IN THE COURT OF APPEALS OF IOWA

No. 1-529 / 00-1279
Filed October 24, 2001

IN RE THE MARRIAGE OF DENISE A. STEWART AND SCOTT B. STEWART

Upon the Petition of
DENISE A. STEWART,
Petitioner-Appellee,

And Concerning
SCOTT V. STEWART,
Respondent-Appellant.

FILED
OCT 24 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Howard County, James L. Beeghly, Judge.

The respondent appeals from the child custody and alimony provisions of the parties' dissolution decree. **AFFIRMED.**

Christopher F. O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, New Hampton, for appellant.

Bradley D. Shidler of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C. Decorah, for appellee.

Heard by Huitink P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Scott Stewart appeals the physical care and alimony provisions of his dissolution decree. We affirm.

I. Background Facts and Proceedings

Scott and Denise Stewart married and had two children, Matthew and Sarah. After twenty years, Denise sought a divorce. She requested joint custody and physical care of the children, child support, alimony, and an equitable property division.

The parties stipulated to a property distribution and agreed they would have joint custody of the children. The remaining issues were set for trial. Meanwhile, Matthew turned eighteen, rendering the issue of his physical care moot.

At trial, each party expressed an interest in having physical care of fifteen-year-old Sarah, although both stated they would afford her extensive time with the non-custodial parent. In the alternative, Scott sought joint physical care of Sarah. Sarah herself stated she wished to frequent both parents' homes on an unscheduled basis as she had been doing immediately following the parties' separation. The district court ordered Sarah placed with her mother, subject to liberal visitation with Scott.

Alimony was also at issue. Denise sought $600 per month. The court awarded her $400 per month for forty-eight months, to assist her in enhancing her earning capacity through college coursework.

Scott moved for enlarged findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b). The district court denied the motion. On appeal, Scott

only challenges the physical care and alimony portions of the decree.[1] Our review of these issues is de novo. Iowa R. App. P. 4.

II. Physical Care

"Physical care" is defined as "the right and responsibility to maintain a home for the minor child and provide for the routine care of the child." Iowa Code § 598.1(7). "Joint physical care" is defined as

> an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including, but not limited to, shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.

Although joint physical care awards were once disfavored, our dissolution statute now authorizes such arrangements if they "would be in the best interest of the child and would preserve the relationship between each parent and the child . . ." Iowa Code § 598.41(5); *see In re Marriage of Walton,* 577 N.W.2d 869, 870 (Iowa Ct. App. 1998).

The district court declined to order joint physical care despite Sarah's request for such an arrangement. While acknowledging that Sarah was "responsible and mature for her age," the court found she still required supervision at a greater level than Scott deemed necessary. The court ordered Denise to assume physical care, stating "Denise's ideas regarding parental supervision are more appropriate, notwithstanding Sarah's maturity and good judgment."

We conclude this order was equitable. While we generally consider a child's wishes if the child "is of sufficient age, intelligence, and discretion to

[1] The child support order has not been appealed.

exercise an enlightened judgment," those wishes are not controlling. *In re Marriage of Thielges*, 623 N.W.2d 232, 239 (Iowa Ct. App. 2000) (quoting *In re Marriage of Hunt*, 476 N.W.2d 99, 101 (Iowa Ct. App.1991)).

Scott conceded he left Sarah unsupervised on an overnight basis while he was out of town. He admitted his work took him away from home several weeks a year and a long-distance relationship took him away on some weekends. Additionally, Scott acknowledged that the children took advantage of the unstructured physical care arrangement in place for a period of time following the parties' separation.

While Denise was aware of Sarah's unsupervised stays at her father's house, she did not endorse them. She stated, "I'm concerned about them not having, you know, guidance I guess, parents around when he's gone." She contrasted her belief that the children continued to require supervision during their teen years to the views of her husband, who felt unsupervised stays taught the children responsibility. She noted that, unlike her husband, she gave up trips to visit her relatives in Wisconsin in order to be at home with the children.

