

FILED

MAR 16 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JANIS M. LENTZ AND DONALD G. LENTZ

Upon the Petition of)

JANIS M. LENTZ,)

Petitioner-Appellee,)

And Concerning)

DONALD G. LENTZ,)

Respondent-Appellant.)

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8-723
88-1200

Appeal from the Iowa District Court for Marshall County
(No. DRD-29-0887), Milton D. Seiser, Judge.

The husband appeals from a dissolution decree, challenging the custody provision placing the parties' young son in the wife's physical care and the decree's economic provisions. **AFFIRMED AS MODIFIED.**

Joel T. S. Greer of Cartwright, Druker & Ryden,
Marshalltown, for respondent-appellant.

Susan S. Klaessy of Fairall, Fairall, Kaplan, Hoglan &
Condon, Marshalltown, for petitioner-appellee.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

PER CURIAM

Respondent-appellant Donald G. Lentz appeals the custody and economic provisions of the dissolution decree entered in the district court.

The parties, married in 1983, are the parents of a boy, Andrew, born in November 1985. Petitioner-appellee Janis Lentz has two children from a former marriage, both of which lived with the parties during their marriage. Donald does not have custody of his son from a previous marriage. Donald is now living with a woman he plans to marry who has a son and daughter, all of which have a good relationship with Andrew.

Donald contends the trial court erred in awarding (1) Janis physical custody of Andrew, (2) Donald responsibility for the \$12,000 lien on a car given to Janis, (3) Janis \$400 a month child support and \$300 a month alimony for two years, (4) Janis approximately \$4,444 for attorney fees. In the event Andrew's physical custody is to remain with Janis, Donald seeks expanded visitation rights.

Our scope of review in dissolution proceedings is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Physical Custody. Donald is most concerned about gaining physical custody of Andrew. In deciding child

custody issues, the best interests of the child is the first and governing consideration. Iowa R. App. P. 14(f)(15); Iowa Code § 598.41 (1987). The general principles applicable to the custody issue are summarized in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and In re Marriage of Bowen, 219 N.W.2d 638, 687-88 (Iowa 1974), and need not be repeated here.

Having applied these factors to the record before us, we find, as the trial court did, that Janis can minister more effectively to the long-range best interests of Andrew. She has been Andrew's primary caretaker. Such an arrangement will allow Andrew to continue living with his half-brother and half-sister whom he has lived with since birth. Our supreme court has expressed a strong interest in keeping brothers and sisters in the same home following a dissolution. In re Marriage of Orte, 389 N.W.2d 373, 374 (Iowa 1986). Donald describes Janis as unstable in work relationships and in finding a permanent home. Many of Janis's moves were prior to Andrew's birth, and her work outside the home during her marriage to Donald was interrupted so she could care for Andrew. The trial court further found, and we agree, that neither party is morally superior. While some of Janis's testimony at trial lacked credibility, Donald's testimony characterizing his financial business affairs and delinquent child support was often incorrect and very evasive. Janis testified to a

more consistent approach to discipline. Donald occasionally practices inappropriate discipline such as suspending Janis's son, Nathan, on a door hook five feet off the bathroom floor.

We affirm the trial court's order regarding physical custody, restrictions on Janis's moving, and Donald's visitation with the following addition. Donald shall be allowed six rather than four weeks of summer visitation on the same terms as set forth in the trial court decree. Andrew shall be allowed to celebrate his birthday with Donald on odd-numbered years unless his birthday falls on a Thanksgiving Day when Janis has visitation provided Andrew and Donald live in the same community. As the trial court indicated, the parties are encouraged to remain flexible regarding visitation by taking into consideration either party's family celebrations.

II. Economic Provisions. The economic issues of a dissolution must be viewed as an integrated whole. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa App. 1984). The property division, child support, and alimony provisions of a dissolution decree must be equitable to both parties and provide for the best interests of minor children. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981).

Donald contends the amount of alimony and child support awards are too much. He argues the court simply continued

the temporary awards which were based on Janis's highly-exaggerated estimates of his financial worth. Donald insists the alimony and support awards should be based upon his net taxable income as shown in his recent tax returns. Because Donald is the sole stockholder, employee, and officer of his heating and cooling business, we find this figure cannot be relied on to give an accurate picture of funds available for these awards. Donald's commingling of personal and corporate monies during and after the parties' marriage makes an accurate monthly income figure even more difficult to ascertain. Donald's 1987 individual income tax return shows \$26,402 in gross income. A financial statement Donald filed for a temporary support hearing indicated his business showed a \$40,000 net profit the first seven months of 1987. Donald has chosen to reinvest such profits in the business rather than make child support payments. While we admire Donald's dedication and desire to build up his business, his responsibility to support Andrew and Janis until she has an opportunity to get a nursing degree comes first. In re Marriage of Mead, 429 N.W.2d 564, 565 (Iowa App. 1980); see also In re Marriage of Behn, 385 N.W.2d 540, 543 (Iowa 1986). The criteria to be used in granting child support and alimony are set out in Iowa Code section 598.21 (1987). We find the trial court properly applied the guidelines and affirm the child support and alimony awards.

The remaining economic issue on appeal is the trial court's award of the 1986 Oldsmobile Cutlass to Janis and the requirement that Donald pay the debt due thereon.

Donald was awarded the business, which carries a value of \$35,000. We recognize that he has the debt on the Cutlass to pay of somewhere between \$11,300 and \$12,000, along with Janis's attorney fees of \$4,444.10 and his attorney fees of \$1,255.36. But he was also awarded the marital home.

As it relates to the marital home, it is true that it was owned by Donald prior to marriage. However, at the time of this marriage, it had an encumbrance of \$2,895, and that debt was retired during the marriage. In addition, the interior was remodeled, new carpeting layed, and a bathroom added along with a Jacuzzi.

We believe under these circumstances, the debt on the Cutlass automobile should be paid one-half by petitioner and one-half by respondent. We modify the decree accordingly.

Costs of this appeal are taxed one-half to Donald and one-half to Janis. The parties shall pay their own attorney fees.

AFFIRMED AS MODIFIED.

Danielson, P.J., and Habhab, J., concur; Hayden, J., dissents.

HAYDEN, J. (dissenting)

I respectfully dissent from that portion of the majority's opinion requiring Donald to pay one-half of the \$11,300-\$12,000 debt on the automobile awarded to Janis.

I do not agree with the majority's holding Donald should shoulder one-half of the payment of the debt on Janis's car. This debt burden, together with all other financial and economic obligations imposed upon Donald by the trial court and the majority, is not a fair and/or equitable distribution of the parties' assets and liabilities. I determine Janis should be solely responsible for the indebtedness on the automobile she received in this property division.