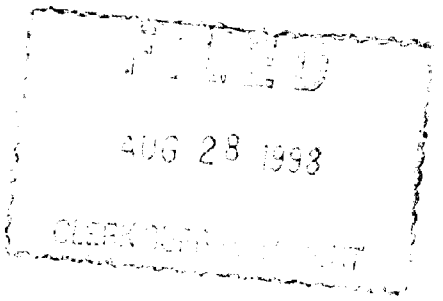


IN THE COURT OF APPEALS OF IOWA

No. 8-177 / 97-1650

IN RE THE MARRIAGE OF DEBRA HANKINS AND MICHAEL HANKINS

Upon the Petition of
DEBRA HANKINS,
Appellant,

And Concerning
MICHAEL HANKINS,
Appellee.

Appeal from the Iowa District Court for Hancock County, Gilbert K. Bovard, Judge.

The petitioner appeals various economic and child custody provisions of the parties' dissolution decree. **AFFIRMED.**

Jeanne K. Johnson, Des Moines, for appellant.

David Shinkle, Des Moines, for appellee.

Heard by Huitink, P.J., Mahan, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

PETERSON, S.J.

The marriage between Michael Hankins and Debra Hankins was dissolved on October 28, 1996. Debra appeals contending the district court erred in awarding primary care of the parties' children to Michael and that the court erred in the amount and duration of the award of alimony. She also requests reasonable appellate attorney fees.

I. Background.

Michael and Debra Hankins were married on August 12, 1978. Three children were born to this marriage; Spencer, born on September 25, 1981, Stephanie, born on January 19, 1984, and Shawna, born on May 27, 1987. At the time of trial, Michael was forty years of age and Debra was thirty-eight.

Both Michael and Debra are high school graduates. Michael has worked for twenty-three years in his father's trucking business and earns approximately $32,000 a year, or a net monthly income of $2,163.

Debra worked as a bookkeeper immediately after the parties' marriage and did so until Spencer was born. She remained at home caring for the children until she returned to the workforce on a full-time basis in 1991. Prior to that, she had some part-time employment. In 1991, she began as a dental assistant for Dr. Leroy Stroman in Algona, Iowa. She continued in that employment until July of 1995 when an incident occurred and her employment was terminated. She again secured employment as a dental assistant with another dentist in June of 1996. Her income

from this employment was approximately $14,768 per year, or a net monthly income of $996.

On September 19, 1996, Debra filed a petition for dissolution and requested an ex parte injunction. In the application for the injunction, she alleged that during the course of their marriage Michael verbally and physically abused her. The court granted the temporary injunction enjoining Michael from entering the parties' home. Michael filed a motion to rescind the temporary injunction. That matter came before the court for hearing on October 14, 1996. On October 28, 1996, the court rescinded the injunction which prohibited Michael from entering the marital residence.

During the period of time that Michael was enjoined from entering the marital home, he lived with his parents, Mr. and Mrs. Roland Hankins. They live close by the parties' marital home in Corwith. During this period of time, the minor children were living with Debra in the marital home, and she attempted to establish specific visitation rights for Michael. He, to a degree; resisted the attempt on the part of Debra to limit his access to the children through specific times of visitation; however, he complied with the arrangements worked out between the parties.

After the injunction was lifted, Michael moved back into the home and shared a bedroom with Spencer. This arrangement continued until the decree was entered on July 29, 1997.

The physical abuse that Debra alleged in her application for the temporary injunction involved two situations. On March 15, 1996, a confrontation occurred in the early morning hours. She entered Michael's truck looking for personal property

that she believed Michael had removed from their home. She alleged that Michael attempted to remove her from the truck by grabbing her ankles; however, she was able to resist that effort. Shortly after the incident in the truck, she entered the locker plant where Michael had gone and was visiting with Dave Burma, the owner. He described Debra as coming in the office "ranting and raving and upset about a personal problem at their home." It was his impression that Debra was upset that Michael was talking to him and he believed that Michael was calmer than Debra.

The other incident occurred in April 1996. Debra and Michael were arguing and Debra contends she was shoved down in the family room in the presence of the children and sustained a bruise on her upper thigh. Michael contends he has never struck Debra, but does admit there have been some "pushing and shoving contests" between them.

An evaluation was ordered by the court on May 20, 1997, in response to a joint application by Debra and Michael. This was completed by Dan Courtney of the Mental Health Center of North Iowa in Mason City. He interviewed Debra and Michael, as well as the three children, and gave Michael and Debra a psychological test known as MMPI-2. His evaluation of Debra and Michael is based substantially upon the profile as reveal by their responses to the MMPI-2 psychological test.

He believed that Debra responded to the questions in an open and candid fashion and that there were no indications of significant psychopathology. She appeared to have an adequate level effectiveness in coping in everyday functioning. He felt that she showed a definite indication of situational dissatisfaction and the

sense of being worn out, but did seem to have good insight into her personality and feelings. He felt she described herself as having difficulties in the past with lack of assertiveness, being submissive, and lacking self confidence. She was quite open about her level of resentment and distrust toward Michael and that there was a certain hardness and tough-mindedness in the way she dealt with the world. In his opinion, individuals with this type of profile can be caustic and sarcastic. They have a feeling of being misunderstood and unfairly blamed. He felt that her reports showed how she felt about her husband and that he has turned his family against her and he has attempted to extend this effort toward the children, particularly Spencer.

