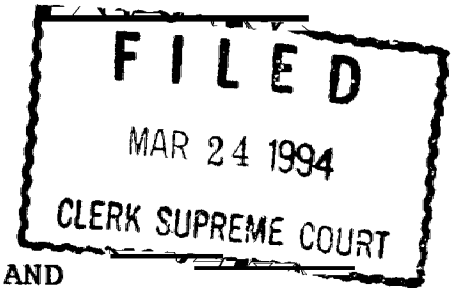


IN THE COURT OF APPEALS OF IOWA

No. 4-074 / 93-887



IN RE THE MARRIAGE OF BELENANN MAY BUTTERFIELD AND
MICHAEL PAUL BUTTERFIELD

Upon the Petition of
BELENANN MAY BUTTERFIELD,

Appellee,

And Concerning
MICHAEL PAUL BUTTERFIELD,

Appellant.

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Appeal from the Iowa District Court for Cerro Gordo
County, J. W. Frye, Senior Judge.

Michael Butterfield appeals the district court's order
dissolving the parties' marriage. **AFFIRMED.**

John G. Sorensen of Stanton & Sorensen, Clear Lake, for
appellant.

Judith O'Donohoe of Eggert, Erb, Ott, O'Donohoe & Frye,
Charles City, for appellee.

Heard by Schlegel, P.J., and Habhab and Cady, JJ., but
decided by Habhab, P.J., Cady, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving by
order of the Iowa Supreme Court.

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SCHLEGEL, S.J.

Michael Butterfield appeals the district court's order dissolving the parties' marriage. He contends the district court erred in: (1) denying him joint physical care of the parties' minor child; (2) dividing marital property; and (3) ordering him to pay child support. Belenann Butterfield requests appellate attorney fees.

Michael and Belenann Butterfield's seven-year marriage was dissolved in May 1993. One child of the marriage exists: Kaylin, born August 9, 1991. Michael is thirty-four, and Belenann is twenty-six years of age. The parties have similar educational backgrounds, and both have been gainfully employed since 1989. According to the parties' financial affidavits, Belenann earns approximately \$641.15 net income biweekly, and Michael earns approximately \$1533.87 net income per month.

The dissolution decree awards joint legal custody to both parents with primary physical care of Kaylin going to Belenann. The district court stated it had considered the request for joint physical care but did not find "unusual circumstances" to justify such an order. The court approved a stipulation by the parties regarding personal property and, among other things, awarded the marital home to Belenann. The court ordered Michael to pay \$150 per month in child support based on the consideration that the actual care of Kaylin is almost equally shared by the parties. No awards of alimony were made.

Michael appeals. He first argues compelling circumstances exist justifying an award of joint physical care. Second, he contends the property division was inequitable because (1) it did not reflect that Michael had brought more property than Belenann into the marriage and (2) the property was incorrectly valued. Third, Michael claims the district court erred in ordering him to pay child support as he has actual physical custody of Kaylin an equal amount of time as Belenann. He also argues that, if anything, he should receive child support because Belenann's income is greater than his and he incurs day-care costs. Belenann requests appellate attorney fees. We affirm.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

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

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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 Vrbn, 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).

Having carefully considered the record in light of these guiding principles, we agree with the district court's conclusion that primary physical care of Kaylin should be placed with Belenann. The district court's finding that Belenann is more capable of providing Kaylin with a stable and suitable environment is consistent with the evidence in the record. We further agree that Michael should receive liberal rights of visitation as discussed in the trial court's dissolution decree.

Secondly, Michael argues the district court erred in dividing the parties' property by (1) failing to recognize the source of the property; (2) failing to accurately evaluate the property; and (3) failing to consider the propriety of an equal division. The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re

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Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or 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 598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). We have considered the parties' respective arguments and find the district court's property distribution to be fair and equitable under the circumstances of this case.

Next, Michael appeals the district court's award of child support for Kaylin in the amount of \$150 per month. He argues that since the parties share the responsibilities of physical care almost equally, he should not be required to pay child support. Application of the child support guidelines in the present case reveals that as the noncustodial parent, Michael's monthly child support obligation is \$345.12 (22.5 percent of \$1533.87).

The district court lessened Michael's child support obligation to \$150 per month, however, due to the fact that actual physical care of Kaylin is almost equally shared by the parties. The district court found that as long as each party maintains care of Kaylin for an approximately equal period of time, an adjustment in the prescribed child support guideline amount is necessary to avoid substantial injustice. We recognize the trial court's discretion to

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adjust downward the required amount of child support under the guidelines given the special circumstances of this case. We decline to interfere with the district court's child support award.

Finally, Belenann requests appellate attorney fees and costs. 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).

Michael shall pay \$1000 toward Belenann's appellate attorney fees. Each party shall pay one-half the costs of this appeal.

AFFIRMED.