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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF FRED J. KREYKES AND DIANNE E. KREYKES

Upon the Petition of)
FRED J. KREYKES,) Filed November 19, 1979
Petitioner-Appellant,)
And Concerning
DIANNE E. KREYKES,) 256
Respondent-Appellee.) 3-62838

Appeal from Polk District Court - Dale S. Missildine, Judge.

Petitioner-husband appeals child custody provision of dissolution decree. Respondent-wife cross appeals economic provisions of the same decree. - Affirmed with modification and remanded for determination on child support.

Michael F. Lacey, Jr., of Patterson, Lorentzen, Duffield, Timmons, Irish & Becker, Des Moines, for petitioner-appellant.

Susan L. Ekstrom, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-husband Fred J. Kreykes appeals child custody provision of dissolution decree. Respondent-wife Dianne E. Kreykes cross appeals economic provisions of the same decree. Affirmed with modification and remanded for determination on child support.

Our review is de novo, Iowa R. App. P. 4; therefore, alleged misconduct of the trial judge, if in fact there was any, has no bearing on appeal. Each party appeals provisions of the decree that dissolved their five-year marriage. Facts relevant on appeal will be developed in discussion of the issues raised.

I. Fred appeals trial court's award of custody of the couple's only son, Jason, to Dianne. He asserts the evidence indicates he is better able to serve Jason's best interests. Our de novo review is governed by the criteria on child custody enunciated in In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974). Our primary concern is the best interests of the child, Jason, and we look to the parties to see which can better minister his long range interests. See In re Marriage of Bowen, 219 N.W.2d 683, 688 (Iowa 1974).

The trial court found both parents loved Jason and that neither was unfit to have custody of him. We agree. Yet, the trial court awarded Dianne custody based on its view of Fred's career:

> [A]nd then when he (Fred) gets employment, starting out in his career, if he thinks the freshman year in law school took up a lot of his time, he just has no concept of what it is going to be in the next several months or years and the court is very aware of this thing.
>
> Now I believe primarily because of that, and because of the fact that Mrs. Kreykes had had a great deal of the daily care of Jason and he seems to have developed very well up to this point, she is perfectly capable of ministering to his needs and I am going to give custody to Mrs. Kreykes of Jason.

We believe, however, time management between family and career is a matter of individual choice. The record does not indicate Fred chose his career over his family.

Instead of looking only to the given career of a parent, a court, when deciding child custody issues, must look at what each parent offers the child. The role of a parent has many facets. Parents provide for the child's physical needs and guide his spiritual awareness. Each parent influences the child's development by the examples he

or she sets. In addition, each parent may affect the child's development through advice, suggestion or demand. Thus, when a court decides custody as between parents, it must view the impact each would have on the child if awarded custody.

Here, the contrast between the characteristics of Fred and Dianne is stark. Fred is mature and responsible. He has definite goals in life. He is analytical, logical and in control of his emotions. He is realistic. He is respected and obeyed by Jason. Dianne is impulsive and has a quick temper. She does not deal with her emotions constructively. She has few, if any, goals in life other than to enjoy it. She has little sense of responsibility. Her emotions rise and fall; at times she is spirited and energetic and at other times depressed and lethargic. While Fred was pursuing his education, she quit her job and spent great periods of time satisfying personal whims at the expense of family needs. Dianne is not realistic. She has difficulty controlling Jason.

Jason is hyperactive, spirited and sensitive. His parents have counterbalancing qualities that would have benefited him had they remained married. Dianne is more outward in her sensitivity, creativity and love. But Jason's special needs require a parent who is stable, mature, responsible and who can be sensitive and receptive to his feelings. Our task, here, is to decide who will be Jason's full-time parent and who will be his part-time one. We believe Jason's best interest will be served by awarding custody to Fred since he can provide firmness and discipline, tempered by feeling. Jason needs the creativity, warmth and love Dianne can supply and it is hoped she can do so in her part-time role.

We modify the dissolution decree below by awarding custody of Jason to Fred and remand for the trial court's determination of Dianne's ability to pay child support.

II. Dianne cross appeals trial court's property division, $1 per year alimony award and failure to award attorney fees.

The criteria of Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1978), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), apply here and we find the trial court property division properly weighed the factors of Schantz. The facts here are far different from those in In re Marriage of Horstmann, 263 N.W.2d 885 (Iowa 1978), and we believe the parties' respective sacrifices relative to Fred's education have been accorded proper weight in the trial court decree. The trial court decree effectuated a fair and just distribution of the marital assets including any increase in

earning capacities. Further, the trial court's award of alimony was proper and allows for future modification if changed circumstances render such action expedient. See section 598.21, The Code 1977. Finally, the trial court did not err by denying Dianne attorney fees. See In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977).

The trial court decree is affirmed as modified. Costs on appeal are taxed to Dianne.

AFFIRMED AS MODIFIED.