**IN THE COURT OF APPEALS OF IOWA**

No. 2-454 / 92-380

**IN RE THE MARRIAGE OF PAULA JAY KNOX AND KEITH DWAINE KNOX**

Upon the Petition of

**PAULA JAY KNOX,**

Appellee,

And Concerning

**KEITH DWAINE KNOX,**

Appellant.

FILED
NOV 30 1992
CLERK SUPREME COURT

---

Appeal from the Iowa District Court for Fayette County, George L. Stigler, Judge.

Keith Knox appeals from a district court dissolution decree awarding custody of the parties' son to Paula and dividing the parties' assets. **AFFIRMED.**

Dennis G. Larson and Chris A. Frana of Larson Law Office, Decorah, for appellant.

R.L. Van Veldhuizen, Oelwein, for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

**OXBERGER, C.J.**

Keith and Paula Knox were married on December 1, 1984. One child was born of the marriage, Dillon, on July 14, 1988.

Keith was born in November 1956. He is self-employed and works as a part-time construction worker, and a part-time hog feeder and cattle raiser. Keith is also involved in stock car racing. The district court found Keith's net income to be $1,400 per month.

Paula was born in March 1965. She currently works for Land's End in West Union and earns a net monthly income of $1,200.

In May 1991, Paula filed this petition for dissolution of marriage. The case proceeded to trial. At trial, the primary dispute concerned custody of Dillon. Both parties attempted to characterize the other as deficient and uninterested in caring for Dillon. Some dispute also centered on the values of certain items of property for distribution.

Following trial, the district court entered its decree of dissolution. The court found that Paula had been the primary caretaker for Dillon throughout his life and Keith's interest had been recent. The court awarded the primary care of Dillon to Paula. Keith was ordered to pay $74 per week child support. The property was also divided with Keith receiving the parties' homestead and small acreage. Keith was ordered to pay Paula $5,000 as a

property cash distribution equalization award. Keith was also ordered to pay a portion of Paula's attorney fees. Keith has filed this appeal, challenging the custody decision and the distribution of property. Paula seeks appellate attorney fees.

**Scope Of Review**

Our scope of review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings, but give them weight, especially when considering the credibility of witnesses. In re Marriage of Toedter, 473 N.W.2d 233, 234 (Iowa 1991).

**I. Custody**

Keith contests the trial court's grant of primary physical custody of Dillon to Paula.

In child custody cases, the first and governing consideration of the courts is the best interests of the child. Iowa R. App. P. 14(f)(15). The critical issue in determining the best interests of the child is which parent will better serve the long-range best interest of the child. In re Marriage of Weidner, 338 N.W.2d 351, 359 (Iowa 1983). Gender is irrelevant and neither parent has the greater burden in attempting to gain custody in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

We have reviewed the facts and the trial court's findings. Both parents appear to be dedicated to Dillon, and either would be a fit custodial parent. However, Paula

was the primary care provider during the first few years of Dillon's life. Paula provided most of the feeding, nurturing, bathing, and child care arrangements for Dillon. Paula has a long history of steady employment.

On the contrary, Keith was frequently absent from the home during the first few years of Dillon's life. He actively pursued his leisure interest: stock car racing. He was also sporadically employed early in Dillon's life. Keith has been steadily employed during recent years and also began taking a greater interest in Dillon several months prior to the filing of the dissolution action.

The district court noted Keith's change for the better, but found Paula has been and remains the primary caretaker providing nurturing for the child. Based on this, we are convinced the trial court correctly decided the custody issue. We affirm the district court.

**II. Property Distribution**

Keith next contends the district court's property distribution is inequitable. Keith challenges the requirement he pay Paula $5,000 as a property cash distribution award. He contends Paula received a greater portion of the parties' personal property and contends he received a greater portion of the debt.

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).

Keith was awarded the homestead, his vehicle, his stock car, and farm equipment. His assets are valued at $10,400. Paula received her vehicle and pension plan. Her assets are valued at $5,352. Keith was awarded a greater portion of the parties' debts, but we note most of them are associated with the homestead, which Keith received in the distribution. Several debts are also associated with Keith's auto racing. Several of the property items "awarded" Paula were hers prior to the marriage. The silver set was a gift to Paula from her grandmother.

We have reviewed the evidence and determine the property distribution awarded by the district court is equitable. We affirm.

**III. Appellate Attorney Fees**

Paula requests appellate attorney fees. 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).

We find Paula has a need for assistance with attorney fees. She has care and custody of Dillon. Keith has an adequate earning capacity and is able to assist her. Finally, Paula was required to defend this action on appeal.

We award Paula $750 in appellate attorney fees.

**AFFIRMED.**