IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

IN RE THE MARRIAGE OF BRUCE DAVID TULEY AND CHRISTINE L. TULEY

UPON THE PETITION OF
BRUCE DAVID TULEY,

Petitioner-Appellant,

AND CONCERNING
CHRISTINE LEE TULEY,

Respondent-Appellee.

Filed April 8, 1983

2-429
3-68182

Appeal from Keokuk District Court, Dick R. Schlegel, Judge.

Petitioner appeals from a dissolution of marriage decree which awarded to respondent custody of their two minor children, child support and alimony. AFFIRMED.

Thomas M. Walter of Johnson, Bauerle, Hester & Walter, Ottumwa, for petitioner-appellant.

Lorna A. Gilbert of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., Donielson, Snell, and Johnson, JJ. Schlegel, J., takes no part.

PER CURIAM

Petitioner, Bruce David Tuley, appeals from a dissolution of marriage decree which awarded to respondent, Christine Lee Tuley, custody of their two minor children, support payments and alimony. We affirm.

Petitioner and respondent were married in 1976. They have two children: Joshua, born in 1978; and Matthew, born in 1979. The family made their home near Hedrick, Iowa, where petitioner assumed a job as a farm laborer on his stepfather's farm.

At the time Matthew was born, the parties' marriage relationship had begun to deteriorate. By May of 1980, it had deteriorated to the point that petitioner was staying away from the family home for extended periods of time. During this period, petitioner became involved in an affair with Betty Shifflett.

Petitioner advised respondent that he thought that a period of separation would benefit their relationship. Respondent was anxious to salvage her marriage, and at this urging she took the children and moved to Ottumwa. Things did not work out for respondent in Ottumwa, and in August, with petitioner's consent, she took the children and moved to Lousiville, Kentucky. Meanwhile, petitioner moved Betty and her daughter in with him.

Respondent became seriously ill on Labor Day weekend and was advised to have someone help her with the children. Petitioner's mother telephoned respondent and offered to keep them while she recovered. Petitioner drove to Louisville and picked them up. Arrangements were made for respondent to drive to Iowa and pick up the children several weeks later, however, petitioner asked to keep them a little longer and respondent agreed. One week later she was served with a petition for dissolution.

A hearing was held on January 19, 1981, and temporary custody was awarded to petitioner for the pendency of the action. At the trial, there was conflicting testimony concerning each party's parenting abilities. The trial court ultimately awarded custody to respondent, concluding that this arrangement was in the best interests of the children. The trial court also directed petitioner to pay child support of $35 per week for each child, and $100 per month alimony for two years in lieu of a property settlement. Each party was awarded the personal property in his or her possession.

Petitioner appeals from the decree of the trial court. He asserts first, that the trial court should have awarded him custody of the children and, second , that the trial court should not have awarded alimony to respondent. Because this is a matter relating to the dissolution of marriage, our scope of review is de novo. Iowa R. App. P. 4; Iowa Code section 598.3.

A. Child Custody

We are not faced here with any unusual or esoteric legal principles. This court has on many occasions reiterated that, in making child custody decisions, we are guided solely by the long-term best interests of the children. See Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975). We do not utilize custody decisions as a means of penalizing either parent for prior moral indiscretions. Rather, it is our endeavor to minimize the punishment to the children which inevitably arises from the separation of their parents. Their parents' indiscretions interest us only to the extent that they have a bearing on each parent's respective fitness to rear properly the children and provide for their needs.

There are many factors bearing on the determination as to which parent will better provide for the children's needs. They are enumerated in In re the Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and need not be repeated here.

At the trial, conflicting testimony was given concerning the ability of each parent to minister to the children's needs. In this circumstance, our custody determination is affected by whose testimony we believe. Where the credibility of witnesses is at issue, we give great weight to the trial court's decision because the trial court is in a superior position to determine what the truth actually is. Utter v. Utter, 155 N.W.2d 419, 421 (Iowa 1968).

Applying the applicable principles, we conclude that the custody determination made by the trial court was correct. While both parents have evidenced a genuine concern for the children's welfare, we determine that the allegations made concerning petitioner's criminal conduct, alcohol and drug abuse, and sexual indiscretions would, if believed, serve to render him less fit to rear the children than respondent.

Petitioner argues that once custody has been awarded to one parent, even on the basis of a temporary custody order, and it appears that the children are being adequately cared for, custody should not be disturbed except for compelling reasons. This is not correct. A grant of temporary custody expires when an entry of the final decree granting the divorce is made. It does not operate to confer any preference to the party to whom it was granted. Both parents stand on equal footing before the court for purposes of fixing a permanent custody order. The court will consider what is in the best long-term interests of the children. We are satisfied in the present case that the court has done just that.

B. Alimony

In a divorce proceeding, neither party is entitled to alimony as a matter of right. In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). An award of alimony is made based upon the circumstances of each particular case. The criteria for determining whether or not to award alimony and, if so, how much to

award are set out in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), and modified by In re Marriage of Williams, 199 N.W.2d 339, 344 (Iowa 1972). We are satisfied that the trial court properly applied these criteria in its decision to award alimony to respondent.

To begin with, we are not moved by petitioner's pleas of poverty. Petitioner's weekly wage of $163 is supplemented by a free house, free furnishings, free electricity, free applicances, all the meat he can eat, and free insurance. He also receives a bonus gift of approximately $3,000 each year, and the expenses of raising his hog brood, from which he keeps all profits, are paid by his stepfather. