

IN THE COURT OF APPEALS OF IOWA

No. 6-041 / 95-1048

IN RE MARRIAGE OF STEPHEN HILLARD
HENSON AND DARCY LOUISE HENSON

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Upon the Petition of

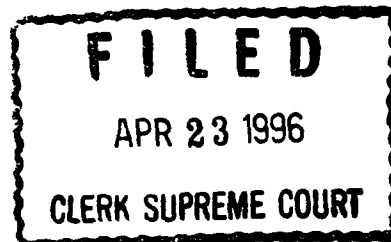
STEPHEN HILLARD HENSON,

Petitioner-Appellant/Cross-Appellee,

And Concerning

DARCY LOUISE HENSON,

Respondent-Appellee/Cross-Appellant.



Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Steve Henson appeals and Darcy Henson cross-appeals from various provisions of the parties' dissolution decree. **AFFIRMED ON BOTH APPEALS.**

Janice Hanrahan Roemer, Davenport, for appellant.

H. Reed Doughty of Nagle, Cook & Doughty, Davenport, for appellee.

Considered by Habhab, P.J., Huitink, J., and Peterson, S.J.*

* Senior judge from the First Judicial District serving on this court by order of the Iowa Supreme Court.

HABHAB, P.J.

Steve and Darcy were married in 1986. This was the third marriage for each. Darcy has three children from a prior marriage. Steve has two sons from a prior marriage. Darcy's children lived with Steve and Darcy during their marriage. Steve's boys came to live with them during summer visitations. Both parties brought assets to the marriage. Steve had a house, as did Darcy. Darcy also owned and ran a daycare at which she cared for Steve's two boys. Darcy continues to run a daycare and has other business interests. Steve is an officer with the Department of Criminal Investigations. They have two children together, Stevie Nicole, born May 13, 1988, and Leigha Virginia, born July 17, 1989.

After a lengthy trial, the district court awarded joint custody but noted it would review the award "if the parties demonstrate an inability or unwillingness to implement a joint custody arrangement." The court awarded Darcy primary physical care of the girls noting (1) Steve's working hours and 24-hour on-call status, (2) the closeness of the relationship between half-siblings, and (3) the custody evaluation recommendation.

Darcy was awarded more of the marital property than was Steve. The court noted Darcy brought more assets to the marriage. Each was awarded a piece of real property and its accompanying debt. Steve and Darcy were awarded equal shares in the marital home, but Darcy was allowed to remain in the house while the children were eligible for child support, at which time the house was to be sold and the proceeds divided equally. Darcy was also ordered to pay the mortgage payments on

the house while she resided there. Darcy was also awarded twelve percent of Steve's state pension. Various consumer debts were given to both parties.

Steve appeals and Darcy cross-appeals.

I. *Scope of Review.* In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. *Primary Physical Care.* Steve contends the district court erred in placing primary physical care of Stevie and Leigha with Darcy. 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 found in our statutes, as well as in prior cases. See Iowa Code § 598.41(3) (1993); *In re Marriage of Weidner*, 338 N.W.2d 351, 355-56 (Iowa 1983). These factors bear on 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).

Siblings should only be separated for good and compelling reasons. *In re Marriage of Winter*, 223 N.W.2d 165, 168 (Iowa 1974); *In re Marriage of Blume*,

473 N.W.2d 629, 631 (Iowa App. 1991). This general rule also applies to situations involving half siblings. *In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993); *In re Marriage of Riddle*, 500 N.W.2d 718, 720 (Iowa App. 1993). In order to depart from this general rule, it must appear the separation of the siblings would better promote the long-range interests of the children. *In re Marriage of Orte*, 389 N.W.2d 373, 374 (Iowa 1986).

Both parties spend a great deal of time and effort harshly criticizing the other party both as a person and as a parent. Like the district court, we also find it both unnecessary and of little use to give a detailed statement of the various complaints both parties raise against the other. Rather, the record appears to indicate both parties have their own individual strengths and both are capable of adequately providing for the children. As both parties are capable parents and placement in either home would provide a stable environment for the children, we cannot find good and compelling reasons to separate Stevie and Leigha from their half-siblings. Consequently, we affirm the district court's ruling regarding the primary physical care of the children.

III. Property Distribution. On appeal and cross-appeal, both parties contend the district court erred in making the property distribution. Steve disputes the distribution of the marital residence, his pension accumulated during the marriage, and other various real estate holdings. Darcy, on cross-appeal, disputes the district court's order requiring her to pay the two mortgages on the marital home without receiving any credit for the principal reduction due to those payments and the distribution of the consumer debt.

Iowa courts do not require an equal division of percentage distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). The determining factor is what is fair and equitable in each circumstance. *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985); *Russell*, 473 N.W.2d at 246. Upon reviewing the claims of the parties, we find the distribution made the district court to be equitable.

IV. Attorney Fees. On cross-appeal, Darcy contends the district court erred in failing to award her trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. *In re Marriage of Giles*, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award, the complaining party must show that the trial court abused its discretion. *Id.* We find no abuse of discretion.

Darcy also requests appellate attorney fees in her cross-appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Gilliam*, 525 N.W.2d 436, 439 (Iowa App. 1994). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Miller*, 524 N.W.2d 442, 445 (Iowa App. 1994). We determine each party should pay his or her own attorney fees for this appeal.

AFFIRMED ON BOTH APPEALS.