

FILED

AUG 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOHN ROBERT STEELE AND LYND KAY STEELE

552

Upon the Petition of)

JOHN ROBERT STEELE,)

Petitioner-Appellant/
Cross-Appellee,)

And Concerning)

LYND KAY STEELE,)

Respondent-Appellee/
Cross-Appellant.)

5-277
84-1093

Appeal from the Iowa District Court for Muscatine County - R. K. Stohr,
Judge.

Petitioner husband appeals the property division and the child support
and visitation provisions of a dissolution decree. Respondent wife cross-appeals
claiming a right to alimony and attorney fees. **AFFIRMED.**

Marie Prince-Cohen of Conway & Prince-Cohen, Muscatine, for petitioner-
appellant/cross-appellee.

Robert H. DeKock of DeKock Law Office, Muscatine, for respondent-
appellee/cross-appellant.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

OXBERGER, C.J.

Petitioner John Robert Steele and respondent Lynda Kay Steele were married in January 1983. They separated in September 1983. Their one child, Heather, was born in February 1984. Heather was premature and has had health problems generally associated with premature birth. At the time of trial, John worked at Clifton Precision, earning \$1300 net per month. Lynda was planning to return to work as a secretary at Hon Industries where she nets about \$210 per week.

At the time of trial, the parties owned two houses in Muscatine, one on Cedar Street and one on Sixth Street. They bought the Cedar Street house after they were married with a down payment from John's savings. Lynda had one-half interest in the Sixth Street house from the dissolution of her previous marriage. After the parties were married, they borrowed \$7000 from John's mother and bought the remaining half-interest in the house for \$3701.45; they used the rest of the \$7000 to pay bills.

The trial court awarded Lynda custody of Heather and directed John to pay child support of \$80 per week. The trial court stated that "[d]ue to Heather's physical condition and prognosis," John was to have visitation in Lynda's home for two hours every other Sunday until Heather reached the age of two.

The trial court awarded each party the personal property in his or her possession, and his or her bank accounts, bonds, and pension funds. The trial court awarded John the Cedar Street house and Lynda the Sixth Street house. The trial court directed John to pay the parties' debts, including the \$7000 debt to his mother. No alimony or attorney fees were awarded.

Our review is de novo. In re Marriage of Deck, 342 N.W.2d 892, 894 (Iowa Ct. App. 1983). We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

Property Division. We find the property division to be equitable and affirm the order of the lower court. The factors which we considered in reaching the decision are set forth in Iowa Code section 598.21.

Visitation. John contends that the trial court's allowance of visitation is inequitable. The trial court limited John's visitation to two hours every other Sunday in Lynda's home because of Heather's health problems. The court provided for review of this visitation at the end of two years with the idea of granting John additional time and visitation outside Lynda's home.

The best interest of the child involved requires continuing and frequent association with the non-custodial parent, unless some reason to the contrary is clearly shown. Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). We feel that the limitation of John's visitation for two years in this situation is not reasonable. Heather at the time of trial was suffering no severe medical problems, although there was medical testimony that she is in a high-risk category for developing future problems in her early years. This does not show visitation now should be restricted nor is there any indication the visits would be harmful to the health of the child. The court did not cite reasons for its current restrictions of visitation. We find visitation should be three hours each weekend outside the home of respondent.

Child Support. John also contends that there should be a modification in the amount of child support awarded. We must consider the factors enunciated in Iowa Code section 598.21(4) to determine the propriety of an award of child support.

Both parents have an obligation to support their children, but this obligation is not necessarily to be borne equally by them. It should be apportioned according to the fair ability of each to contribute. In re Marriage of Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981). The record reveals that Lynda will have

a monthly net income of \$903 and more than \$1683 per month expenses. John's net monthly income is almost \$1300.

John claims that \$80 per week is an excessive amount to be required to pay to support one child. We do not agree. The disparity between the financial positions of Lynda and John indicates that John should provide the greater portion of support necessary for the child. The amount awarded by the trial court is not unduly burdensome to John.

Alimony. Payment of alimony is not an absolute right. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). Alimony is awarded out of fairness, according to the peculiar circumstances of each case. Two of the factors to be given great weight in such a determination are the duration of the marriage and the ability of the supported spouse to engage in gainful employment. In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972).

We have reviewed the record before us and agree with the trial court that Lynda is not entitled to alimony in this case.

Attorney Fees. The trial court is vested with considerable discretion in allowing attorney fees to be awarded in dissolution cases. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa 1983). In light of the property division, we find no error in the trial court's decision that each party should pay their own attorney fees.

In evaluating a request for attorney fees on appeal, the court must consider the needs of the party making the request and the ability of the other to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa Ct. App. 1981). We order petitioner to pay \$500 of the attorney fees incurred by respondent on appeal.

AFFIRMED.

All judges concur except Snell, J., who dissents.

SNELL, J. (dissenting)

I respectfully dissent. The trial court limited John's visitation to two hours every other Sunday in Lynda's home because of Heather's health problems. The court provided for review of this visitation at the end of two years with the idea of granting John additional time and visitation outside Lynda's home.

The best interest of the child involved requires continuing and frequent association with the non-custodial parent, unless some reason to the contrary is clearly shown. Donovan v. Donovan, 212 N.W.2d 451, 453 (Iowa 1973). In this situation, I feel that the limitation of John's visitation for two years is warranted.

Heather was born 11 weeks premature. The prematurity was aggravated by perinatal asphyxia (low oxygen). Shortly after birth, she suffered spinal meningitis, pneumonia, necrotizing enterocolitis (an intestinal disease), and high blood oxygen levels. Heather remained in the intensive care unit for two months. She continues to require intensive care and will need careful followup and testing. While Heather at the time of trial was suffering no severe medical problems, medical testimony was not disputed that she is in a high-risk category (greater than 50%) for developing future problems at least in her early years. These potential problems include learning problems or retardation, muscle control problems such as cerebral palsy, visual problems, some degree of blindness or poor vision and hearing problems.

In light of Heather's delicate physical condition and special needs, I would affirm the trial court's decision to limit visitation during her most critical years.