On this record, we agree with the district court that Denise should have physical care of Sarah. However, in reaching this conclusion, we do not minimize or denigrate Scott's extensive contributions to the family. He actively participated in the children's lives, shared a close, open relationship with both, and supported their relationship with their mother despite his own differences with her. There is no question the children love and respect him. Accordingly, we also agree with the district court that Sarah should have "liberal time" with Scott.

III. Alimony

Scott also challenges the district court's alimony award of $400 per month for forty-eight months to further her education. He maintains: (1) the factors favoring an alimony award were not present; (2) Denise furnished no documentation to support her claim for educational expenses; (3) he should not have to pay alimony because his debt load under the property stipulation is substantially higher than Denise's; and (4) Denise could have used the pension funds allocated to her under the property stipulation to further her education.

In deciding whether to award alimony, a court is to consider the factors set forth in Iowa Code section 598.21(3) (1997).[2] The record reveals Scott and Denise married in 1979. Both are high school graduates. Both were generally in good health. After high school, Scott completed a four-year apprenticeship in electrical transmission systems. He worked as a maintainer of electrical transmission systems throughout the marriage, earning $24.24 per hour at the time of trial. Denise took college night courses but did not obtain an advanced degree. She worked on and off during the marriage, holding various part or full-time jobs. Her most recent job was as a credit card and automatic teller machine representative at a bank, earning $9.78 per hour, or less than $20,000 per year. Denise stated this sum was insufficient to make ends meet. She advised the court there were no opportunities to advance at the bank without further education.

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[2] These factors include: the marriage length; the age and health of the parties; property distribution; education of the parties; the earning capacity of the spouse seeking alimony; feasibility of attaining self-sufficiency; tax consequences; mutual agreements by the parties regarding financial or service contributions; terms of a prenuptial agreement; any other factors deemed relevant by the court. Iowa Code § 598.21(3).

We believe this record supports the district court's award of rehabilitative alimony. *See In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa Ct. App. 1999) (noting primary goal of rehabilitative alimony is self-sufficiency, as it serves to support an economically dependent spouse through a limited period of education and retraining). Denise sacrificed her long-term career goals to accommodate her family's schedules. While Scott was able to advance in his chosen field with the support of his wife, Denise was unable to make similar strides. As a result, she earned less than half Scott's income at the time of the dissolution, a sum that was insufficient to meet her needs and those of the children. The district court awarded alimony for the express purpose of moving her toward self-sufficiency. This is a permissible goal. *Id.*

Scott next argues Denise furnished no support for the specific amount of alimony she requested. We disagree. The record contains an exhibit itemizing college tuition expenses for a bachelor's degree in business administration at various institutions. The expenses ranged from a low of $74.95 per credit hour to a high of $842.31 per credit hour. This documentation is sufficient to support an award for educational expenses.

We also are not persuaded by Scott's third argument that he should not have to pay alimony because he agreed to carry the majority of the parties' debt. Scott does not dispute that much of the credit card debt he assumed was accumulated by him after the parties separated. The parties' home mortgage constitutes most of the remaining debt Scott assumed. As Scott received the home, his assumption of the mortgage is not unduly burdensome.

Finally, we are not persuaded by Scott's contention that Denise should have been required to use the retirement funds allocated to her to further her educational goals. It is well established that in dividing property, a court should consider the retirement security of both spouses. *In re Marriage of Fall*, 593 N.W.2d 164, 167 (Iowa Ct. App. 1999); *In re Marriage of Miller*, 475 N.W.2d 675, 677 (Iowa Ct. App. 1991). Scott commendably agreed Denise should receive a significant portion of his pension funds, funds that she would need in retirement to supplement her own meager accumulation. This distribution, however, did not address the disparity in the parties' wages and Denise's inability to make ends meet on what she earned. We conclude the district court acted equitably in not requiring Denise to substantially impair her retirement security in order to become self-sufficient before retirement.

Having concluded Denise was entitled to rehabilitative alimony, we further conclude the amount of the award was equitable. The court's award of $400 per month for education fell within the mid-range of tuition options proffered by Denise.

We affirm the physical care and alimony portions of the parties' dissolution decree.

AFFIRMED.