IN THE COURT OF APPEALS OF IOWA

No. 3-548 / 93-162

FILED
NOV 29 1993
CLERK SUPREME COURT
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IN RE THE MARRIAGE OF KENNETH LEE VANDE POL AND MARJORIE JANE VANDE POL

Upon the Petition of
KENNETH LEE VANDE POL,

Appellee/Cross-Appellant,

And Concerning
MARJORIE JANE VANDE POL,

Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Monroe County, Dan F. Morrison, Judge.

Respondent wife appeals the child custody and economic provisions of the parties' dissolution decree. **AFFIRMED.**

Stephen A. Richardson of Martin & Richardson, Bloomfield, for appellant.

J. Terrence Denefe of Kiple, Kiple, Denefe, Beaver & Gardner, Ottumwa, for appellee.

Heard by Schlegel, P.J., Oxberger, C.J., and Keefe, S.J.* Donielson and Hayden, JJ., take no part.

*Senior judge from the 1st judicial district serving on this court by order of the Iowa Supreme Court.

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SCHLEGEL, P.J.

Respondent wife appeals the child custody and economic provisions of the parties' dissolution decree. She argues the trial court erred in (1) awarding physical custody of the parties' minor child to petitioner and (2) inequitably distributing the marital property. Petitioner husband cross-appeals, contending the court should not have awarded the wife one-half interest in the hay baler the husband had given to his parents.

Kenneth and Marjorie Vande Pol were married on February 24, 1968. Kenneth filed a petition for dissolution of marriage on March 30, 1992. The matter went to trial on November 24 and 25, 1992. The district court entered a dissolution decree on January 5, 1993. Kenneth filed a motion to enlarge findings, which was granted on January 26, 1993.

Kenneth is forty-four years old. He had been employed as an electrician and meter reader, but is now disabled by an arthritic condition. He receives $1000 per month in disability payments, which will be reduced to $400 per month beginning January 1994. Marjorie is forty-five years old. She is employed thirty to thirty-five hours per week at a Hardee's restaurant. She receives net pay in the amount of $550 per month.

In March 1992 Kenneth settled a worker's compensation claim for $23,000; after attorney fees and expenses were deducted, Kenneth received $16,847.19. The district court

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set this entire amount off to Kenneth "because of the probability that Kenneth will not be able to hold a full-time job in the future." The district court then divided the remaining marital property about evenly. Kenneth received the family residence and all marital debts. In addition to some personal property and bank accounts, Marjorie was to receive a cash settlement from Kenneth in the amount of $7400. Nine hundred dollars of the cash award was the value of Marjorie's one-half interest in a hay baler that remained on the Vande Pol's tax returns. No alimony was awarded.

The Vande Pols have three children. Cindy Jo, born August 27, 1981, is the only minor child affected by the custody provisions of the dissolution decree. The parties requested, and cooperated with, a custody evaluation. Social worker Thomas X. Lazio reported that both parents were loving and caring and could provide Cindy Jo an adequate home. He concluded that Cindy Jo should remain in the family home, continue to attend school in the same system, and be placed in Kenneth's physical care.

The district court awarded the parties joint custody of the minor child. Primary care was awarded to Kenneth. Marjorie will have visitation on alternating weekends and holidays and for three two-week periods in the summer. Marjorie was ordered to pay child support in the amount of $110 per month. The parties were ordered to share any medical and educational expenses. Marjorie appeals, and Kenneth cross-appeals. We affirm.

Our review in cases such as these is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We are not bound by these determinations, however. Id. Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

In child custody cases, the best interests of the child is the first and governing consideration. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41(3), in In re Marriage of Weidner, 338 N.W.2d at 355-56, and in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974). All factors bear on the "first and governing consideration," the court's determination of what will be in the long-term best interests of the child. In re Marriage of Vrban, 359 N.W.2d 420, 424 (Iowa 1984). The critical issue in determining the best interests of the child 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 Ullerich, 367 N.W.2d 297, 299 (Iowa App. 1985).

Having thoroughly reviewed the record in light of these guiding principles, we conclude the district court's award

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of joint legal custody with Kenneth receiving primary physical custody of Cindy Jo is in accordance with the child's long-term best interests. The evidence indicates that both Kenneth and Marjorie are loving and caring parents. Both parents are quite capable of providing for the material, social, moral, and emotional needs of Cindy Jo. The district court decided under the whole record that Kenneth will minister more effectively to Cindy Jo's long-range best interests. We do not disagree with this determination. "The status of children should be quickly fixed and, thereafter, little disturbed." In re Marriage of Winter, 223 N.W.2d at 166.

Next, Majorie contends the court inequitably divided the parties' property and assets by setting aside the entire worker's compensation settlement to Kenneth. She contends the award constitutes marital property and should have been divided equally. The partners in the marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. In re Marriage of Russell, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division of percentage distribution. Id. The determining factor is what is fair and equitable in each circumstance. Id. The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

We have reviewed the district court's property distribution in the present case and find the division to be equitable and just under all the circumstances. The record supports the district court's conclusion that Kenneth will probably be unable to hold a full-time job in the future. Marjorie, however, is in good physical and emotional health. Furthermore, the district court's property award requires Kenneth to assume all responsibility for the parties' marital debts, while Marjorie is free of such debts and will receive a cash settlement of $7400.

Under the circumstances of this case, we affirm the district court's property division. In doing so, we reject Kenneth's contention on cross-appeal that the district court erred in offsetting one-half the value of the hay baler and awarding that amount to Marjorie.

In accordance with the above discussion, we affirm the contested provisions of the district court's decree dissolving the parties' marriage.

AFFIRMED.