

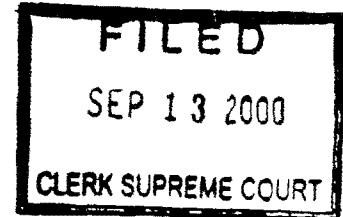
IN THE COURT OF APPEALS OF IOWA

No. 0-498 / 99-1720
Filed September 13, 2000

**IN RE THE MARRIAGE OF LYNETTE J. LEE
AND RANDALL E. LEE**

Upon the Petition of
LYNETTE J. LEE,
Petitioner-Appellee/Cross-Appellant,

And Concerning
RANDALL E. LEE,
Respondent-Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Black Hawk County, John
Bauercamper, Judge.

The respondent appeals, and petitioner cross-appeals, from the custody
and property distribution provisions of the parties' dissolution decree.

AFFIRMED.

Timothy-J. Luce of Anfinson & Luce P.L.C., Waterloo, for appellant.

Michael W. Buckner and Obie Saddler, Jr. of Ball, Kirk & Holm, P.C.,
Waterloo, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Randall Lee appeals, and Lynette Lee cross-appeals, from the custody and economic provisions of their dissolution decree. Randall contends the district court erred by granting Lynette primary physical care of the children and awarding Lynette temporary child support despite a shared physical care arrangement. In her cross-appeal, Lynette argues the district court erred in the valuation of the family home when making the property distribution. We affirm.

Randall and Lynette married in 1983. They have three children: Nicole, born in July of 1981; Stephanie, born in March of 1986; and Kelsey, born in February of 1990. Lynette was thirty-six at the time of the dissolution and Randall was thirty-eight. Lynette has worked as a radiology technologist since 1987 and earns \$17.95 per hour. Randall's employer is Orthotics & Prosthetics One and he earns \$10.75 per hour. He earns a small amount of additional income in the summer by umpiring softball games.

On November 6, 1998, Lynette petitioned for dissolution. In her petition, she requested temporary physical placement of the minor children with her and an award of temporary child support. On November 24, the district court entered a temporary child support order requiring Randall to pay Lynette \$432 per month. At that time, the couple continued to live together in the family home. On December 3, Randall filed an application for reconsideration, asking the court to suspend his child support obligation until the parties separated. Lynette resisted, claiming she had assumed responsibility for the payment of joint bills and expenses and would be moving from the family residence with the children as soon as her pending purchase of a new home was completed. The court

declined to change its order.

In January of 1999, Lynette finalized the purchase of a house two blocks away and moved out of the family home. Lynette initially wanted the children to live with her but Randall refused. The couple informally agreed to share physical care of the children alternating on a weekly basis. Lynette understood the alternating placement arrangement was undertaken on a trial basis. In April of 1999, Randall filed an application for temporary custody. He asked the court to reconsider the temporary child support order and approve the joint physical care arrangement. After a hearing on July 22, 1999, the court noted Lynette's move and vacated the temporary support order effective June 1, 1999. It also ordered the shared physical care arrangement to continue until trial.

Trial was held in September of 1999. In its final decree, entered September 27, 1999, the court awarded joint legal custody but concluded it was in the children's best interests to be in Lynette's primary physical care. The trial court modified the temporary child support order to \$300 per month for January through May of 1999.

Randall appeals and Lynette cross-appeals. Randall contends the trial court erred by granting Lynette primary physical care and declining to set aside the temporary child support order. Lynette disputes the trial court's valuation of the homestead.

I. Scope of Review. We review dissolution decrees de novo. See *In re Marriage of Knickerbocker*, 601 N.W.2d 48, 50-51 (Iowa 1999) (citations omitted). We examine the entire record and adjudicate anew the parties' rights on the issues properly presented. *Id.* (citation omitted). In doing so, we give

weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. *Id.* (citations omitted).

II. Primary Physical Care. Randall does not seek primary physical care of the minor children. Rather, he argues to maintain the shared physical care arrangement the couple had before trial. He contends it was error for the district court to decline to continue that arrangement permanently.

