IN THE COURT OF APPEALS OF IOWA

No. 9-118 / 98-0755
Filed April 30, 1999

IN RE THE MARRIAGE OF CYNTHIA A. HAGER AND WILLIAM J. HAGER

Upon the Petition of
CYNTHIA A. HAGER,
Petitioner-Appellant,

And Concerning
WILLIAM J. HAGER,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, K. D. Briner, Judge.

Petitioner appeals the custodial, visitation, child support, and economic provisions of the parties' dissolution decree. **AFFIRMED.**

Roger J. Hudson and Andrew B. Howie of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney & Shindler, P.C., Des Moines, for appellant.

Eric W. Johnson and John R. Walker of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

SACKETT, C.J.

Petitioner-appellant Cynthia A. Hager appeals from the economic and custodial provisions of the decree dissolving her eleven-year marriage to respondent-appellee William J. Hager. Cynthia contends (1) she, not William, should have been awarded primary physical care of the parties' minor children, William, born in 1990, and Ashley, born in 1992; (2) she was not afforded adequate visitation with the children; (3) her child support is too high; (4) the property division does not treat her equitably; (5) the district court did not correctly value property; and (6) William should have been ordered to pay her attorney fees. Cynthia also seeks appellate attorney fees. We affirm.

Cynthia and William were married in 1987. At the time, Cynthia was employed by GMAC and William was a farmer, employment they continued throughout their marriage and still held at the time of the dissolution hearing.

Cynthia filed this petition for dissolution in 1996. Trial was held in August of 1997 at which time Cynthia was thirty-three years of age and William was thirty-six.

The district court awarded the legal custody of the children to William and Cynthia jointly, but ordered primary placement with William, with Cynthia to have liberal rights of visitation. Cynthia was ordered to pay William $331 a month for child support, in addition to keeping the children insured for medical and dental care and paying one-third of uncovered expenses. The assets of the parties were divided, and William was ordered to pay Cynthia $42,374.25.

Cynthia first contends she is the better parent and should have been named the physical custodian. William contends the custodial arrangement made by the trial court is in the children's best interest. There is no challenge to the joint custody award.

In considering the issue of custody, the district court specifically found:

> Based on the wishes of the parties and the strong legal preference for joint custody, the court finds that if the parties abandon their combativeness and subordinate their own needs and wishes to the well-being of their children, both are suitable persons to have joint legal custody.
>
> In the court's considered opinion, Cindy's history of assaulting Bill, often in the presence of the children, militates strongly against an award of primary placement to her. Additionally, although both parties have been immature and self-indulgent, her irresponsibility in repeatedly exposing the children to extreme risk by driving at high speeds on country roads with them in the car also argues strongly against placing the children with her. Finally, her multiple acts of attempted suicide or threatened suicide gestures cannot be less than devastating to the children if they observe them or learn of them. Because such acts were multiple, the court cannot safely conclude that suicide efforts, including possibly a successful suicide effort, would not recur. These children are surely damaged by what they have seen of their parents' behavior, especially Cindy's behavior. To require them to establish their primary base in a home in which they might one day find that their primary custodial parent has attempted to commit or even succeeded in committing suicide is unacceptable.

We find, as did the trial court, either William or Cynthia would be an adequate custodian. They both love their children and have been substantially involved in their care. Yet, their selfish concerns have resulted in their failure to treat their children's other parent with respect.

Unfortunately, both parties have focused on the negative attributes of the other. Cynthia contends William has abused her emotionally. William contends Cynthia has abused him physically. The record supports both allegations. The district court found, and we agree, William uses taunting words and facial expressions to incite anger in Cynthia. Cynthia admitted physically abusing William. William suffered a broken nose and facial wounds.

Cynthia contends she has been the primary physical custodian. William challenges this statement, as did the guardian ad litem who found both parents played significant roles in their children's lives. William advances Cynthia's suicidal tendencies and attempts and her willingness to endanger the children should be held against her.

Our review is de novo. We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. *In re Marriage of Vrban,* 359 N.W.2d 420, 423 (Iowa 1984). Our objective is to place the children in the environment most likely to bring the children to healthy physical, mental, and social maturity. *Lambert v. Everist,* 418 N.W.2d 40, 42 (Iowa 1988). We look to determine which parent will in the future provide an environment where the child is most likely to thrive. *In re Marriage of Engler,* 503 N.W.2d 623, 625 (Iowa App. 1993). In reviewing a district court's award of custody, we give its finding deference because the district court had an opportunity to view, firsthand, the demeanor of the parties and evaluate them as custodians while we did not. *See id.*

We find no valid reason to disagree with the district court's determination William should have physical care and affirm on this issue.

