

FILED

DEC 23 1980

CLERK SUPREME COURT

352

IN THE COURT OF APPEALS OF IOWA

RONALD RAY HECK,

)

Petitioner-Appellant,

)

Filed December 23, 1980

vs.

)

LINDA E. HECK,

)

0-305

2-64547

Respondent-Appellee.

)

Appeal from Boone District Court - James C. Smith, Judge.

Petitioner-husband appeals from various provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Roland D. Peddicord and Mark A. Humphrey of Peddicord, Simpson & Sutphin, Des Moines, Iowa, for petitioner-appellant.

Barbara G. Barrett of Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, Iowa, for respondent-appellee.

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

Petitioner-husband appeals from various provisions of the parties' dissolution decree. He claims that the trial court erred in awarding custody of their minor child to respondent-wife. He also challenges the award of alimony, child support, attorney fees, and the division of property. Our review is *de novo*. Iowa R. App. P. 4. We modify the property division and otherwise affirm.

Ronald and Linda Heck were married on June 10, 1972. Libby, their adopted daughter, was born on May 11, 1977 and has been in their custody since shortly after her birth. The parties lived in Chicago for nearly two years after their marriage and then moved to Iowa in May of 1974, where Ron planned to help in his father's farming operation. They separated in August of 1978, and Ron filed a petition for dissolution on September 12 of that year. An order filed three months later gave temporary custody of Libby to Linda with reasonable and liberal visitation rights for Ron. He was also ordered to pay temporary support in the amount of \$160 per month during the pendency of the action as well as \$200 for 1978 Christmas money and \$250 for temporary attorney fees. After an extensive hearing, the trial court issued its decree on October 12, 1979. Linda was awarded custody of Libby with liberal visitation for Ron. He was directed to pay \$360 per month for child support. He was also required to pay \$200 monthly alimony for one year, \$150 per month for the next year, \$100 per month for the next year and none thereafter. Linda was awarded a \$15,000 cash property settlement, payable in three annual installments of \$5,000 each. Ron was ordered to pay an additional \$5,000 for Linda's attorney fees and \$3,212.60 for the fees of the attorney appointed to represent Libby's interests. Other provisions of the decree are not at issue here. After the trial court rejected various post-trial motions, Ron perfected this appeal.

I. The primary issue is whether the trial court was justified in concluding that Libby's best interest is better served by giving custody to Linda. See Iowa R. App. P. 14(f)(15). After considering the relevant factors as found in In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974), we conclude that the trial court was correct. Initially, we note the fact that Libby has been in Linda's custody since the parties' separation in 1978. "[W]hen it appears children are happy, well adjusted, adequately disciplined, and receiving proper care in a suitable home, they should not be removed therefrom other than for the most persuasive causes." Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975).

We think that there is sufficient evidence in the record to indicate that Linda is a loving, caring mother who is able to maintain a very solid relationship with her daughter. The attorney appointed to represent Libby recommended that custody be placed in Linda. Although Ron has many complaints about Linda's various activities and tendencies, most of these complaints pertain to past conduct, not shown to presently affect the child. We believe that either Ron or Linda would be a good custodial parent for Libby. But we agree with the trial court's conclusion that her best interest is better served by placing her custody with Linda. We therefore affirm the custody decree. Because we do so after reviewing the entire record *de novo*, we need not address Ron's contention that the trial court erred in overruling his motion under Iowa R. Civ. P. 179(b) for enlargement of the findings and conclusions.

II. Ron also complains that the economic provisions of the decree are inequitable and excessive and were imposed without regard to his ability to pay. The relevant factors used to determine appropriate awards of child support and alimony are found in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974), and Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (excluding fault), respectively.

Ron was ordered to pay \$360 per month for child support and \$200 per month for alimony, the latter figure to be reduced during both of the next two years and eliminated entirely after November, 1982. He argues that these payments, in conjunction with the other provisions of the decree, will force him into early bankruptcy. Regarding the support and alimony, however, Ron's claim is belied by the fact that he indicated in his own testimony that he was able to pay Linda about \$555 per month in 1979. His total support and alimony obligations under the decree are only five dollars more, or \$560 per month. In addition, that figure will be reduced significantly as alimony is eventually reduced to zero in 1982.

Ron argues that he should not have to pay any alimony at all since Linda is capable of working outside the home. She is not compelled to do so, however, since she has expressed her desire to be at home with Libby at least until she is able to start preschool, at which time Linda plans to obtain employment. See Zoellner, 219 N.W.2d at 525. It is also significant that the alimony obligation is only temporary and will disappear completely after 1982.

Linda has undisputed monthly expenses of approximately \$980. She is in no position at this time to meet those expenses. Although Ron's financial situation is not as secure as it could be, he is better able to help Linda than she is able to help herself.

In view of all these circumstances, we affirm the child support and alimony awards in their entirety.

III. Ron was ordered to pay a lump sum property settlement in the amount of \$15,000, payable in three annual installments of \$5,000 each. He claims this award is excessive. We agree. As noted above, Ron's financial position is somewhat precarious. His monthly expenses total \$717. In addition, he has incurred a large number of debts in his farming operation as well as necessary and significant fixed expenses. Although Linda is entitled to something in return for her contributions to the marriage, we must also be mindful of Ron's ability to pay. We therefore reduce the lump sum award to \$10,000 to be paid in five annual installments of \$2,000 each. The unpaid balance of this award shall draw interest at the rate of twelve percent per annum from the date of the original decree.

IV. Finally, Ron argues that he should not have to pay the entire amount of the fee owing to the attorney who represented Libby in these proceedings. According to section 598.12, The Code, such fees are to be assessed "against the party responsible for court costs unless the court determines that the party responsible for costs is indigent in which event the fees shall be borne by the county." In this case, costs were assessed to Ron who is not and cannot claim to be indigent. We find no abuse of discretion in the trial court's assessment of costs.

Except for the modification of the property division described above, we affirm the decree in all respects.

AFFIRMED AS MODIFIED.