In any custody determination, the primary consideration is the best interests of the children. Iowa R. App. P. 14(f)(15); *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999) (citation omitted). The court's objective is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *Murphy*, 592 N.W.2d at 683. We identify numerous factors to help determine which parent should serve as the primary caretaker of the children in a divorce. See Iowa Code § 598.41(3) (1997); *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa App. 1997) (citations omitted). These include the characteristics of the parents, as well as the capacity and desire of each parent to provide for the needs of the children. *Id.*

The paucity of evidence in this case hampers our review. While we applaud the amicable nature of this divorce, the evidence regarding the factors we must apply is sparse. Neither Lynette nor Randall claimed the other was a better parent. The trial transcript does not even reveal who, if either, was the primary caregiver during the marriage. Only Lynette and Randall testified on the custody issue. Lynette did submit affidavits from three family friends at trial. The affidavits support the conclusion Lynette has been more involved and responsible when it comes to the needs and nurturing of the children. All three

affiants favored primary placement with Lynette.

The trial court concluded both parents were capable of raising the children. The court rejected Randall's proposal of shared physical care and awarded Lynette primary physical care. Based on a de novo review of the record, we agree with the trial court. We recognize shared physical care is deemed a viable disposition of a custody dispute if in the best interests of the children. See Iowa Code § 598.41(5) (1999). Although the Lee children did reasonably well during the alternating placement arrangement, little evidentiary support exists in this case for favoring such an arrangement permanently. Since their separation, Lynette and Randall have failed to communicate effectively regarding the children's medical and dental care expenses. In addition, there is little evidence addressing the possible long-term effects of a shared custody arrangement on the children. Giving due deference to the trial court's opportunity to observe the parties firsthand, we affirm its decision to award primary physical care to Lynette.

III. Temporary Child Support. Randall contends the district court erred in calculating the amount of temporary child support. He argues the court should have calculated support for each parent, as though he or she were the noncustodial parent. He urges the lesser of those two amounts should then be set off from the greater. According to his calculations, the parent who had the greater amount under the guidelines would pay the difference after the setoff.

We find several flaws in this argument. First, we question whether Randall preserved error. Randall did not appeal any of the district court's orders on temporary child support within thirty days of entry. Instead, he waited until

entry of the final decree and then appealed this issue. Temporary orders involving financial assistance in dissolution cases are final judgments which must be appealed within thirty days from the district court decision in order to preserve the right to contest the award of assistance. See *In re Marriage of Denly*, 590 N.W.2d 48, 50 (Iowa 1999) (holding temporary child custody order was interlocutory) (citation omitted). Because Randall failed to earlier appeal, he cannot now argue that temporary child support should not have been allowed. See *id.* at 49 (citation omitted).

Even if the issue were preserved, Randall's calculation method using a setoff is misguided. Randall cites *In re Marriage of Will*, 489 N.W.2d 394 (Iowa 1992), for the proposition that when the parties had divided physical care, child support should be calculated for each parent and then these amounts set off from one another. That case is inapposite. *Will* did not involve temporary child support, but rather final. See *id.* at 400. Furthermore, that case involved a *split* physical care arrangement. *Id.* at 397. 'Split physical care' refers to the separation of the children of the marriage between the parents—that is, each parent has physical care of at least one child but not all of the children. *Id.* This is not the same as *divided* or shared physical care, the arrangement the Lees had, in which physical care of all children is granted to one parent for a period of time and to the other parent for a period of time. See *id.* Randall does not explain why the setoff rule regarding child support in the split physical care situation should apply in the divided care situation. In fact, the Iowa Supreme Court implicitly rejected such an argument in *In re Marriage of Fox*, 559 N.W.2d 26, 28-29 (Iowa 1997) (noting differences between divided and shared physical

care and alluding to potential effect of the two types of arrangements on child support calculation). We affirm on this issue.

IV. Valuation of Marital Home. Lynette disputes the trial court's valuation of the homestead at \$50,000. She presented the court with an affidavit of Fred Miehe, Jr., a licensed real estate broker. He placed the market value between \$60,000 and \$65,000. Randall called a real estate appraiser, Mike Locky, to testify. Locky appraised the home at \$50,000. Lynette contends the trial court was not permitted to totally disregard Miehe's opinion. She argues the court erred by not averaging the two amounts for a value of \$56,250.

Randall's appraiser researched comparable sales and carefully examined the real estate before concluding the market value of the property was \$50,000. He testified persuasively concerning this analysis. He also indicated a real estate broker may be more inclined to inflate a home's value for sale purposes and to increase the potential sales commission. The district court's valuation was well within a range permitted by the evidence, and we will not disturb it on appeal. *See In re Marriage of Driscoll*, 563 N.W.2d 640, 643 (Iowa App. 1997).

AFFIRMED.