (Iowa Ct. App. 1983).

In attempting to foster the children's best interests, courts ordinarily attempt to avoid divided custody. Id. "The underlying rationale is that split custody deprives children of the benefit of constant association with each other which, as innocent victims of marital bankruptcy, they should not lightly be subjected to." Id. We do not separate siblings absent "good and compelling reasons." In re Marriage of Burham, 283 N.W.2d 269, 276 (Iowa 1979).

Applying these principles, we conclude that the trial court's custody determination should not be disturbed. In our de novo review, we find compelling reasons for dividing custody between Larry and Billie Jo. Christopher has lived with his mother since the commencement of these proceedings. While he did not testify at trial, witnesses indicated that Christopher had expressed a preference for living with his mother. Dr. Carroll Roland, a psychologist, testified that, from an emotional standpoint, Christopher's primary relationship was with his mother. On the other hand, the child was "very confused and at times quite angry towards his father." Dr. Roland said Christopher felt he had been rejected by his father and that he was the least-favored of the three children. The psychologist also indicated that, in his opinion, removing Christopher from the custody of his mother would be a devastating and traumatic event.

Further, some testimony reflects that Christopher and his brother have a strained relationship. As the trial court indicated, at times Michael has been abusive toward Christopher, and Christopher has expressed reservations concerning his relationship with his older brother. We recognize that evidence is conflicting on this point. Larry cites us to testimony that indicates the relationship between the brothers is good and characterizes the difficulties as mere sibling rivalry. We are inclined, however, to defer to the trial court's assessment of the evidence. Due to the nature of an appeal, this court does not have an opportunity to observe the demeanor of any witnesses. As such, we are hesitant

to interfere with a determination of credibility, absent some clear indication in the record.

Since compelling reasons exist for divided custody, we affirm the decree in this respect. We are confident that Billie Jo can provide a suitable environment for Christopher. Christopher has lived with his mother since birth and has expressed a desire to remain with her. We see no reason to unnecessarily disrupt his life by removing him from this environment.

II.

Larry also argues that the property division is inequitable and that the court incorrectly valued the dairy farm.

Our analysis of the property division is governed by section 598.21(1) of the Iowa Code which codifies many aspects of our prior case law. A percentage division of property is not statutorily sanctioned. Rather, the ultimate question is whether the distribution is equitable under the specified facts of the particular case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981).

Viewing the facts before this court in light of section 598.21(1), we conclude that the distribution of property was equitable. An award of $150,000 properly reflects Billie Jo's contributions to the farming operation and the marriage. Contrary to respondent's assertion, we do not view this award as imposing an "overwhelming" financial burden "calculated to force liquidation of all the agricultural assets." Rather, the award seems to properly strike a balance between the parties' competing interests.

We further conclude that the trial court's valuation of the farm at $300,000 is proper. At trial, three appraisers testified concerning the value of the parties' home, farmland, and buildings. Two of Billie Jo's experts gave values of $312,500 and $349,000; Robert Johnston, a real estate appraiser for respondent, testified that the property was worth $230,000. The trial court found that this lower

value was largely due to Johnston's depreciation of the farm buildings. Based on this evidence, the trial court's valuation is reasonable.

III.

We also find that the support payments ordered by the trial court are equitable.

The factors to be considered in awarding child support are set forth in Iowa Code section 598.21(4). Both parties to the marriage have an obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each person to contribute. In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981).

The criteria to be considered in awarding alimony have been codified in Iowa Code section 598.21(3) (1985). While payment of alimony is not an absolute right, it is awarded out of fairness, according to the peculiar circumstances of each case. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1967). The spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible. In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983). Two of the factors to be given great weight in such a determination are the duration of the marriage and the ability of the supported spouse to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

We have reviewed the record and find that the trial court appropriately considered these factors in arriving at $400 per month alimony and $400 per month child support. The support obligations reflect an equitable balance between Billie Jo's needs and Larry's ability to pay. We therefore affirm these provisions of the decree.

IV.

The remaining issues before this court concern attorney fees. Larry argues that the trial court erred in awarding Billie Jo $7,500 in attorney fees; Billie Jo requests appellate attorney fees in the amount of $3,150.

The trial court is vested with considerable discretion in allowing attorney fees to be awarded in dissolution cases. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa 1983). The allowance here appears fair and reasonable and should not be disturbed.

In evaluating Billie Jo's request for attorney fees on appeal, we consider the needs of the party making the request and the ability of the other party to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). In doing so, we conclude that an award of attorney fees would be inappropriate.

After consideration of all the contentions raised by the parties, we affirm the decree in all respects.

AFFIRMED.