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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF LINDA JEAN PEARSON AND LESLIE MYRON PEARSON

Upon the Petition of)
LINDA JEAN PEARSON,) Filed November 30, 1983
Petitioner/Appellant/Cross-Appellee,)
And Concerning)
LESLIE MYRON PEARSON,) 3-303 / 83-19
Respondent/Appellee/Cross-Appellant.)

Appeal from Story District Court - Louis F. Beisser, Judge.

Petitioner appeals and respondent cross-appeals from the trial court decree dissolving the parties' marriage. AFFIRMED.

Joseph G. Bertogli and Harlan M. Hockett of Flagg, Hockett, Benhart & Bittner, Des Moines, Iowa, and Thomas C. Wynia of Brekken, Deppe & Wynia, Story City, Iowa, for petitioner-appellant.

Thomas T. Duffield of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, Iowa, for respondent-appellee.

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

HAYDEN, J.

Petitioner appeals and respondent cross-appeals from the trial court decree dissolving the parties' marriage.

Petitioner, Linda Jean Pearson, and respondent, Leslie Myron Pearson, were married in 1970. It is the second marriage for each of them. Linda had a daughter, Marianne, from her first marriage whom Leslie adopted in 1971. A son, Lars, was born to the parties in 1972. Leslie's son from his first marriage is married and lives in Texas. At the time of trial Leslie was 63 and Linda was 39 years of age.

Linda had several jobs prior to her marriage to Leslie, but after their marriage she remained at home taking care of the house and children. Leslie is a retired insurance agent whose primary occupation is breeding and training horses.

Identification and valuation of marital assets is disputed. It is clear, however, that Linda brought relatively few assets into the marriage whereas Leslie had already accumulated substantial assets prior to the marriage.

Several allegations of improper conduct have been raised during these proceedings. Marianne testified that on two occasions Leslie touched her breasts. Leslie contended that he and Marianne had engaged in tickling and roughhousing ever since she was a little girl and that there was nothing sexual in the contact. Linda's emotional stability has been called into question by Leslie. Linda called the sheriff on two occasions saying that Leslie was going to kill his horses and harm Marianne and later that one Ray Whitmore was going to kill her. The sheriff went to the house both times but took no other action concerning these incidents. There have been other unpleasant exchanges between the parties since their separation including name-calling and disputes over the use of the car.

The trial court awarded custody of Marianne to Linda and custody of Lars to Leslie. Linda is to receive $150 per month child support for Marianne until she graduates from high school. The determination of child support for Lars was left

open until Linda secured employment. The joint tenancy in the parties' home was severed and replaced with a tenancy in common. Upon Lars' graduation from high school, college, or trade school, whichever is later, the house is to be sold and the proceeds divided equally between the parties. Linda was given the car and Leslie received the two trucks. Each party kept those household furnishings which he or she brought into the marriage or received as gifts. The jointly acquired property was to be divided by the parties. Leslie was ordered to pay Linda a lump sum of $20,000 and $500 per month alimony for four years or until her death or remarriage. Leslie was also required to contribute $4,000 toward Linda's legal fees in addition to the $750 in temporary attorney fees already paid by him.

On appeal Linda challenges the custody provision for Lars and argues that the property award, alimony, and attorney fees provisions to her should be increased. She also requests attorney fees on appeal. Leslie cross-appeals asserting that the trial court should not have given Linda any interest in the house.

Our review of this equitable proceeding is **de novo**. Iowa R. App. P. 4. While we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

I.

Custody of Lars. The governing principle in determining child custody is the best interest of the child. Iowa R. App. P. 14(f)(15). The award of custody cannot be used to punish one parent or reward the other. In re Marriage of Sparks, 323 N.W.2d 264, 266 (Iowa Ct. App. 1982). Acts of misconduct are considered only if they affect the welfare of the child. In re Marriage of Kramer, 297 N.W.2d 356, 362 (Iowa 1980).

The record in this case shows that Lars has a good relationship with both of his parents. He is unfortunately caught in the middle of an unpleasant situation. Although both parents seem to be competent, the trial court concluded that it is

in Lars's best interest to be with Leslie. We see no reason to disturb that finding. Testimony revealed that Lars and his father share common interests and enjoy working together with the horses. Leslie's retirement allows him to spend a great deal of time with his son.

Normally courts disfavor cusody arrangements which split up siblings; however, there are situations when split custody is justifiable. In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981). In this case the children are not very young. Marianne was 16 at the time of trial. She is approaching the age when she will probably be leaving home and would be separated from her brother in any event. Furthermore, we do not think Leslie should be precluded from having custody of his son simply because the relationship between him and his daughter has deteriorated to the point that it would be undesirable for them to remain together. Finally, we note that there was some evidence of resentment between the children which might be eased if they are not together constantly.

The custody provisions of the decree are affirmed.

II.

Property Division. The factors to be considered in dividing property are found in Iowa Code section 598.21(1) (1981). Division of property is based on each party's right to an equitable share of property accumulated as a result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). Uncompensated contributions to the marriage such as the raising of children should be considered. In re Marriage of Williams, 303 N.W.2d 160, 165 (Iowa 1981). However, assets brought into the marriage by one party need not always be divided. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa Ct. App. 1982).

The major dispute concerning the property division in this case is over the amount of property Leslie brought into the marriage and the amount accumulated by the parties during the marriage attributable to their joint efforts. It is clear that, due primarily to their age difference, Leslie's financial contribution to the

marriage was significantly greater than Linda's. Leslie was close to retirement age and had accumulated assets in contemplation of retiring and raising horses. The court correctly found that each party had contributed to the building and furnishing of the home and awarded each an equal share in it. In recognition of Linda's contributions of housekeeping and childraising, the court awarded her a $20,000 lump sum. Each party was given the household effects brought into the marriage or received as gifts. The remaining items were to be divided by the parties. If no agreement could be reached, the items were to be sold and the proceeds divided equally. We find no error in the court's division of property.

III.

Alimony. The criteria to be considered in awarding alimony are found in Iowa Code section 598.21(3) (1981). We review the alimony provisions keeping in mind the property division. Leslie is in a better financial position than is Linda. She has been out of the job market for over a decade taking care of Leslie's home and children. However, she is a relatively young woman in good health. Therefore, the trial court correctly allowed her $500 per month for four years in order to allow her time to acquire new skills, reenter the work force, and become self-supporting.

IV.

Attorney Fees. Allowance of attorney fees in a dissolution action is not a matter of right; it depends upon the financial condition of the parties. In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977). Since there is a disparity between the financial situation of these parties, we affirm the trial court's award of $4,000 to Linda for legal expenses. However, each party should bear his or her own costs and attorney fees on appeal.

AFFIRMED.