

FILED

AUG 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

257

IN RE THE MARRIAGE OF BRENDA SUE LORD AND ROBERT DALE LORD

Upon the Petition of)

BRENDA SUE LORD,)

Filed August 29, 1985

Petitioner-Appellee,)

And Concerning)

5-255
83-1603

ROBERT DALE LORD,)

Respondent-Appellant.)

Appeal from the Iowa District Court for Warren County - Jack D. Levin,
Judge.

This appeal primarily involves the custody of the three minor children
of the petitioner; respondent appeals the trial court's provision for joint custody
of primary care. **AFFIRMED AS MODIFIED.**

P. F. Elgin of Elgin, Hoyman, Clogg & Patin, Indianola, Iowa, for
respondent-appellant.

Mason J. Ouderkirk, Indianola, Iowa, for petitioner-appellee.

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

SCHLEGEL, J.

This appeal primarily involves the custody of the three minor children of the petitioner, Brenda Lord, and the respondent, Robert Lord. Respondent appeals the trial court's provision for joint custody with primary care being placed with Brenda. Robert also claims that the child support ordered by the court is excessive, and that he should not be required to contribute to Brenda's attorney's fees. By separate motion, Robert asks that a substantial amount of the cost of the appendix be taxed to Brenda, by reason of claims of excessive designation of matters to be included in the appendix. We consider Robert's motion concerning the costs of the appendix, and affirm the decision of the trial court as modified by this opinion.

Our review of this equity action is de novo. We give deference to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Custody. We are troubled by the turbulence to which the children of these parties have been subjected, and are less than confident that anything the courts or judicial process can do will assure them a stable, happy relationship with both of their parents. Upon a careful review of the record, however, we believe the trial court was correct in its order providing for joint custody, with the primary physical care with Brenda.

While Robert's accusations concerning Brenda's behavior are not supported by competent evidence in many respects, many instances of her bizarre conduct—with her use of alcohol, and her relationship with men other than her husband—are corroborated by Brenda herself. It is obvious that she, and for that matter, Robert, as well, have had an alcohol abuse problem, and that alcohol, rather than being a "coping mechanism" as Dr. Silberman states, was in very great measure the cause of many of the problems that led to the breakdown of this marriage. Many instances in the record, for which there seems to be abundant

corroboration, show that both of these parties have a propensity to engage in alcohol-related conduct that cannot provide a wholesome condition for the upbringing of their children. The record indicates that both parties have sought evaluation to determine whether they need treatment or counselling for alcohol or drug abuse. While there is some positive feeling expressed for this development, the expressed confidence that neither party is addicted to alcohol or drugs does not assure the court that no problem with these substances still exists.

The trial court placed a great deal of reliance upon the testimony and the report of Dr. Allen Silberman, who, selected by the court, examined and evaluated both parties, and who, over Robert's objection was permitted to give testimony and whose written report was received in evidence. The court, following Dr. Silberman's recommendation, and in the absence of a request by either party, see Iowa Code section 598.41(2), ordered joint custody of the children with the primary care of the children with Brenda. We believe that this custody order is appropriate, under the record in this case. We also counsel a careful and cooperative attitude on the part of both of these parents in all aspects of child custody, visitation, and the participation of both parents in the decisions that affect the lives of the children. Efforts to influence the children against either parent should be studiously avoided by both parents. A refusal to follow these simple, but important suggestions may serve as grounds for an early termination of the joint custody provision of the decree in this matter.

II. Child Support. Robert claims that the child support awarded by the trial court is excessive. In view of respondent's earnings at the time of trial, In re Marriage of Heinemann, 309 N.W.2d 151 (Iowa App. 1981), and considering the factors listed in Iowa Code section 598.21(4), we agree that some adjustment of the child support award is called for. Accordingly, we modify the decree by reducing the amount respondent shall pay as child support to \$150 per month

per child, commencing upon the date of filing of this opinion. All the other provisions respecting the child support award shall remain the same.

III. Attorney's Fees. Respondent claims the trial court erred in ordering him to pay \$5,000 toward petitioner's attorney's fees. That award was based upon a claim, by plaintiff's attorney, in the amount of \$14,942.50, plus advancements and costs of \$911.40. The trial court awarded \$5,000 toward the trial fees.

Petitioner seeks an order requiring respondent to pay legal fees to her attorney for services in connection with this appeal. More accurately, she seeks an award from this court of fees to cover claimed services of her attorney since the rendition of the decree in the trial court. The exhibit submitted with the application filed in the supreme court claims a fair and reasonable charge for the services described on that exhibit as \$23,543.75. In addition, it claims advancements and costs paid by the attorneys in the amount of \$1,759.00.

While this has been a protracted dissolution case, it is difficult to find support for a claim that practically the entire net worth of both parties should be equalled by the fees of the attorney for one party.

It is not, as a rule, our function to set the fees between an attorney, privately hired, and his or her client. However, when we are asked to award a fee in connection with an appeal, or to approve the award of a fee by the trial court, we feel constrained to consider the reasonableness or unreasonableness of the suggested fee.

Under the circumstances of this case, and considering primarily the abilities of these parties to pay, as well as the value of the services rendered, the proposed fee, in our opinion, is unreasonably excessive.

While we will approve the fee awarded by the trial court, we refuse to require the payment of any additional fee by respondent to petitioner's attorney.

We order that the cost of printing of the appendix in this matter shall be paid one-half by petitioner and one-half by respondent.