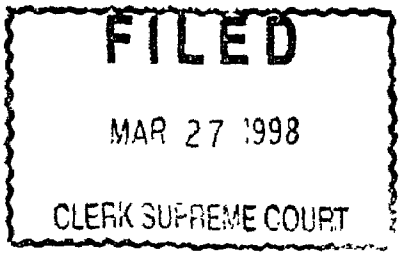
IN THE COURT OF APPEALS OF IOWA

No. 7-779 / 97-0662
Filed March 27, 1998

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IN RE THE MARRIAGE OF WENDY G. HOLLAND AND JEFFREY C. HOLLAND

Upon the Petition of
WENDY G. HOLLAND,
Appellant,

And Concerning
JEFFREY C. HOLLAND,
Appellee.

Appeal from the Iowa District Court for Winnebago County, Paul W. Riffel, Judge.

Petitioner appeals the economic and child custody provisions of the parties' dissolution decree. **AFFIRMED.**

Mark A. Young of Young Law Office, Mason City, for appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

STREIT, J.

A mother appeals the award of primary physical care of her three boys to their father and the trial court's division of property. Because the father can provide a more stable lifestyle for the boys, we affirm the award of primary physical care to him. In light of the property brought to the marriage by each party, the gifts given to Jeffrey by his parents, and the interest in preserving the family farm, the division of assets was equitable. We affirm the trial court's division of property.

I. Background Facts & Proceedings.

Jeffrey and Wendy Holland were married in 1984. They have three children: Wesley, born November 5, 1985; Wade, born September 18, 1987; and Wyatt, born October 5, 1989. At the time of trial, Jeffrey was thirty-four years old and Wendy was thirty-two.

Jeffrey is a high school graduate who completed a two-year farm operation course at Iowa State University. He has worked as a farmer all his life and currently farms approximately 1520 acres of corn and soybeans. Jeffrey had a farm income of $458,560 and a net loss of $21,588 in 1995. Part of his farm operations have been incorporated into Holland Farms, Inc. Holland Farms, Inc. had a gross farm income of $87,628 and a net loss of $84,187 in 1995.

Wendy is a high school graduate and completed a two-year secretarial course at NIACC in Mason City. For the first ten years of the marriage, Wendy was a homemaker and the primary caregiver of the children. She did not work outside the

home. For the last couple of years of the marriage she was employed by the Forest City school district, and worked part-time at the YMCA. Wendy's 1995 gross annual income was $9957 from the school district and $2353 from the YMCA.

Wendy brought few assets to the marriage. Most of the assets Jeffrey brought to the marriage were gifts from his parents in connection with the farm operation; including a one-half interest in a fifty-acre parcel located in Winnebago County valued at $37,500; a 20,000-bushel capacity grain bin valued at $19,000; and a John Deere tractor valued at $6000. He bought several other parcels of farmland from his parents at a price of $272,000. In 1996, Jeffrey had crops of 1137 acres in corn and 383 acres in soybeans, valued at $442,353. Jeffrey's farm machinery was valued at $142,752, and he owned several vehicles, including a 1996 Dodge pickup, valued at $26,000 with a $19,000 encumbrance.

The primary issue at trial was custody of the three children. The district court concluded it was in the children's best interests to award Jeffrey primary physical care. Wendy was ordered to pay $193 per month in child support. She was awarded a 1994 Dodge Caravan, a 1988 Polaris snowmobile, her IPERS account, her bank accounts, and personal household items. Jeffrey was awarded the bulk of the marital assets, valued at $861,035, but was also ordered to pay debts of $855,277. Jeffrey was ordered to pay $2000 toward Wendy's attorney fees. Wendy appeals the custody award to Jeffery and the division of assets.

II. Standard of Review.

Our review is de novo. Iowa R. App. P. 4. *In re Marriage of Miller,* 532 N.W.2d 160, 162 (Iowa App. 1995). We are not bound by the district court's findings of fact, but do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *Id.; In re Marriage of Brown,* 487 N.W.2d 331, 332 (Iowa 1992).

