FILED
NOV 30 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-292 / 91-1264

IN RE THE MARRIAGE OF DWIGHT MERLE BISHOP AND SUSAN LEE BISHOP

Upon the Petition of
DWIGHT MERLE BISHOP,

Appellant,

And Concerning
SUSAN LEE BISHOP,

Appellee.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

The husband appeals the economic and visitation provisions of a dissolution decree. **AFFIRMED.**

Harold J. DeLange II, Davenport, for appellant.

Susan Bishop, pro se, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Dwight and Susan Bishop were married on September 28, 1981. The parties had one child, Trinity Leonard Bishop, born January 10, 1983. Susan also had a child from a previous marriage who lived with the family.

Dwight was born July 7, 1959. Dwight has completed the ninth grade. He testified he wanted to take a high school equivalency test in the near future. Dwight has been unemployed during much of the parties' marriage. The jobs he has held have been minimum-wage jobs. Dwight spends much of his time engaged in sporting activities such as hunting or fishing. He also plays in pool tournaments and at one time was ranked the nineteenth best pool player in the world.

Susan was born December 20, 1959. Prior to the marriage she obtained an associate degree in computer programming from Scott Community College. She has worked throughout the marriage. Since 1983 Susan has been employed as a computer systems programmer by the United States Army at the Rock Island Arsenal. She earns approximately $42,000 per year.

The district court entered a decree of dissolution on July 17, 1991. The court granted the parties joint legal custody of Trinity with Susan having primary physical care. Because Dwight was unemployed at the time of the trial, the court did not order him to pay child support. The court determined that when Dwight becomes employed at

least twenty-five hours per week he should pay $15 per week in child support. No spousal support was awarded.

The court divided the parties' property. Dwight was awarded assets worth about $13,200, which included a pickup truck, boat, motor, guns, fishing equipment, and some household items. Dwight was also ordered to assume a debt he claimed he owed to his father of about $15,000. Susan was awarded net assets worth about $16,800. She received the parties' house, a car, jewelry, pool table, savings account, her retirement account, and household items and was ordered to assume all of the parties' other debts. Dwight has appealed.

I. **SCOPE OF REVIEW.**

Our scope of review in dissolution cases is de novo. In re Marriage of Craig, 462 N.W.2d 692, 693 (Iowa App. 1990). While not bound by the trial court's determination of factual findings, we will give them considerable weight, especially when considering the credibility of witnesses. Id.

II. **ALIMONY.**

Dwight contends that he should have been awarded rehabilitative alimony. He states that he has a very limited earning capacity when considering his educational background, limited job experience, and absence from the work force for most of the marriage. He asks for spousal support for a period of time to allow him to become self-supporting.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. In re Marriage of Whelchel, 476 N.W.2d 104, 110 (Iowa App. 1991). When determining the appropriateness of alimony, the court should consider the earning capacity of each party. In re Marriage of Oler, 451 N.W.2d 9, 13 (Iowa App. 1989). We ignore gender when addressing the question of alimony. In re Marriage of Bethke, 484 N.W.2d 604, 608 (Iowa App. 1992).

We agree with the district court's decision not to award alimony in this case. The court found Dwight was capable of earning a living if he applied himself. The evidence showed Dwight was primarily interested in recreational pursuits. Not only was Susan the bread-winner of the family, she was also the party responsible for household chores and care of the children. Susan placed Trinity in day-care while she was at work. We agree with the district court that Dwight is not so much lacking in job skills as he is in a desire to work.

III. PROPERTY DIVISION.

Dwight claims the district court's division of property is inequitable to him. He states that his father lent him the money for the pickup truck and boat and that these items should have been set aside to him. He also asks for one-half of Susan's pension plan. Finally, he contends he should have been awarded both of the parties' Black Labrador hunting dogs.

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 particular circumstance. Id.

We note that on appeal Dwight is arguing that the $15,000 loan from his father should be considered a gift. We also note that a portion of this gift was made to Dwight and Susan. Furthermore, Susan financially contributed to the down payment on the boat. We therefore agree with the district court that it would be inequitable to set aside any property to Dwight. We find it would be inequitable to award part of Susan's pension plan to Dwight. In her brief Susan stipulates that Dwight may maintain possession of the two Black Labrador hunting dogs. With the understanding that Dwight will receive both dogs, we affirm the property distribution as set forth by the district court.

IV. VISITATION.

Dwight contends that the visitation provisions in the dissolution decree are unduly restrictive and burdensome. Dwight was given visitation on every other weekend and for two weeks during the summer. He is required to give twenty-four-hour advance notice of any visitation. He would like visitation on one night each week, an expanded period during the summer, and an elimination of the notice requirement.

In determining visitation rights, the governing consideration is the best interest of the child. In re Marriage of Toedter, 473 N.W.2d 233, 234 (Iowa App. 1991). A child should be assured the opportunity for the maximum continuing physical and emotional contact with both parents. In re Marriage of Drury, 475 N.W.2d 668, 671 (Iowa App. 1991). We conclude the visitation schedule given by the district court is fair to both parties and we affirm it.

V. ATTORNEY FEES.

Dwight asks for attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Hunt, 476 N.W.2d 99, 103 (Iowa App. 1991). We determine each party should be responsible for his or her own attorney fees. Costs of this appeal are assessed to Dwight.

For the reasons stated, we affirm the district court.

AFFIRMED.