Cynthia next contends, while the district court said she should have liberal visitation, the court then went forward to award specific visitation which she contends is too restrictive. Cynthia was granted every other weekend from 5:00 p.m. Friday until 5:00 p.m. on Sunday; twenty-eight days starting the first Friday in April and for twenty-eight days starting the first Friday in August; fourteen consecutive days of her choice during the children's summer recess; holiday visitation in even years as follows: Easter from Thursday at 5:00 p.m. until 5:00 p.m. on Sunday; four days of her choice including July 4th for Independence Day; Thanksgiving from 5:00 p.m. Wednesday until 5:00 p.m. on Sunday; December 25 from 12:00 p.m. until 12:00 p.m. on December 27; holiday visitation in odd years as follows: Valentine's Day from 5:00 p.m. on Friday to 5:00 p.m. on Sunday; Memorial Day from 5:00 p.m. on Friday until 5:00 p.m. on Sunday; Labor Day from 5:00 p.m. on Friday until 5:00 p.m. on Sunday; December 23 from 5:00 p.m. to 12:00 p.m. on December 25; and Mother's Day weekend from 5:00 p.m. on Friday to 5:00 p.m. on Sunday.

In determining the appropriate amount of visitation, we are guided by the principle a court should order such visitation as will ensure a child the opportunity for maximum continuing physical and emotional contact with the noncustodial parent. *See* Iowa Code § 598.41(1) (1993). The visitation given Cynthia is more than sufficient to meet this directive. *See In re Marriage of Drury*, 475 N.W.2d 668, 671

(Iowa App. 1991) (father given four weeks summer visitation plus various weekends and holidays).

In assessing Cynthia's claim she should have more visitation, we must focus on the animosity William and Cynthia have toward each other. The children, in visiting with their guardian ad litem, were most concerned with finding a way to keep their parents from their constant fighting. A Ph.D. licensed psychologist who interviewed and tested both parents reported, in part:

> [I]t is the belief of this psychologist that the pathology in their relationship has to a large extent blinded them to potential psychological damage which they may have and possibly will inflict upon the children by their mutual hostility, disparagement, emotional and, at times, physical abusiveness to each other. This psychologist wishes to make it clear that he has no reason to believe that either Bill or Cindy have or will physically or emotionally abuse their children. He strongly believes that they may well be at substantial risk for psychologically damaging their children by the intense hostility and volatility in their relationship with each other. This psychologist is concerned with the narcissistic components in each of their personalities as well as Cindy's histrionic over-reactivity and Bill's alcohol usage and related behaviors.

The psychologist determined the hostility was so serious he recommended the transfer of the children should be made through a third party.

The problems William and Cynthia have with each other and their children's concern with their fighting has the propensity of resulting in difficult situations for the children at each transfer of custody. Additional transfers would not be in the children's interests. We deny Cynthia's request that we increase her visitation.

Cynthia challenges the amount of child support she is ordered to pay contending the district court failed to correctly determine William's income in that it failed to reallocate depreciation taken on his income tax returns and increase his income by about twenty-five percent for child support purposes.

A court must determine a parent's current monthly income from the most reliable evidence presented. *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991). The question is whether the district court abused its discretion in fixing net income for the purpose of applying the child support guidelines. *In re Marriage of Gehl*, 486 N.W.2d 284, 287 (Iowa 1992); *In re Marriage of Thede*, 568 N.W.2d 59, 62 (Iowa App. 1997).

Cynthia fails to direct us to that part of the record where the alleged erroneous computation was made. Cynthia does not contend the depreciation figure represented other than straight-line depreciation nor that the depreciation was not a reasonable expense of William's doing business. Depreciation is a valid cost of doing business. *In re Marriage of McKamey*, 522 N.W.2d 95, 99 (Iowa App. 1994). Depreciation deductions for farm equipment reflect a decrease in value of those items and have been established by the Internal Revenue Service and Congress to reflect the cost of doing business. *Id.* However, a parent electing to expense certain depreciable assets should have that amount of expense allocated over a reasonable depreciation period. *See In re Marriage of Gaer*, 476 N.W.2d 324, 329 (Iowa 1991); *see also In re Marriage of Cossel*, 487 N.W.2d 679, 682-83 (Iowa App. 1992). Cynthia cites no

evidence showing William has not allocated depreciation over a reasonable period. We find no merit to her argument on this ground.

Cynthia next contends the property division made by the district court was not equitable.

The partners in a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each particular case. *In re Marriage of Plasencia*, 541 N.W.2d 923, 925 (Iowa App. 1995). We look to the economic provisions of the decree as a whole in assessing its equity. *See In re Marriage of Robison*, 542 N.W.2d 4, 5 (Iowa App. 1995). Iowa is an equitable distribution state which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *See In re Marriage of Havran*, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Cynthia challenges the values placed on certain property by the district court. She first contends the district court should have accepted the value of $165,000 her appraiser placed on the parties' home rather than the $145,000 figure of William's

expert. The district court advanced valid reasons for rejecting the appraisal of Cynthia's expert.

