FILED
FEB 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF SUSAN KAY MILLER AND DWIGHT ANDREW MILLER 145

Upon the Petition of	)	
SUSAN KAY MILLER,	)	Filed February 26, 1986
Petitioner/Appellant/ Cross-Appellee,	)	
And Concerning	)	
DWIGHT ANDREW MILLER,	)	5-616 / 85-891
Respondent/Appellee/ Cross-Appellant.	)	

Appeal from the Iowa District Court for Boone County (1902) - Louis F. Beisser, Judge.

Petitioner wife appeals and respondent husband cross-appeals the decree dissolving the parties' marriage. **AFFIRMED AS MODIFIED.**

William R. Tysseling of Tysseling & White, Ames, Iowa, for petitioner/appellant/cross-appellee.

John L. McKinney, Ames, Iowa, for respondent/appellee/cross-appellant.

Considered by Schlegel, P.J., Hayden, and Sackett, JJ.

HAYDEN, J.

Petitioner wife appeals and respondent husband cross-appeals the decree dissolving the parties' marriage. On appeal, petitioner wife asserts that (1) the visitation respondent husband was allowed is excessive; (2) the property division is inequitable; and (3) her attorney fee award is inadequate. On cross-appeal, respondent husband asserts that the trial court should have set up a joint custody arrangement. We affirm as modified.

Petitioner Susan Kay Miller and respondent Dwight Andrew Miller were married in 1975. They have two children: Katherine, born in 1979, and Andrew, born in 1983. Susan is trained as a nurse, but is now unemployed and receiving ADC benefits. Dwight is attending an aircraft mechanics school; he is paying support for the parties' children through the Child Support Recovery Unit.

In its dissolution decree, the trial court gave Susan sole custody of the parties' two children, and allowed Dwight visitation of every other weekend, every other Thanksgiving, a week at Christmas, and four weeks in the summer. The trial court ordered the parties' personal property sold at auction unless they could agree on a division. (The parties do not own any real property.) The trial court directed Dwight to pay the parties' debts, $300 toward Susan's attorney fees, and court costs. It also directed him to continue his child support payments through the Child Support Recovery Unit until he finished school; the trial court reserved jurisdiction to determine his permanent child support obligation then. No alimony was awarded. Susan has appealed and Dwight has cross-appealed from the dissolution decree.

Our review is de novo. Iowa R. App. P. 4. When considering the credibility of witnesses, we give weight to the trial court's findings but we are not bound by them. Iowa R. App. P. 14(f)(7).

Dwight argues on cross-appeal that an award of joint custody would have been more appropriate. We agree.

In child custody cases, the best interests of the child is the first and governing consideration. Iowa R. App. P. 14(f)(15); Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975). The factors considered in awarding custody are enumerated in section 598.41(3) of the Iowa Code and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and need not be repeated here. The critical issue in determining the best interests of the chid is which parent will do better in raising the child; gender is irrelevant and "neither parent should have a greater burden than the other in attempting to gain custody in a dissolution proceeding." In re Marriage of Bowen, 219 N.W.2d 683, 689 (Iowa 1974).

Because our object is to make a custody award "which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents" after dissolution of the marriage, Iowa Code § 598.41(1) (1985), we favor granting joint custody whenever reasonable and in the child's best interests. When either parent applies for joint custody, as Dwight did here, we shall consider granting it even when the other parent opposes joint custody. Iowa Code § 598.41(2) (1985). In the event that joint custody is not awarded, it is necessary to cite "clear and convincing evidence . . . that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed." Id.

In the present case, the trial court determined that joint custody was not appropriate due to problems with visitation and disagreements between the parties regarding child care. We are unpersuaded that these factors, standing alone, constitute clear and convincing evidence that joint custody should not be granted.

We are satisfied that Susan is the better custodian, however, we cannot agree that sole custody in the mother is warranted. The record indicates that both parents love their children and are willing and able to care for them. We see no reason why Dwight should not have equal rights and responsibilities in making decisions "affecting the child's legal status, medical care, education, extracurricular activities" and other matters. Iowa Code § 598.41(4) (1985).

The problems with visitation and disagreements between the parents stem from Dwight's and Susan's animosity toward one another. In fact, Susan's attitude towards Dwight seems to be the primary cause of the difficulties with visitation. We strongly encourage the parties to set aside their differences in the interests of the children involved. As the trial court indicated, the parties should understand that their subtle influence effects their children. We are confident Dwight and Susan will make every effort to avoid perpetuating unnecessary anxiety for their children and will provide a suitable environment for them.

The decree is accordingly modified to provide joint legal custody to both parties with the physical care in Susan. Dwight shall have visitation as provided for in the original decree.

The decree is affirmed in all other respects. We have considered Susan's arguments concerning the property division and have found that it is equitable.

AFFIRMED AS MODIFIED.