

FILED
FEB 5 1980
CLERK OF THE SUPREME COURT
OF IOWA

IN THE COURT OF APPEALS OF THE STATE OF IOWA

JUDY B. MEPHAM,	)	
Petitioner-Appellee,	)	Filed February 5, 1980
vs.	)	
THOMAS C. MEPHAM,	)	
Respondent-Appellant.	)	$\frac{316}{3-61938}$

Appeal from Scott District Court - Margaret S. Briles, Judge.

Respondent appeals child custody, visitation, and economic provisions of dissolution decree. - Affirmed as modified.

Alan R. Havercamp, of Havercamp, Havercamp & Murray, Davenport, for respondent-appellant.

Dorothea O'Dean & H. Reed Doughty, of Winstein, Kavensky, Wallace & Doughty, Rock Island, Illinois, for petitioner-appellee.

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

PER CURIAM

Respondent appeals child custody, visitation, and economic provisions of dissolution decree. We affirm as modified.

Respondent, Thomas C. Mephram, appeals various provisions of the decree dissolving his eleven-year marriage to petitioner, Judy B. Mephram. Our review is de novo, Iowa R. App. P. 4, and we apply criteria enunciated in Schantz v. Schantz, 163 N.W.2d 395, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974).

I. Child Custody.

The trial court granted custody of the couple's two children, Collin and John, to Judy subject to "reasonable visitation" granted Tom. Tom asserts the trial court erred by not awarding him sole custody of the children, by failing to provide him specific visitation rights, and by not entering provisions for grandparental visitation. In reviewing these assertions, our first and governing concern is the best interests of the children. Iowa R. App. P. 14 (f)(5). The trial court awarded Judy custody based on its finding: "The childrens' needs will be more adequately served by the love, affection, care, environment and training which the petitioner can furnish them than those needs can ever be met by respondent." Although our review is de novo, we give weight to custodial judgment of the trial court when supported by the evidence. Harwell v. Harwell, 253 Iowa 413, 420-21, 112 N.W.2d 868, 873 (1962). In light of the Winter criteria, most notably the capacity and interest of each parent to provide for the needs of the children and the interpersonal relationship between the children and each parent, we think the trial court correctly concluded the best interests of the children would be served by awarding custody to Judy.

Judy has been primarily responsible for care of the children. Her working schedule is less demanding than Tom's and, thus, Judy is able to spend more time with the children. While Judy may have had emotional difficulties, they did not affect her ability to care for Collin and John. Custody has been fixed here for a considerable period and we do not think it would be in the best interests of the children to disturb that award now. See Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975). We affirm the trial court's child custody award.

We also agree Tom should be afforded reasonable visitation; however, we think the visitation provisions should be specified. The trial court stated at trial it would grant specific visitation periods to Tom and we think express visitation provisions here would minimize animosity between the parties and assure the children have sufficient contacts with their father. We believe the decree should be modified to grant Tom specific visitation rights, including the rights to: two one-week periods of visitation with both children during their summer vacation; holiday visitation on an alternating schedule; and alternating weekend visitation. On remand, express visitation provisions meeting these guidelines shall be established.

We believe entry of specific grandparental visitation rights may be unnecessary in light of the changes ordered in Tom's visitation rights and accordingly, we decline to enter grandparental visitation provisions. However, if the grandparents petition for visitation rights, on remand the trial court may review that petition under section 598.35, The Code 1979.

II. Property Division.

Tom asserts the trial court property division inequitably distributed the couple's assets alleging it did not reflect his contribution of \$5000 cash at the beginning of the marriage nor his contribution of earnings, which were the primary source of income during the marriage. According to Tom's valuations, Judy was awarded \$25,099 of the marital assets while he received \$21,759; he was held liable for \$2,467.75 in debts and she was ordered to pay three charge accounts of unknown value. Judy alleges Tom waived error on the property provision by accepting benefits of the decree and, alternatively, that the property division is equitable and should be affirmed.

We believe Tom has not waived his challenge to the property division, but after reviewing it in light of the Schantz criteria, we find trial court fairly divided the assets of the couple. The parties are similarly situated and made nearly equal contributions to the marriage. Both parties worked during the marriage and although Tom's earnings were substantially greater, Judy's efforts in the home equalized that disparity. While Tom did bring \$5000 cash into the marriage, Judy brought numerous household goods and also contributed \$2400 in proceeds from the sale of a home she owned at the time of the marriage. Although the trial court did not achieve equal distribution with mathematical

precision, we think the property division is fair and just. See In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976), and therefore affirm it.

III. Business Records.

Tom asserts the trial court erred by failing to enter his requested order compelling Judy to return business records he alleges she took during the dissolution proceedings. In her response to Tom's motion for new trial, and to amend and enlarge, Judy, through counsel, stated she "had no objection to returning the notebooks, records and papers claimed by respondent to be his at the expiration of the respondent's rights of appeal in this proceeding." We accept this statement of counsel that the records will be returned and accordingly do not decide if the trial court's failure to enter an order constituted error. If the records are not returned as promised, however, the trial court shall conduct a hearing on this matter and enter an appropriate order.

IV. Attorney Fees.

Judy seeks an award for attorney fees for this appeal. Attorney fees are not recoverable as a matter of right in a dissolution proceeding and such an allowance depends on one spouse's financial needs and the other spouse's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). Without fixing the amount of the fee, we order Tom to pay \$500 toward it. Costs of appeal are taxed to Tom.

AFFIRMED AS MODIFIED.