

FILED

APR 26 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA**IN RE THE MARRIAGE OF MARTHA M. LEWMAN AND REX E. LEWMAN**

Upon the Petition of)

MARTHA M. LEWMAN,)

Petitioner-Appellant,)

Filed April 26, 1983

And Concerning)

REX E. LEWMAN,)3-63
3-69371

Respondent-Appellee.)

Appeal from Jefferson District Court - Robert Bates, Judge.

Petitioner wife appeals from the custody and property division provisions of the parties' dissolution decree. **AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.**

Ronald K. Watkins of McGrath & McGrath, Keosauqua, for petitioner-appellant.

Donald W. Harris and R. Kurt Swaim of Harris & Swaim, Bloomfield, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

PER CURIAM

Petitioner wife appeals from the custody and property division provisions of the parties' dissolution decree. She asserts that she should have been awarded custody of their two children and that the property division ordered by the trial court was inequitable. We affirm in part, modify in part, and remand.

Martha and Rex Lewman were married in January, 1969. They have two children: Rex, Jr., born in December, 1969, and Sheila, born in September, 1974. Martha's child by a previous marriage, Kevin (who was born in 1968), also lived with the parties. Neither party has a high school diploma. At the time of trial, Rex was working while Martha had not worked since 1981. There was testimony at trial concerning Rex's problem with alcohol and Martha moving herself and the children in to live with her boyfriend in a trailer. The evidence indicated that the trailer was not well kept up.

The trial court awarded Rex custody of the two children. Martha was awarded the personal property she had taken with her when she moved out of the parties' home. Rex was awarded the parties' house and was directed to pay their debts (including the mortgage on the house) totalling approximately \$13,000. Martha was given a \$5000 lien on the house payable with ten percent annual interest on the sale of the house when Sheila either reached age 18, became self-supporting, married or died, whichever came first. No alimony was awarded. Each party was ordered to pay his or her own attorney fees. Martha brought this appeal.

I. Martha's primary complaint centers around the trial court's decision to award custody of Rex, Jr. and Sheila to Rex. In determining issues involving child custody, our major consideration is the children's best interests. Iowa R. App. P. 14(f)(15). We are also guided by the factors listed in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974).

We believe that Martha should be awarded custody of the two children. We are not assured as was the trial court that Rex's drinking problems, along with his propensities to violence and threats of violence, are fully resolved. In addition, the children have been living with Kevin Wyatt, Martha's child from a previous marriage with whom they have formed a strong sibling relationship. "Siblings should not usually be separated." In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974). While Martha may not be the ideal custodial parent, we believe that she is better able to minister to the children's long-range best interests than is Rex.

II. Since Martha is to have custody, some modification of the economic provisions of the decree is required. Martha is awarded title to the marital home so that she will have a place in which to raise the children. She will be responsible for paying the remaining mortgage balance on the house. Rex will pay off the remaining debts to Iowa State Bank and Trust, Gamble's, J. C. Penney, American Family Insurance, and CIT. Martha shall have the right of possession of the house until the youngest child reaches age eighteen, marries, dies, or becomes self-supporting, whichever occurs first or until Martha voluntarily ceases to use the home as a personal residence. At that time, the real estate shall be sold and, after deducting expenses of sale, the net proceeds will be divided equally between the parties. Rex shall pay child support in the amount of \$25 per week per child until each of their two children reach age eighteen, marries, dies or becomes self-supporting, whichever occurs first. Martha is awarded alimony of \$1 per month. All provisions of the trial court's decree not specifically modified or rendered nugatory by this opinion are affirmed. Each party will pay his or her own attorney fees; costs are divided equally.

The case is remanded for entry of a decree in conformity with this opinion.

AFFIRMED IN PART, MODIFIED IN PART, AND REMANDED.

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

DONIELSON, J. (dissenting)

I dissent.

This is another in a long line of child custody cases where neither party represents the ideal in parenting ability. The testimony in this case is composed mainly of Martha and Rex focusing on relatively isolated instances of misconduct on each other's part over their thirteen-year marriage. This is a particularly good case for giving considerable weight to the findings of the trial court, especially regarding witness credibility. See Iowa R. App. P. 14(f)(7). "Such matters as demeanor of the parties, candor or lack thereof on the part of witnesses, attitudes, real and assumed, and apparent motives of those testifying, are all entitled to much weight in making findings." Long v. Long, 255 N.W.2d 140, 143 (Iowa 1977).

I find nothing in the record to justify disturbing the decision of the trial court. I would affirm the decree in all respects.