FILED
AUG 04 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-218 / 93-1314

IN RE THE MARRIAGE OF KAREN ANN GRANSETH AND PERRY THOMAS GRIMES III

Upon the Petition of
KAREN ANN GRANSETH,

Appellant/Cross-Appellee,

And Concerning
PERRY THOMAS GRIMES III,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge.

Karen appeals and Tom cross-appeals from various provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Robert G. Allbee of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, David S. Good of Nazette, Hendrickson, Marner & Good, Cedar Rapids, and Robert M. Jilek and Chad M. VanKampen of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for appellant.

Gary J. Shea of Shea Law Offices, Cedar Rapids, for appellee.

Heard by Donielson, C.J., and Cady and Huitink, JJ., but decided by Habhab, P.J., and Cady and Huitink, JJ. Donielson, C.J., takes no part.

HUITINK, J.

Karen Granseth appeals the custodial and child support provisions of the district court's decree dissolving her marriage to Perry Thomas (Tom) Grimes III. Tom cross-appeals from the provisions of the decree regarding division of marital property, child support, alimony, and visitation. We affirm as modified.

Karen and Tom were married on November 12, 1983. They have one child, Lauren, age six. Lauren by all accounts is a happy, well-adjusted child. Tom and Karen each claim to be the parent who assumed the greater burden of Lauren's primary care. Each has substantial primary care experience, and both are capable of providing for Lauren's primary care.

Tom and Karen first separated in 1990 when Karen left with Lauren and moved to her current residence. Although they were separated, Tom was at Karen's home every day to assist with Lauren's care. In April 1992 the parties abandoned all hopes of reconciliation and actively pursued this dissolution. They agreed to share physical care of Lauren pending resolution of their respective custodial claims.

Karen is thirty-five years old. She practices dentistry in Cedar Rapids. The district court valued her practice at $40,000. Her average net monthly income is between $7000 and $9000.

Karen has a history of depression. She has been successfully treated and is able to attend to her parental and professional duties without limitation.

Karen has a continuing romantic relationship with Harry Warner. She characterizes her relationship with him as something more than a "fling." He is a frequent overnight guest in her home and has significant contact with Lauren. Although Harry is a significant part of Karen's life, the record does not reveal much about him or the future implications this relationship holds for Lauren.

Tom is forty-three years of age. He also practices dentistry in Cedar Rapids. The district court valued his practice at $26,000. Tom's average net monthly income is between $2500 and $3500.

Tom is in good health. He has a good personal and professional reputation. He also has other romantic interests. They, however, are not as substantial as Karen's. There is evidence Tom is temperamental and his relationship with Lauren lacks affection. Tom denies these assertions and presented evidence supporting his patience with and affection for Lauren.

The district court found both Karen and Tom are "well able to provide financially and emotionally for their daughter." The court, however, found Karen "less than candid" and Tom "a better role model for Lauren and a more stable influence." Tom was awarded physical care of Lauren, and Karen was awarded liberal visitation including

eight weeks during the summer. Karen was ordered to pay $1500 monthly child support beginning June 1, 1993.

Karen and Tom were each awarded $118,187 in net assets. The property division did not include $77,000 Karen irrevocably transferred from her dental practice to Lauren for future educational expenses.

Karen contends the district court erred in awarding Lauren's physical care to Tom and that an error was made in calculating her child support as well as the date child support was to commence.

In child custody cases our first and foremost consideration is the best interest of the child involved. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983); Iowa R. App. P. 14(f)(5). We review the record de novo to determine how the child's best interest will be served. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we do give them weight particularly where the credibility of the witnesses is implicated. Iowa R. App. P. 14(f)(7).

The factors the court considers in awarding physical care are codified in Iowa Code section 598.41. The critical issue is which parent will do a better job of raising the child. Gender is irrelevant, and neither parent has a greater burden than the other to gain physical care in a dissolution proceeding. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

Karen claims she has been Lauren's primary care provider and her experience compels an award of physical care to her. The record, however, does not support her claim. There is ample evidence that the parties equally shared the burdens of Lauren's primary care and that both are capable of caring for her. Even if Karen was Lauren's primary care provider prior to separation, she is not assured of an award of physical care. In re Marriage of Fennell, 485 N.W.2d 863, 865 (Iowa App. 1992) (citations omitted).

After a careful review of the entire record we conclude Tom should be awarded physical care of Lauren. We agree with the district court's determination that Tom will be a better role model for Lauren and a more stable influence. We share the trial court's concerns about Karen's emotional stability and the wholesomeness of the custodial environment she offers Lauren.

Much of the testimony on the issue of physical care was irreconcilably in conflict. The trial court resolved this issue in favor of Tom in large measure because it found Karen was not a credible witness. A trial court deciding dissolution cases "is greatly helped in making a wise decision about the parties by listening to them and watching them in person." In re Marriage of Callahan, 241 N.W.2d 133, 136 (Iowa 1974). We will not second guess the trial court on this issue and accordingly affirm the decision to award physical care to Tom.

Both parties contend the trial court erred in its determination of child support. Karen argues the amount should not exceed $675 per month while Tom argues the court should have awarded him 22.5% of Karen's net monthly income. We disagree with both.

Under the child support guidelines, when the noncustodial parent's net monthly income is $3001 or more, the award is deemed to be within the sound discretion of the trial court. In re Marriage of Gehl, 486 N.W.2d 284, 286 (Iowa 1992). Karen's net income is between $7000 and $9000 per month. The guidelines do not provide for a specified amount of support in this situation. They only provide the amount can be no less than that required to be paid by a person earning $3000, which is $675 per month. We determine the trial court's award of $1500 per month in child support was well within its discretion, and we decline to disturb it on appeal.

Tom also cross-appeals the various aspects of the economic provisions of the dissolution decree. We address only his claim that the trial court erred in failing to award him one-half of the $77,577.52 Karen transferred to Lauren's name under the Uniform Transfer to Minors Act during the dissolution proceedings.

The record clearly indicates this money came from assets acquired during the marriage. The trial court found, and we agree, that Karen had not been entirely forthcoming in providing documents related to this

transfer. Although Karen asserts she was merely saving for Lauren's education, this action had the effect of placing the entire $77,577.52 outside of the marital estate. Based on our de novo review of the record, her motives can best be classified as "mixed." See In re Marriage of Cerven, 335 N.W.2d 143, 146 (Iowa 1983). We therefore modify the decree to include the $77,577.52 in Karen's property award. Karen is ordered to pay Tom one-half of this amount, $38,788.76 plus interest, to equalize the distribution of property.

Finally, Tom contends awarding Karen eight weeks of summer visitation is improper and not in Lauren's best interests. We disagree. While the trial court awarded Karen eight weeks of visitation, it specifically granted Tom the same weekend and Wednesday visitation that Karen receives during the remainder of the year. We do not find this arrangement will cause instability and confusion as Tom claims, rather it will better enable Karen to maintain her relationship with Lauren. We affirm the visitation award.

We determine all other issues the parties may have raised are either covered by this opinion or are without merit. Each party shall be responsible for his or her own attorney fees. Costs are assessed to Karen Granseth.

AFFIRMED AS MODIFIED.