We have considered Cynthia's challenges to the value of other items. We find the value placed on the assets by the trial court to be well within the permissible range of evidence and we will not disturb it on appeal. *In re Marriage of Versluis*, 521 N.W.2d 760, 761 (Iowa App. 1994); *see also In re Marriage of Bare*, 203 N.W.2d 551, 554 (Iowa 1973); *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa App. 1984).

Cynthia further contends the district court improperly considered assets William had before the marriage as his in allocating the property between the couple. Iowa Code section 598.21(1) (1997) provides, in relevant part:

> The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:
>
> . . . .
>
> b. The property brought to the marriage by each party.

Iowa Code § 598.21(1)(b).

Cynthia contends she contributed to discharging the debt on the property and her efforts increased its value. We agree with the trial court the value of the property did not increase and, while the mortgage on the farm was paid off, we agree with the trial court the increase in the total farm debt negates Cynthia's argument their joint efforts increased the value of assets William brought to the marriage.

The division made by the district court divides nearly equally the

accumulations made by the parties and allows William to retain his farming operation. The Iowa courts have recognized Iowa's position as a farm state and the need to look to preserving the farming business in dividing assets in a dissolution. *In re Marriage of Callenius*, 309 N.W.2d 510, 514-15 (Iowa 1981); *In re Marriage of Andersen*, 243 N.W.2d 562, 564 (Iowa 1976); *In re Marriage of Briggs*, 225 N.W.2d 911, 913 (Iowa 1975).

Cynthia contends the value of her wedding ring should not have been considered in valuing the assets. The question is whether the distribution made is equitable. We find it is and affirm.

Cynthia contends William should have been ordered to pay her trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). For us to overturn the trial court decision on this issue, Cynthia must show the trial court abused its discretion. *See id.* We affirm on this issue.

Cynthia contends she should have appellate attorney fees. We have the discretion to award appellate attorney fees under Iowa Code section 598.36. In addressing Cynthia's request, we consider her needs in making it, the ability o' William to pay, and whether Cynthia was obligated to defend the trial court's decis' on appeal. *In re Marriage of Roerig,* 503 N.W.2d 620, 623 (Iowa App. 1993). is no basis to award Cynthia appellate attorney fees.

AFFIRMED.

No. 98-0755. [9-118] IN RE MARRIAGE OF HAGER

Appeal from the Iowa District Court for Black Hawk County, K. D. Briner, Judge. **AFFIRMED.** Considered by Sackett, C.J., and Vogel and Mahan, JJ. Opinion by Sackett, C.J. (10 pages $4.00)

Cynthia Hager appeals from the economic and custodial provisions of the decree dissolving her marriage to William Hager. Cynthia contends she, not William, should have been awarded primary physical care of William, born in 1990, and Ashley, born in 1992. There is no challenge to the joint custody award. We find, as did the trial court, either William or Cynthia would be an adequate custodian. They love their children and have been substantially involved in their care. Yet, their selfish concerns have resulted in their failure to treat their children's other parent with respect. We find no reason to disagree with the district court's determination William should have physical care. Cynthia contends visitation is too restrictive. In determining visitation, we are guided by the principle a court should order such visitation as will ensure a child the opportunity for maximum continuing physical and emotional contact with the noncustodial parent. The visitation given Cynthia is more than sufficient to meet this directive. The problems William and Cynthia have with each other and their children's concern with their fighting has the propensity of resulting in difficult situations for the children at each transfer of custody. Additional transfers would not be in the children's interests. We deny Cynthia's request that we increase her visitation. Cynthia challenges the child support she is ordered to pay contending the district court failed to correctly determine William's income in that it failed to reallocate depreciation taken on his income tax returns and increase his income by about twenty-five percent for child support purposes. Cynthia does not contend the depreciation figure represented other than straight-line depreciation nor that the depreciation was not a reasonable expense of William's doing business. Cynthia cites no evidence showing William has not allocated

No. 98-0755. [9-118] IN RE MARRIAGE OF HAGER(continued)

depreciation over a reasonable period. We find no merit to her argument on this ground. Cynthia next contends the property division made by the district court was not equitable. Cynthia challenges the values placed on certain property by the district court. We find the value placed on the assets by the trial court to be well within the permissible range of evidence. The division made by the district court divides nearly equally the accumulations made by the parties and allows William to retain his farming operation. Cynthia contends William should have been ordered to pay her trial attorney fees. We affirm on this issue. Cynthia contends she should have appellate attorney fees. There is no basis to award Cynthia appellate attorney fees.