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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CARLA G. LUNDAHL AND TIMOTHY P. LUNDAHL

Upon the Petition of)
CARLA G. LUNDAHL,)
Petitioner-Appellee,) Filed October 25, 1983
And Concerning)
TIMOTHY P. LUNDAHL,) 3-231 / 83-160
Respondent-Appellant.)

Appeal from Woodbury District Court - James P. Kelley, Judge.

Respondent husband appeals from the child custody and certain economic provisions of the parties' dissolution decree. AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.

Dennis J. Mahr, Sioux City, for respondent-appellant.

Richard L. McCoy, Sioux City, for petitioner-appellee.

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

DONIELSON, J.

Respondent husband appeals from the child custody and certain economic provisions of the parties' dissolution decree. He claims he should have been awarded primary care of the child in the court's joint custody decree. He also raises issues regarding visitation, child support, and certain economic provisions. We affirm in part, modify in part, and remand.

Carla and Timothy Lundahl were married in March of 1978. Their only child, Joshua, was born in October of 1978. Joshua has been with Carla since the parties separated. There was considerable testimony at trial regarding the parties' parenting abilities and character. There was also testimony at trial indicating that Carla worked for a beef processing plant, earning $21,000 a year, and that Timothy worked for a railroad, earning $17,000 a year.

The trial court found that the parties should have joint custody of Joshua, with Carla having physical care. Timothy was to have visitation of every other Wednesday, the weekend in weeks there was no Wednesday visitation, and alternating holidays, and he was to pay child support of $50 a week. The trial court did not specify which party could claim Joshua as a dependency exemption for income tax purposes.

The trial court awarded Carla the parties' house, subject to a $1,500 lien in Timothy's favor and all the parties' personal property except Timothy's personal effects, a shotgun, some tools and golf clubs, a 1976 Dodge, and a motorcycle. The trial court also awarded each party the bank accounts in his or her name, except that the postal thrift certificates of deposit in Carla's name were to be cashed and the proceeds left after payment of the fees of the guardian ad litem for the parties' minor child equally divided. Each party was to be responsible for his or her own debts, including attorney fees and court costs were to be equally divided. Timothy has appealed.

I.

The primary dispute in this case concerns who should have primary care of Joshua. Our primary concern, as always in cases of this nature, is the best interests of the child. Iowa R. App. P. 14(f)(15). Our review is de novo. Iowa R. App. P. 4. Neither party contests the joint custody arrangement; rather, the separate issue of physical care is involved. See In re Marriage of Bolin, 336 N.W.2d 441, 446 (Iowa 1983). In that case, the supreme court indicated that an award of physical care should be based upon the same factors as employed in determining an award of child custody. Id. at 447; see In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). We have applied those factors in this case. As happens all too often in cases like this, the record is full of bitter and contradictory accusations and counter-accusations of parental unfitness and immoral conduct on the part of each other. Our purpose, however, is not to reward or punish either party; rather, we must "determin[e] under the whole record which parent can minister more effectively to the long-range best interests of the child[]." In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974).

Without specifying its reasons, the trial court awarded physical care of Joshua to Carla. We believe, however, that the record demonstrates that Timothy is better able to minister to Joshua's everyday and long-term needs and thus should be given physical care of the child. Timothy has demonstrated his ability and willingness to see that Joshua is well-fed, clothed, and clean, both during the marriage and after this proceeding began. He has also exhibited a relatively greater interest in Joshua's education than has Carla. When Timothy is at work, he has arranged for Joshua to be cared for by a day care center and his sister's family where Joshua has his own bedroom. On the other hand, there are indications that Carla's child care abilities and babysitting arrangements while she is at work are somewhat less than adequate. The record also indicates without

contradiction that Carla places more emphasis on her own family and her recreation time (including frequent tavern visits) than on caring for Joshua. For example, Carla rarely engaged in any recreational activities with Joshua while Timothy frequently did so. We are also disturbed by the fact that Carla has refused to allow Timothy visitation with Joshua on various occasions. Finally we cannot ignore Carla's sexual indiscretions—while still married to Timothy, she had sexual relations with at least two other men, one of whom infected her with gonorrhea. The other man, who was himself married at the time, slept with Carla on a number of occasions in the same house with Joshua who was aware of that fact. This relationship is still going on although there are no marriage plans.

In short, we believe the record demonstrates that Timothy is more mature and more responsible than Carla in caring for Joshua and in seeing to his best interests. We do not mean to imply, of course, that Timothy is without any faults; indeed, the record shows that he too has been guilty of poor judgment and questionable conduct on various occasions. We do believe, however, that he is better able and more willing to assume the responsibilities of caring for Joshua. We therefore modify the joint custody decree to award physical care of the child to Timothy.

II.

We now dispose of several corollary issues. Carla is entitled to reasonable visitation on the order of that granted to Timothy in the trial court's decree. We remand for a specification of Carla's visitation rights with a view to doing so in sufficient detail to avoid the interpretation problems which occurred before this appeal was taken. Considering the relevant factors in Iowa Code § 598.21(4) and especially in light of the fact that Carla's income is higher than Timothy's, we believe Timothy is entitled to child support from Carla in the amount he requested; i.e. $35 per week. Since Timothy will have primary care of Joshua, he

should be entitled to the income tax dependency exemption.

III.

Finally, Timothy complains about the vagueness of the property distribution provisions of the decree. We affirm the distribution as far as it goes but remand for disposition of the $1000 certificate of deposit in the name of Carla and Joshua and the $100 bank account in the name of Tim and Joshua. The trial court also awarded Timothy his "personal effects." The parties dispute what that term means and are now fighting over numerous items of personal property. On remand, the trial court will specify the division of these various items.

This case is remanded with instructions to enter a decree in conformity with this opinion. Each party will pay his or her own attorney fees incurred in this appeal. Costs are assessed equally between the parties.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.