FILED
AUG 25 1994
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-520 / 92-1762

IN RE THE MARRIAGE OF JULENE K. BAGBY AND WILLIAM P. BAGBY

Upon the Petition of
JULENE K. BAGBY,

Appellant/Cross-Appellee,

And Concerning
WILLIAM P. BAGBY,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Wright County, Newt Draheim, Judge.

The petitioner wife appeals, and respondent husband cross-appeals, various economic and visitation provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Kurt T. Pittner, Fort Dodge, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink, JJ.

DONIELSON, C.J.

Julene and William Bagby were married in 1979. Neither party brought substantial property to the marriage. Their only child, Jonathon, was born in 1982. Jonathon has a learning disability and has taken special summer classes to improve his skills.

Julene currently manages Women's World Store in Sioux City, where she earns $1261.34 per month. William works at Bachel's Body Shop in Eagle Grove, and earns $1462 per month. He also mows lawns during the summer and does snow removal during the winter.

The parties separated in February 1992, and Julene filed her petition for dissolution that month. Pursuant to the district court's decree regarding temporary custody, William was granted physical care of Jonathon. Following trial, the district court awarded Julene physical care of Jonathon, and William was ordered to pay $328.95 per month in child support. William was granted summer visitation from June 5 until August 24. Julene was awarded her grandmother's opal ring, her mobile home, a 1986 Oldsmobile, and all the rest of her personal property. William was awarded his personal property, tools, snowblower, lawn mowers, and the family homestead. William was also ordered to maintain health insurance on behalf of Jonathon and to pay the Sears, J.C. Penney, Visa, and First charge card bills. Julene was ordered to pay the Visa Platinum card, First Federal mortgage, her car payments,

and mobile home payments. The parties were responsible for their own attorney fees. Julene appeals, and William cross-appeals.

Julene argues it is not in Jonathon's best interests for William to have summer visitation for the entire summer. Julene asserts this extensive visitation will interfere with Jonathon's extracurricular activities. Julene argues Jonathon should be exposed to numerous cultural attractions, and with her, he will experience these things. Julene contends William will not enhance Jonathon's cultural awareness. Julene proposes William be granted three weeks of visitation in August.

Julene also maintains William's income from snow removal and lawn mowing should be included for purposes of child support. Julene contends William makes an extra $125 per month gross from his lawn mowing and snow removal jobs. Julene claims William's child support obligation should be increased to $351.45 per month. Julene also argues she should be awarded a one-half interest in the parties' homestead. Both Julene and William valued the home at $18,000. An appraiser valued that home at $10,020. She urges the homestead be sold so she may receive her $5000 share of the equity. Julene lastly contends William should contribute to her attorney fees.

William argues he should be granted physical custody of Jonathon. William also argues Julene should be required to

pay him $707 in back temporary child support dating from the time he had physical custody of Jonathon.

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 351, 355-56 (Iowa 1983), 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). Our review of the record convinces

us the district court was correct in placing Jonathon in Julene's physical care.

Iowa's statutory scheme provides for liberal visitation to give the child the "opportunity for maximum continuing physical and emotional contact with both parents." Iowa Code § 598.41(1) (1993). The governing consideration, as with custody, is the best interests of the child. Petition of Deierling, 421 N.W.2d 168, 171 (Iowa App. 1988). Summer vacation for children of school age is the only time during the temperate portion of the year when a parent can have any significant period of time with the child. Setting one parent's visitation to include the entire summer vacation deprives the other parent of a significant opportunity for meaningful contact with the child. We conclude the visitation set by the court for June 5 through August 24 is inequitable. We modify the decree to divide the vacation period between Julene and William. Julene shall have Jonathon for the vacation period through July 15 each summer. William shall have Jonathon for the remainder of the summer vacation period. The parties are free to agree upon a different transition date.

Julene next argues the court should have included William's income from snow removal and lawn mowing when calculating his child support obligation. We disagree. Iowa cases applying the child support guidelines have broadened the types of income included in the calculation of net monthly income. In re Marriage of Russell, 511

N.W.2d 890, 893 (Iowa App. 1993). "All income that is not anomalous, uncertain, or speculative should be included when determining a party's child support obligation." Id. We generally include overtime, bonuses, incentive pay, and even some items which are exempt from federal income tax. See State Dept. of Human Services v. Burge, 503 N.W.2d 413, 415 (Iowa 1993); In re Marriage of Brown, 487 N.W.2d 331, 333 (Iowa 1992); In re Marriage of Lee, 486 N.W.2d 302, 305 (Iowa 1992); Russell, 511 N.W.2d at 893. This record does not contain enough information for us to determine William's income from lawn mowing and snow removal should be included. The evidence does not allow us to conclude the income is not speculative or uncertain. The district court recognized the income but did not include it in calculating net monthly income. The court also had the opportunity to review its decision when ruling on the 179(b) motion, but declined to include the income in its calculations. Based on the record before us on appeal, we conclude there was not sufficient basis for including the income and affirm the district court.

Julene next asserts she should be awarded half the equity in the marital home. 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 or percentage distribution. Id. The determining factor is what is fair

and equitable in each circumstance. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975). The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1993). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983). The property division in each case must be decided on the unique facts of that case; precedent is of relatively little value in determining the equitable division of property. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). We find the value placed on the assets by the trial court to be well within the permissible range of evidence and will not disturb them on appeal. See In re Marriage of Bare, 203 N.W.2d 551, 554 (Iowa 1973); In re Marriage of Griffin, 356 N.W.2d 606, 608 (Iowa App. 1984). After consideration of the statutory factors and the circumstances of the parties in this case, we determine the property division made by the district court is equitable.

Julene asks us to award her attorney fees for the dissolution proceeding. The district court refused to award Julene fees, even after reconsideration pursuant to her 179(b) motion. 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. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of

Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties' respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982). Julene has not demonstrated the district court abused its discretion in ordering the parties to pay their own attorney fees. We decline to upset the district court's decision on appeal.

William, on cross appeal, asserts the district court should have ordered temporary child support for the four months Jonathon was in his custody at the beginning of the dissolution. The court initially ordered the parties to seek a stipulated agreement concerning child support. No agreement was reached. The court did not address temporary support in the dissolution decree. William did not appeal the initial order or the support portion of the decree. He did not file a 179(b) motion asking the court to order the support. He cannot raise this issue for the first time on appeal. In re Marriage of Davis, 462 N.W.2d 703, 704 (Iowa App. 1990); In re Marriage of Davis, 447 N.W.2d 571, 573 (Iowa App. 1989).

AFFIRMED AS MODIFIED.