III. Custody of the Children.

The controlling consideration in child custody cases is always what is in the best interests of the children. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). The decision requires us to select the custodial parent who can minister most effectively to the long-term best interests of the children and place them in an environment that will foster healthy physical and emotional lives. *In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997).

Wendy was the primary caregiver of the children during the marriage. The parent who has been the primary caretaker of the children during the marriage will not necessarily be designated by the court to be primary caretaker at the time of the divorce. *In re Marriage of Fennell*, 485 N.W.2d 863, 865 (Iowa App. 1992). However, the role the primary caretaker has played in the lives of the children is given consideration in custody disputes. *In re Marriage of Burkle*, 525 N.W.2d 439, 441 (Iowa App. 1994). Allowing a parent to continue as the primary caretaker after the divorce gives continuity to the lives of children. *Id.*

The trial court recognized Wendy as the primary caregiver of the boys during the marriage. She performed nearly all of the household duties, including the cooking, cleaning, and laundry. She arranged for the boys' medical care and attended their sporting events. The boys were well-adjusted socially and academically with Wendy as the primary caregiver.

Despite the fact Wendy was the primary caregiver prior to the divorce, it is in the best interests of the boys to award primary physical care to Jeffrey. Wendy is unstable. She has gone through a "personality change" characterized by symptoms of depression, anxiety, and displays of rage. On several occasions she has lost her temper, yelling at Jeffrey and the boys and displaying reckless behavior. Wendy has become isolated and estranged from her own family. Even her mother testified the boys would be better off with Jeffrey. Wendy has made attempts to isolate the boys from Jeffery and his family. It is doubtful if she were awarded primary physical custody she would be able to facilitate the relationship between the boys and Jeffrey and the boys and Jeffrey's family.

Compared to Wendy, Jeffrey can provide the children with a stable environment. With Jeffrey, they can remain on the farm where they have spent their childhood to this point. Since the divorce Jeffrey has performed the household tasks of cooking, cleaning, and laundry. He has a strong bond with his children. He also encourages their relationship with Wendy and her family. It is in the best interests of the children that Jeffrey be awarded primary physical custody. The decision of the

trial court awarding primary physical care to Jeffrey and ordering Wendy to pay $193 in child support is affirmed.

IV. Division of Assets.

The partners to 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). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1997). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

Iowa law does not give credit to a party for the value of the property owned prior to the marriage. *In re Marriage of Brainard,* 523 N.W.2d 611, 616 (Iowa App. 1994). Instead, the property brought to the marriage by each party is a factor to consider together with the other relevant factors in determining an equitable property division. *Id.*; Iowa Code § 598.21(b) (1995). Gifted property which is easily identified and not commingled with marital assets is not divided among the parties. *See In re Marriage of Van Brocklin*, 468 N.W.2d 40, 44-45 (Iowa App. 1991). When gifts become so commingled with and transformed into the marital property, they are subject to division with the property acquired during the marriage. *See In re Marriage of Hoffman*, 493 N.W.2d 84, 89 (Iowa App. 1992).

Wendy contends Jeffrey lowered the valuation of his farm property, machinery, and crops to create the appearance he had less assets than he does. Wendy claims Jeffrey's representation resulted in an inequitable property distribution. Most of the assets brought to the marriage were gifts from Jeffrey's parents to Jeffrey in connection with the farming operation. Wendy did not bring any significant assets to the marriage. After de novo review, we find the trial court fairly divided the parties' assets under the circumstances. Although Wendy was awarded $16,000 worth of property and Jeffrey $861,035 worth of property, Jeffrey was encumbered with $855,277 of debt. This division is appropriate in light of the property brought to the marriage by each party, the gifts Jeffrey received from his family, and the interest in preserving the family farm. The trial court's property division is affirmed.

AFFIRMED.