IN THE COURT OF APPEALS OF IOWA

No. 7-181 / 96-1537

000379

IN RE THE MARRIAGE OF STACEY POULSON AND HEATHER POULSON

FILED
JUN 26

Upon the Petition of
STACEY POULSON,

Appellee,

And Concerning
HEATHER POULSON,

Appellant.

Appeal from the Iowa District Court for Plymouth County, Gary E. Wenell, Judge.

Appellant appeals the dissolution decree. **AFFIRMED AS MODIFIED.**

R. Scott Rhinehart and W. Curtis Wiberg of Richard Rhinehart & Associates, Sioux City, for appellant.

Kay E. Dull, Sioux City for appellee.

Heard by Habhab, C.J., and Cady, and Vogel, JJ.

CADY, J.

This is an appeal from a decree for dissolution of marriage entered by the district court. We affirm with modification.

Stacey and Heather Poulson were married on August 11, 1990. They have two children: Jacob, born in 1991; and Taylor, born in 1993. The parties separated in January 1996. Stacey remained in the family home and the parties divided the primary care responsibilities of the children.

Stacey was twenty-nine-years-old at the time of trial and worked as a mechanic for an oil company. Heather was twenty-five and worked as a nighttime shift manager at Pizza Hut. Stacey had a net monthly income of $1186. Heather's income was about $600.

The court determined either parent could meet the emotional, social, moral, material, and educational needs of the children yet found Stacey was somewhat more stable and mature than Heather. It awarded Stacey primary physical care of the children. The court indicated a primary consideration in its decision was its concern that Heather would return to her home-state of Arizona and Stacey would have limited contact with the children. Heather had repeatedly expressed during the marriage her dissatisfaction with living in Iowa and her desire to live near her parents in Arizona. The court concluded awarding Stacey physical care would ensure the children maximum continuing physical and emotional contact with both of their

parents. The court awarded Heather alternating weekend, holiday, birthday, and summer visitation.

The court did not award Heather alimony or attorney fees. The court divided the parties' assets and debts and awarded Stacey the homestead. It ordered Stacey to pay Heather one-half the value of the equity in the home which the court determined to be $3600.

On appeal, Heather argues she should have been awarded the physical care of the children. She contends it was improper for the court to base its decision upon speculation she might leave the state of Iowa. She set forth several reasons why she should have been awarded the children's physical care, including: 1) she had been their primary caretaker throughout the marriage; 2) Stacey committed domestic abuse; and 3) Stacey was indifferent to the family throughout the marriage. Heather argues if she is not awarded the children's physical care the visitation award should be expanded to include six weeks of summer vacation, alternating holidays, birthdays, weekends, mid-week visitations and a first-option to baby-sit while Stacey works.

Heather further contends she should have been awarded alimony to compensate for over $20,000 in inherited and gifted funds she contributed toward the acquisition of the parties' first home and the payment of family debts and household expenses. She requests an award of alimony sufficient to restore her net financial worth and rehabilitate the earning capacity sacrificed by her inability to pursue higher education during the marriage. Heather also claims the court made an inequitable

distribution of the parties' property, and she challenges the district court's valuation of the family home. Finally, Heather contends she should have been awarded trial attorney fees. Both Heather and Stacey request awards of appellate attorney fees.

I. Primary Physical Care.

The best interests of the child is always the first and governing consideration in child custody cases. *In re Marriage of Liebich*, 547 N.W.2d 844, 848 (Iowa App. 1996). In determining the best interests, we consider a variety of factors found in our statutes as well as our prior cases. *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa App. 1995).

Heather first claims the district court improperly considered evidence she was likely to leave Iowa if awarded primary care of the children. We disagree.

We have previously recognized that stability is important in the lives of children. *See In re Marriage of Carrico*, 284 N.W.2d 251, 254 (Iowa 1979); *Lovett v. Lovett*, 164 N.W.2d 793, 802-04 (Iowa 1969). We have also recognized that continuing contact with extended family members can be beneficial to the development of children. *See In re Marriage of Golay*, 495 N.W.2d 123-125 (Iowa App. 1992). Moreover, children generally benefit when they are able to have maximum continuing physical and emotional contact with both parents. Iowa Code § 598.41(1) (1995).

In this case, there was ample evidence Heather desired to move to Arizona or New Mexico. We give weight to the findings of the district court. Iowa R. App. P.

14(f)(7). This evidence was a proper consideration in the resolution of the custody decision.

Nevertheless, we consider all the relevant factors in resolving custody. Heather points to her role during the marriage as the primary caretaker of the children, evidence of Stacey's abusive conduct, and other adverse characteristics of Stacey.

The role of primary caretaker is an important consideration in custody disputes, but does not ensure an award of physical care. *Wilson*, 532 N.W.2d at 495. Evidence of domestic abuse is also an important factor. *Id.* In this case, however, the evidence of abuse by Stacey was vague and limited. While it remains a consideration, it was not compelling.

Both parents would make adequate primary caretakers. They both possess favorable and unfavorable characteristics. On the balance, we agree with the district court that the overall best interests of the children would be served by awarding primary care to Stacey. Heather has generally been a good caretaker of the children during the marriage, but Stacey offers greater stability. Heather has engaged in several affairs during the marriage and recklessly pursued an intimate relationship with a high school student. Although the decision is very close, we believe the long-range interests of the children will be best served by awarding Stacey primary care.

II. Visitation.

The governing consideration in establishing visitation is the best interests of the children. *In re Marriage of Stepp*, 485 N.W.2d 846, 849 (Iowa App. 1992). Liberal visitation is encouraged. Iowa Code § 598.41(1)(a).

The trial court limited summer vacation visitation to three weeks. Under the circumstances, we agree with Heather it should be extended to six weeks. *See In re Marriage of Toedter*, 473 N.W.2d 233, 234-35 (Iowa App. 1991). We decline to expand the visitation further, and recognize all visitation terms established under the decree are minimums. Stacey also testified he would provide Heather additional visitation.

III. Remaining Issues.

We decline to award alimony. However, we believe the court failed to properly consider the inheritance Heather received during the marriage and the funds she brought into the marriage in making the property award. We increase the property settlement from $3600 to $13,600. We deny all requests for attorney fees.

IV. Conclusion.

We have considered all issues raised by the parties. We affirm the decree of the district court except as modified by this opinion.

AFFIRMED AS MODIFIED.