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DEC 29 1993
COURT

IN THE COURT OF APPEALS OF IOWA

No.3-597 / 92-2027

IN RE THE MARRIAGE OF RAJKUMAR GRANDHI AND LINNEA JILL GRANDHI

Upon the Petition of
RAJKUMAR GRANDHI,

Appellee,

And Concerning
LINNEA JILL GRANDHI,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge.

The wife appeals from the child custody and property division provisions of the order dissolving the parties' marriage. **AFFIRMED.**

Robert L. Rausch of the Rausch Law Firm, Waterloo, for appellant.

R. James Sheerer of Cornell & Sheerer, Cedar Falls, for appellee.

Curtis J. Klatt, Waterloo, for minor children.

Heard by Oxberger, C.J., Habhab, J., and McCartney, S.J.*

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

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OXBERGER, C.J.

Rajkumar (Raj) and Linnea Jill (Jill) Grandhi were married in India in 1984 and in the United States in 1985. They have two minor children: Natasha, born August 9, 1985; and Jaykumar, born March 1, 1987.

Raj was born in India where he received a bachelor of science in engineering. Raj initially came to the United States to attend graduate school at the University of Northern Iowa. He quit school, however, and began working for a car dealership in Cedar Falls. Raj eventually worked his way up to the position of general manager and currently earns in excess of $100,000 per year.

Jill was raised in Decorah, Iowa. She attended the University of Northern Iowa as a math major where she met Raj. In August 1991, Jill obtained a teacher assistantship at the University of Iowa. She eventually dropped out and was unemployed at the time of the dissolution.

On October 27, 1992, the district court dissolved the parties' marriage. The court awarded the parties joint custody of the children with primary physical custody awarded to Raj. Jill was not required to pay child support. The court awarded Raj the family residence and awarded Jill the Donutland business acquired during the marriage. It ordered Raj to pay Jill $500 per month for twenty-four months in transitional alimony. The court determined it had awarded Jill approximately $10,000 more property in the property division and determined each party

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should be responsible for their own attorney fees. The court denied Jill's 179(b) motion. Jill appeals.

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).

I. Child Custody

Jill contends the district court incorrectly awarded primary physical care of the children to Raj. She claims her parenting skills far exceed those demonstrated by Raj.

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 Weidner, 338 N.W.2d at 355-56, and in 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).

Raj has dramatically increased his involvement with the children. Numerous witnesses, including parents of children who are friends of Natasha and Jay, testified to Raj's strong involvement and outstanding ability to nurture. He has also encouraged the children to have contact with their mother, including taking them to visit her regularly when she was injured.

In August 1991, Jill obtained a teaching assistantship in mathematics at the University of Iowa. At her insistence, arrangements were made for her to have an apartment in Iowa City so she could have the children. After two weeks, she returned the children to Raj in Cedar Falls. Raj's parents, who were quite close to the children, came to assist him in caring for them. In early October, Jill dropped out of graduate studies but continued teaching until October 24 or 25, 1991. She then returned to Cedar Falls demanding a divorce. She had divorce papers prepared for filing by an attorney in Iowa City. She also demanded the children. When Raj refused to give her the children, she threatened to go to California. The next day Raj called her Iowa City apartment. Her phone answering machine message stated "California here I come." She left

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no address or phone number as to where she could be reached. She returned twelve days later. However, she spent an additional two months in California between September 1991 and May 1992.

Numerous independent witnesses, including Jill's friends and the teacher at the Montessori Preschool, testified Jill's behavior has changed dramatically. She has been openly hostile towards Raj and has displayed this in extreme outbursts in the presence of the children. One friend of Jill's described Jill as "cold, hostile, uncalled for and rude." She also testified "Jill is a pot waiting to boil over." Judy Connor, the children's Montessori Preschool teacher, testified she has been unable to predict Jill's conduct and "questioned her ability to make proper decisions about the children."

Jill's psychologist testified he believed she should receive custody of the children. However, he had not interviewed Raj. He also admitted, on cross-examination, she had not told him of the frequent hostile outbursts. He also testified Jill was guarded, evasive, "almost paranoid," and had trouble warming up to people.

During Jill's testimony, she frequently buried her head in her crossed arms on the desk in front of the witness chair. She continued to testify in a somewhat muffled voice. At one point, Jill was asked what would prevent her from using the children against Raj when she became angry

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with him. She replied, "That's what the court systems are for."

We conclude Raj has demonstrated a better ability to minister to the long-term best interests of the children. We affirm the district court's decision awarding physical care of the children to Raj.

II. Property Distribution

Jill complains she was awarded an unprofitable business in lieu of the family residence. She requests she receive half the equity in the home and half the equity in the business.

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). We also consider property division and alimony together in evaluating their individual sufficiency. In re Marriage of Dahl, 418 N.W.2d 358, 359 (Iowa App. 1987); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984).

Because the value of the family residence and the value of the business was nearly identical, we find the award equally economically beneficial. The trial court did not award the business to Jill to ensure she receive a profit, but merely to equally distribute the parties' assets. Jill received alimony to support herself during her transition.

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No evidence was presented regarding the profitability of the business, and the parties agreed to the value of the business. Also, both parties estimate the value of the business as approximately equal to that of the value of the home. Because Raj was awarded physical care of the children, also awarding him the family home was equitable. Rather than force a division of equally valued marital assets, each party was awarded one asset valued at $75,000. We also find the portion of the marital assets awarded to Jill to be equitable. We affirm the decision of the district court.

AFFIRMED.