Her profile is one of an individual who is socially avoidant, self-conscious, and shy. The profile that was revealed is one that reflects cautiousness, seriousness, and dependability, and although an honest person, would have difficulty with trust if they felt threatened and can quickly develop an intolerant and hostile attitude. Confrontations for individuals with this profile are difficult and painful, and they try to avoid them and keep a rigid check on their emotions to avoid loss of control. They tend to keep people at a distance and are especially sensitive to any demands and are fearful of any emotional involvement with others. They tend to feel more comfortable alone or with a few close friends and family and are reliable and dependable and tend to be somewhat indecisive, moody, and sensitive to what others think of them. They can be easily influenced, especially by authority figures, but if they begin to distrust someone, they would likely become stubborn and evasive and lacking in sensitivity.

With respect to Michael, he felt he responded to the questions in an open and nondefensive manner. The profile that was formed from his responses to the test did not indicate any emotional difficulties; however, he felt there was a moderate indication of a personality difficulty. He felt that the profile so revealed is one associated with egocentricity, passive aggressiveness, immaturity, and independency. Individuals with profiles of this nature are outwardly conforming, but are demanding of those closest to them. They see expectations and rules associated with close relationships to be confining and irritating. They are sensitive to criticism and rejection and are unaware of how they distort or selectively report matters. Generally, they are over controlled and out of touch with their motives and feelings. Their defenses are denial and repression, as well as passivity, and they tend to lack persistence and dependability. They may vary from dramatic showings of attention and favor to moments of coldness and indifference. They tend to bottle up anger for periods of time, then act out of this anger, after which they return to long periods of inhibition and moderate behavior. They often feel tense and anxious as a result of repressed anger toward their partner, and there tends to be a lack of spontaneous warmth and affection for their children. They tend to ignore their negative feelings and look on the bright side of things and thus the gradual buildup of anger results in rare, but frighteningly short-lived, rages. They are often seen as charming and attractive and make good initial impressions. They tend to disregard the potential or actual consequence of their actions. It is associated with being energetic and talkative, but the relationships tend to be superficial.

In his interview with the children, he believed they are quite conscious of not wanting to be critical or unappreciative of either Michael or Debra. None of them are particularly in favor of the divorce, but have indicated they have become more resigned to the inevitability of it and appreciate that there will be a reduction in the arguing and yelling that goes on. None of them particularly blame one or the other parent for the difficulties, and they all seem to have emotional attachment to both parents. They perceive Debra to be the major disciplinarian, although they concede that Michael does some. They feel Debra is stricter than Michael, but none of them feel that their mother is harsh or unreasonable. They all feel that their parents are equally interested in their school and extracurricular activities, and both parents are credited by the children with regular attendance at school functions.

The report of Dr. Courtney does not make a specific recommendation with respect to physical custody of the children.

At the time of the trial, Spencer was fifteen years old and a sophomore in high school. He was a straight-A honor roll student and participated in sports, band, and extracurricular activities, and his health was excellent.

Stephanie was thirteen at the time of trial and was in eighth grade. Although she had struggled academically in the past, she has recently been doing much better in the classroom and has been active in sports. She also plays in the band and has been doing baby-sitting and has had waitressing jobs. She is also in excellent health.

Shawna at the time of trial was ten and in fifth grade, and she was described as having an easy time in school. She is also involved in athletics, band, and plays the piano. Her health was described as excellent.

Both Debra and Michael have attended school conferences consistently and, to the extent they are able to, attend extracurricular activities at school. Michael, alone, has made arrangements for birthday parties for the children. Debra has resisted the children bringing their friends into the home.

Debra is experiencing some difficulty in her relationship with Spencer. She believes that Spencer has a demeaning attitude toward women and contends that this increased after Michael moved back into the home. She described her relationship with Spencer at the time of trial as "strained."

In February of 1996, Debra took Shawna to their physician. She did this because of an odor about Shawna and some itching. This was diagnosed as a yeast infection; however, Debra requested that Shawna be examined because she felt that Michael may have sexually abused her because Shawna sat on Michael's lap. The investigation revealed that there had not been any sexual abuse.

Michael's sister's automobile became available and, without consulting Debra, Michael made arrangements for Spencer to purchase it. Spencer had accumulated some funds as a result of a lawn mowing service he has, and these funds were used and the balance of the funds were borrowed by Michael from a local bank. The security for that loan was the automobile that Debra was using. Debra was not consulted about this purchase.

Spencer then obtained a permit to drive the automobile to and from school. He has used the vehicle contrary to the provisions of that permit with Michael's tacit consent.

