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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF WALTER V. COFFMAN and JUDY M. COFFMAN

Upon the Petition of

WALTER V. COFFMAN,

Appellant,

And Concerning

JUDY M. COFFMAN,

Appellee.

Filed September 21, 1978

601
3-61223

Appeal from Pottawattamie District Court - Paul H. Sulhoff, Judge.

Appeal from custody and property division provisions of marriage dissolution decree. Affirmed on custody issues. Affirmed as modified on property division.

Kenneth Sacks, of Perkins, Sacks & Hannan, Council Bluffs, for appellant.

Robert Leonard, of Sidney, for appellee.

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

This appeal presents issues relating to child custody and property division under a decree dissolving the 15-year marriage between petitioner, Walter Coffman, and respondent, Judy Coffman. Walter appeals from said decree urging that custody of the parties' three minor children should have been awarded to him and also that Judy received too great a share of the assets. Our review is de novo. Rule 4, Rules of Appellate Procedure. In custody matters we are guided by the criteria listed in In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974). In economic matters we are governed by the criteria listed in Schantz v. Schantz, 163 N.W.2d 393, 405 (Iowa 1968), without regard to fault; In re Marriage of Ward, 226 N.W.2d 812, 814 (Iowa 1975).

I. Custody. We conclude that giving proper application to the Winter criteria the evidence preponderates, albeit not greatly so, in favor of Judy on the issue of whether she or Walter would better satisfy the best interests of the children as custodial parent. While the evidence on this matter is close, we hold that it does fully support the difficult choice which the trial court was required to make. We do not disturb the custody provision of the decree.

II. Property Division. On our de novo review of the record we conclude that in dividing the assets of the parties the trial court should have set off to Walter the undivided one-half interest in the 80 acres of real estate which he received by inheritance or gift prior to the marriage, and divided the value of the additional undivided one-half interest in said property acquired during the marriage. To achieve this result we modify the trial court's decree so as to award the entire 80 acres to Walter with a corresponding order that he pay to Judy the sum of $29,000 within 60 days of the issuance of the procedendo on this appeal. We further order that Judy shall have the right to occupy the dwelling house located on this 80-acre tract rent free (with Walter paying the taxes and insurance) until such time as the youngest child of the parties attains the age of 18 years. She must notify Walter in writing of her intention to exercise this right within 60 days of the issuance of the procedendo on this appeal, failing which said right on her part shall cease to exist. If she elects to exercise such right it shall be for the period of time herein provided, however, if she fails to maintain her residence in said dwelling continuously for a period of 100 days said right of occupancy shall terminate.

In all other respects the decree of the trial court is affirmed. Costs are divided equally between the parties, each party to pay their own attorney fees.

AFFIRMED AS MODIFIED.