IN THE COURT OF APPEALS OF IOWA

No. 0-122 / 99-1344
Filed April 28, 2000

IN RE THE MARRIAGE OF CONNIE M. COLE AND LESLIE G. COLE

Upon the Petition of
CONNIE MAE COLE,
Petitioner-Appellee,

And Concerning
LESLIE G. COLE,
Respondent-Appellant.

FILED
APR 2 8 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, William R. Eads, Judge.

The respondent appeals the child custody and distribution of marital property provisions of the parties' dissolution decree. **AFFIRMED.**

Bradley L. Norton of Norton & Norton, P.C., Lowden, for appellant.

Maurine A. Braddock of Honohan, Epley, Braddock & Brenneman, Iowa City, for appellee.

Heard by Sackett, C.J., and Vogel and Hecht, JJ.

HECHT, J.

Les George Cole ("Les") appeals from the child custody and property division provisions of the parties' dissolution decree. We affirm.

I. Factual Background and Proceedings. Les married Connie Cole ("Connie") on May 23, 1987. Les and Connie are parents of a son, Jonathan, who was born November 30, 1991. Both parties had been previously married and divorced. Connie's previous marriage produced two sons, Joey and Michael who are in their father's primary physical care during the school year and their mother's primary care during the summer months.

Les is a high school graduate who was forty-six years of age at the time of trial. He is employed by the University of Iowa Hospitals and Clinics in the housekeeping department at a gross wage of $1,882.75 per month. In addition to his employment at the hospital, Les had a part-time job and worked at times on his family's farm during the marriage.

Connie, a high school and nursing assistant program graduate, was forty-five years of age at the time of trial. She, too, is employed in the housekeeping department as a supervisor at the University of Iowa Hospitals and Clinics, and earns a gross monthly wage of $1,997.58. She also works from thirty to forty-four evening hours at Hy-Vee per month and one weekend per month at the hospital. She pays child support to her ex-husband for her two older sons.

The parties separated in September of 1997 when a sexual abuse charge was filed against Les and a no-contact order required him to move out of the family home. The criminal charge alleged Les committed the offense against

Connie in the family home. In October of 1997, the parties entered into a temporary stipulation granting Connie primary physical care of Jonathan subject to visitation by Les every other weekend. Les later pled guilty to charges of assault with intent to commit sexual abuse and domestic abuse assault.

The district court awarded primary physical care of Jonathan to Connie and divided the assets and liabilities of the parties. The decree directed that Les shall maintain health insurance and Connie shall provide dental insurance for Jonathan during the period Les is obligated to pay child support, and ordered the parties to share equally the medical and dental expenses which are not covered by insurance. Les appeals from the custody, property division, and insurance provisions of the decree.

II. Standard of Review. Our review 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, but are not bound by them. Iowa R. App. P. 14(f)(7).

III. The Merits.

A. Custody Issue. The critical issue is which parent will do the better job of raising Jonathan. *See In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). The parent who has the ability to do the better job of raising the child during his minority is the parent who should be granted custody. *See In re Marriage of Vrban*, 359 N.W.2d 420, 424 (Iowa 1984).

Les argues the district court erred by granting primary physical care to Connie. Although Les did provide some of Jonathan's care prior to the separation of the parties, the record is clear Connie was the primary physical

care provider for the child before the separation of the parties. She has continued in that capacity since the separation of the parties. In child custody disputes, we consider whether allowing a child to remain with a parent who has been the primary caretaker will promote stability in the child's life. *In re Marriage of Moorhead,* 224 N.W.2d 242, 244 (Iowa 1974); *In re Marriage of Green,* 417 N.W.2d 252, 253 (Iowa App. 1987).

After school officials expressed concern about his behavior in kindergarten, Connie promptly sought professional assistance. Jonathan was diagnosed with ADHD for which Ritalin was prescribed. Since the time medical management and counseling for the condition commenced, Jonathan has shown significant improvement of his conduct and performance in school. There is evidence in the record tending to prove Les has doubts about whether medical management of the condition is necessary. We believe Connie, who has provided primary care for Jonathan and responded appropriately to his needs since the parties' separation, is best equipped to provide primary parental care in this case.

It is clear both parents love Jonathan and have a good relationship with him. Connie clearly provides him with both structure and nurture. Though his counselor testified Jonathan sees Connie as someone "who makes him do things," the witness also noted the child shows affection for Connie and is fond of her. The record also suggests Jonathan thoroughly enjoys his time with Les and benefits from opportunities to visit the Cole family farm. Like the district court, however, we conclude Jonathan's best interests dictate Connie be the primary

physical care provider. We see no compelling reason to disrupt the custodial arrangement that has prevailed since Les stipulated Connie should have primary physical care in October of 1997.

B. Property Division. Les claims the district court failed to equitably divide the assets and liabilities of the parties. Each party is entitled to a just and equitable share of the assets. *In re Marriage of Havran,* 406 N.W.2d 450, 452 (Iowa App. 1987). In evaluating the propriety of the district court's distribution of the parties' property, we are guided by the factors set forth in Iowa Code section 598.21(1) (1999). The sparse evidence in the record of the nature and extent of the parties' personal property and asset values made it difficult for this court to evaluate the district court's division of the property. After a thorough review of the record, however, we concluded the district court's distribution of the assets and liabilities was equitable.

Les claims the district court improperly set aside $10,000 to Connie in the property division. This sum was obtained from Connie's parents at the time she and Les purchased the marital home; and was repaid by one or both of the parties when Connie sold the home she received in the property division from her prior divorce. Les claims the money obtained from Connie's parents was not a loan, but was instead a gift to him and Connie, and should have been considered by the court in the division of the assets notwithstanding repayment of the sum to Connie's parents.

In support of his contention, Les notes Connie's mother testified the transaction was at least, in part, a gift. The district court found the transaction

was a loan from Connie's parents. We agree with the district court's finding. The two checks totaling $10,000 named only Connie as payee. Although one of the checks in the amount of $7850 refers to a "gift" on the face of the instrument, we believe the conduct of the parties evidences the transaction was actually a loan. The record is not clear with respect to whether one or both of the parties made the repayment to Connie's parents. However, the fact the money was repaid at or near the time Connie received the proceeds from the sale of her former home suggests the parties considered the transaction as a loan rather than a gift.

We note approximately $12,000 received by Connie from the sale of her former residence was used for family expenses during the marriage. Under all the circumstances presented in the record, we believe the district court's distribution of assets and liabilities is equitable.

C. Insurance. The district court ordered Les to provide health insurance and Connie to provide dental insurance for Jonathan and further ordered the parties to share equally the expenses not covered by such insurance. Les contends the court should have: (1) directed him to provide all the insurance; and (2) required Connie to pay him one-half of the cost of such insurance plus one-half of the medical and dental expenses not covered by insurance. We acknowledge there might be some efficiency in having one parent provide all of the insurance coverage, however, we believe the district court's resolution of this issue is equitable. Accordingly, we affirm.

AFFIRMED.