JUN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROGENE MAE FAULKNER AND THOMAS EDWARD FAULKNER

Upon the Petition of)

ROGENE MAE FAULKNER)

Petitioner-Appellant Cross-Appellee,) Filed June 30, 1981

vs.)

THOMAS EDWARD FAULKNER,) 1-89 / 3-65592

Respondent-Appellee Cross-Appellant.)

Appeal from Dubuque District Court - William G. Klotzbach, Judge.

Petitioner wife appeals from economic provisions of the parties' dissolution decree; respondent husband cross-appeals from child custody provisions of the decree. REVERSED.

James J. Roth of Roth & Schumacher, Dubuque, for petitioner-appellant.

Robert L. Day, Jr., Dubuque, for respondent-appellee.

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

DONIELSON, J.

Petitioner wife appeals and respondent husband cross-appeals from provisions of their dissolution decree. Petitioner contends on appeal that she should have been awarded half of the parties' certificates of deposit; respondent requests custody of the couple's minor son as well as an award of the family home and child support from the petitioner. We reverse.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law and to determine rights anew from the credible evidence on properly presented and preserved issues. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. In re Marriage of Novak, 220 N.W.2d 592, 597 (Iowa 1974); Iowa R. App. P. 14(f)(7). As in all cases of this type, precedent is of little value and our decision must ultimately depend on the particular facts of this case. In re Marriage of Nehrli, 241 N.W.2d 923, 926 (Iowa 1976).

I.

The twenty-year marriage of Rogene and Thomas Faulkner was dissolved by a decree entered on August 18, 1980. Petitioner wife was awarded custody of the couple's thirteen-year-old son and respondent was ordered to pay $30 per week in child support. Petitioner was awarded the family home and ordered to pay $16,175 to the respondent for his interest in the real estate. The personal property was divided equally between the parties with the exception of $12,493 in joint certificates of deposit, all of which was awarded to the respondent.

The parties were both approximately 20 years old at the time of their marriage in 1960. The petitioner wife, who has worked throughout the marriage, is now a branch manager of a savings and loan institution and earns $19,750 per year. The respondent is a media specialist with the Dubuque public schools and earns an annual income of approximately $18,000.

II.

Petitioner contends that she should have been awarded half of the joint certificates of deposit. We agree, and modify the decree accordingly.

Section 598.21, The Code 1979, provides that "[w]hen a dissolution of marriage is decreed, the court may make such order in relation to . . . property . . . as shall be

justified." Id. A justified property division is one that is equitable under the circumstances. In re Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). Although frequently an equal division of assets is made, there is no mechanical rule that dictates this result. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The factors to be considered in achieving a fair and equitable determination of the property rights of the parties are set forth in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) (modified to exclude fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972)). When asked to review an individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976).

Although the trial court divided between the parties most of the personal property and the equity in the house, it granted the respondent the entire value of the certificates of deposit. This result cannot be justified in light of the criteria enumerated in Schantz. Because the petitioner has worked through out the marriage, her efforts contributed significantly to the accumulation of the $12,493 now held in the certificates of deposit. In fact, the certificates were purchased entirely with joint funds with the exception of $3000, which the petitioner inherited from her grandfather. We therefore modify the decree to award the petitioner one-half of the $12,493 now jointly held by the parties in certificates of deposit.

III.

On cross-appeal, respondent contends that he should have received custody of the couple's thirteen-year-old son and, correspondingly, that he should receive the family home and an award of child support from the petitioner.

Our first and governing consideration in determining custody is the best interests of the child involved. Iowa R. App. P. 14(f)(15). With this in mind, we note further that the status of children should be quickly fixed and, thereafter, little disturbed. In re Marriage of Bowen, 219 N.W.2d 683, 687-88 (Iowa 1974). In deciding the custody issue, we seek neither to punish one parent nor reward the other. In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973). There is no inference favoring one parent as opposed to the other in deciding which is the more fit custodian except that arising from the particular facts of the case. Bowen, 219 N.W.2d at 688. Factors relevant to the custody determination are listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974),

with the ultimate question being, based on the entire record, which of the parents can minister more effectively to the long-range best interests of the children. Id.; Iowa R. App. P. 14(f)(15). We conclude in the instant case that that parent is the respondent father.

The record indicates that of the two parties, it is the respondent who has the better relationship with the boy. The respondent and his son appear to have many interests in common and share many activities. They often take camping trips together and the respondent shares his son's enthusiasm for sports and recreational activities. The petitioner, on the other hand, does not share these interests; from the record it would appear that she and her son do things together only infrequently. The main interest of the petitioner, and the activity to which she seems to devote most of her time and attention, is her work. She works daily during the week from 8:30 to 5:30 and often has to work in the evenings and/or on weekends as well. Consequently, she does not have much time to spend with her son and testified that it had been four or five years since she had spent more than a weekend on vacation with him, although more vacation time was available to her had she chosen to take it. The respondent, on the other hand, works from 7:00 to 2:30 during the week, which corresponds exactly to the hours the boy is in school; respondent's job also allows him to have the summer months free. Finally, it would appear that the respondent is better able to communicate with the boy or is at least more interested in him, as is evidenced by the fact that while the respondent was well-informed about problems his son was having at school and took active steps to solve those problems, the petitioner was completely unaware that such difficulties existed. Respondent has also taken a very active interest in the boy's participation in school sports and attends most of the athletic events in which the child is involved; petitioner's attendance at these events is sporadic at best and it is disputed whether she attended any at all during the year directly preceding trial. For these reasons, we conclude that it is in this child's best interests that custody be awarded to the respondent. Additionally, because the parties are in agreement that the best place to raise the boy is in the family home, we award that home to the respondent, with the provision that he pay the petitioner $16,175 for her interest in the real estate. In recognition of the fact that both parents are under a legal duty to support their children, In re Marriage of Wahl, 246 N.W.2d 268, 272 (Iowa 1976), and having considered the factors set forth in In re Marriage of Zoellner, 219 N.W.2d 517, 525 (Iowa 1974), we

further conclude that the petitioner should be required to pay $30 per week in child support to the respondent.

By order of the supreme court dated December 17, 1980, petitioner was ordered to pay the cost of printing her brief and the supplemental appendix. All other costs of this appeal are assessed equally against the parties.

REVERSED.