

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 23 1982

CLERK SUPREME COURT

~~Filed March 23, 1982~~

417

IN RE THE MARRIAGE OF BARBARA E.
CLARK and DENNIS S. CLARK,

UPON THE PETITION OF
BARBARA E. CLARK

Petitioner-Appellee,

AND CONCERNING
DENNIS S. CLARK,

Respondent-Appellant.

2-33
3-66977

Appeal from Polk District Court, Rodney J. Ryan, Judge.

Respondent-husband appeals from the economic and child custody provisions of the decree dissolving the parties' marriage. On appeal, respondent asserts that the trial court should not have awarded custody of their three children to petitioner-wife, that the trial court either failed to evaluate or evaluated incorrectly the parties' residence and some items of personal property, and that the trial court should not have awarded petitioner-wife \$3500 in attorney fees. Petitioner-wife requests attorney fees on appeal. AFFIRMED WITH MODIFICATIONS.

John R. Sandre and Nolden Gentry of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for respondent-appellant.

C. Carleton Frederici and Patricia A. Shoff of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for petitioner-appellee.

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

Respondent-husband appeals from the economic and child custody provisions of the decree dissolving the parties' marriage. On appeal, respondent asserts that the trial court should not have awarded custody of their three children to petitioner-wife, that the trial court either failed to evaluate or evaluated incorrectly the parties' residence and some items of personal property, and that the trial court should not have awarded petitioner-wife \$3500 in attorney fees. Petitioner-wife requests attorney fees on appeal. We affirm with modifications.

The parties were married in 1971 and have three minor children: Joshua, born July 20, 1975; Jessica, born November 2, 1976; and Rachael, born June 1, 1979.

Petitioner-wife Barbara is a registered nurse, and respondent-husband Dennis is an attorney. Both parties had earned their degrees before marriage and were working in their respective fields at the time of the marriage. Until Joshua was fourteen months old, Barbara continued working full-time, but then she stopped working and remained home as a homemaker. Dennis is now a self-employed attorney and is occupying the family home in Riverside, Iowa. Barbara and the children are living in Des Moines with Barbara's parents. Since April 1980, Barbara has been employed full-time in a Des Moines hospital.

Our review is de novo.

I. Custody.

The trial court awarded Barbara custody of the three children. While both parents are capable of being a competent and loving custodial parent, we think Barbara is better able to minister effectively to the long-range best interests of the children. Since the best interests of the children is our foremost consideration, In re Marriage of Snyder, 241 N.W.2d 733, 733 (Iowa 1976), and since the evidence shows Barbara's superior capabilities in providing for the children's physical and emotional needs, we affirm the trial court's award of permanent custody to Barbara.

II. Visitation Issue.

Dennis is allowed visitation every other weekend, every other holiday, and two weeks in the summer. He is asking for enlarged visitation in the alternative if he does not receive custody of the children.

We think the visitation schedule set out by the trial court is adequate, except that summer visitation should be enlarged to three weeks. If Dennis takes full advantage of the schedule, he will have enough time to maintain and further develop a proper parental relationship with his young children.

III. Division of Assets and Liabilities.

Dennis alleges the parties' home, 1977 Chevrolet van, life insurance policies, household furniture, and his law practice were improperly valued.

The home was appraised by two different appraisers. One of them valued the house and acreage at \$74,000; the other valued it at \$54,000. The court found the fair market value was \$67,000, after considering the conflicting appraisals, the condition of the home, and the situation in the real estate market. Subtracting the outstanding mortgage and other indebtedness, the court found the equity was \$50,000 and that Barbara was entitled to one-half of that regardless of whether or not Dennis chose to sell the property. The court's findings are supported by the evidence in the record and there is no abuse of discretion.

Furthermore, we find no abuse of discretion in the court's valuation of the van, the policies, the furniture and Dennis's law practice. We affirm the court's division of the parties' assets and liabilities.

IV. Attorney's fees.

Dennis asserts he should not be required to pay \$3500 toward Barbara's attorney fees. An allowance of attorney fees in a dissolution proceeding depends upon one spouse's financial needs and the other spouse's ability to satisfy them. Locke v. Locke, 263 N.W.2d 694, 696 (Iowa 1978). In addition, considerable discretion is given to the trial court's award. In re Marriage of Winegard, 257 N.W.2d 609, 618 (Iowa 1977).

However, regardless of the fact that Dennis is an attorney while Barbara is a nurse, Dennis's net income is only approximately \$14,000. Given that Dennis must pay child support and a \$25,000 property settlement and that Barbara has been and continues to live in her parents' home with minimal expenses, the award of attorney fees in the trial court is not justified.

On appeal, each party is responsible for his or her own attorney fees.

AFFIRMED.

All judges concur except Oxberger, C.J., and Snell, J.

OXBERGER, C.J., (dissenting).

I dissent. I would affirm the trial court's award of one-half of Barbara's attorney fees obligation. Dennis is a private attorney while Barbara is a nurse with set income potential. Dennis is living in the family home in Riverside while Barbara will have to find new housing in today's real estate market for herself and the children. The trial court had the benefit of seeing and hearing the witnesses and evidence before making its judgment, and thus I would defer to the trial court's decision on this issue.

Snell, J., joins this dissent.