Debra's employment with Dr. Stroman came to an end as a result of a confrontation between Michael and Dr. Stroman. Michael believed that Debra and Dr. Stroman were having an affair, and he confronted Dr. Stroman about this in the office. After this confrontation, Dr. Stroman advised Debra that she should look for employment elsewhere. Dr. Stroman's son also worked in the office and shortly after the incident he grabbed Debra by the arms, pushed her against the wall, and told her he did not like her and his father should have fired her in the beginning.

She left the office and returned to her home, and Michael found her curled up on Spencer's bed. He felt she expressed a suicidal thought and contacted her minister and requested that she come to the home and help Debra through this situation. The minister did come and apparently was able to assist Debra with this matter.

Michael called four witnesses who have known him for some time. They described him as a good, honest, and hard-working person and said that he has good parenting abilities.

II. Standard of Review.

Our review is de novo. Iowa R. App. P. 4. We are required to examine the record made at the trial and determine anew rights on issued properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). The findings of the trial court, however, are recognized and given weight especially when considering the

credibility of the witnesses. Iowa R. App. P. 14(f)(7). The trial court has the advantage of hearing the evidence and observing the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). This important perspective can greatly enhance the decision-making process and is not forgotten on appeal. *See In re Marriage of Callahan*, 214 N.W.2d 133, 136 (Iowa 1974).

III. Custody.

The governing consideration in deciding the issue of primary care in a dissolution of marriage is the best interests of the child. The legislature has identified several factors to weigh in determining the best interests of the child in each particular case. *See* Iowa Code § 598.41(3) (1997). The courts have also outlined other factors which we are to consider. *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997). The critical inquiry is to determine which parent will do the best job in raising the children. *Id.*

In our de novo of the evidence, we agree that the district court correctly designated Michael to be the primary caretaker of the children. Although Dr. Courtney's report does not make a recommendation on physical custody, Debra contends that it infers she is regarded by the report in a more favorable light than Michael. The trial court was unable to correlate the personalities described in the report with the parties who appeared before him during the trial. Dr. Courtney generally described Michael and Debra in terms of the profiles that were developed as a result of the interpretation of the MMPI-2 psychological tests. The trial court found that during the course of the entire trial, including not only the parties' own

presentations, but also testimony from other individuals, when distilled to proper levels of credibility, the record presented two individuals substantially different than the profiles that had been developed. We believe this is a situation where we should defer to the judgment of the trial court.

At this time, there is a strained relationship between Debra and Spencer. Both Michael and Debra have attended the school functions; however, Michael has taken the initiative to arrange for birthday parties for the children with their friends. Debra has intimated to the children that they should not bring their friends into their home.

Domestic abuse is a factor to be taken into consideration in determining the custodial parent. *In re Marriage of Daniels*, 568 N.W.2d 51, 54 (Iowa App. 1987). Debra has accused Michael of domestic abuse. In an early hearing, the trial court determined that the acts attributed to Michael did not justify enjoining Michael from the home. The descriptions of the incidents of abuse vary to some degree between Michael and Debra; however, we do not believe they rise to the level of denying Michael physical custody of the children. The trial court, on two occasions, by different judges, made this determination.

IV. Alimony.

Alimony is an allowance to a former spouse in lieu of the legal obligation to support that person. *In re Marriage of Hitchcock*, 309 N.W.2d 432, 437 (Iowa 1981). In determining the appropriateness of alimony, the court must consider the earning capacity of each party and the present standards of living and ability to pay balanced against the relative needs of the other. *In re Marriage of Miller*, 524 N.W.2d 442, 445

(Iowa App. 1994). It is not an absolute right, but depends upon the circumstances of each particular case. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995). Alimony and the division of property are considered together in determining sufficiency. *In re Marriage of Jennings*, 455 N.W.2d 284, 286 (Iowa App. 1990).

Debra argues, in essence, that the alimony should be increased because of the inequality of the property settlement. She bases that on what she contends was an error in determining the value of the Chevrolet pickup truck, the 1965 Chrysler, and the 1989 Lincoln. The major difference is the value attributed to the 1950 Chevrolet truck and the 1965 Chrysler automobile. She based those values on the Old Cars Price Guide. That showed a value of $11,900 for the truck and $3,600 for the Chrysler. Michael paid $350 for the truck and has put approximately $1,000 into it in his restoration work. In his opinion, in order to command a price of $11,900, substantially more restoration work would have to be done on the truck. The trial court valued the truck at $3,000 and the Chrysler at $2,500. We believe that the trial court did not err in arriving at these values. We believe that in reviewing the property settlement as well as the respective incomes of the parties, the court did not err in its award of alimony.

V. Appellate Attorney Fees.

An award of appellate attorney fees is not a matter of right, but rests within the appellate court's discretion. *In re Marriage of Applegate*, 567 N.W.2d 671, 675 (Iowa App. 1997). In determining whether to award appellate attorney fees, we 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 decision of the trial court on appeal. *Id.* Under the circumstances of this case, we find that equity does not warrant an award of appellate attorney fees to Debra.

In conclusion, we find that the trial court did not err in awarding primary custody of the minor children to Michael, that the award of alimony to Debra is appropriate, and that her request for appellate attorney fees is denied.

AFFIRMED.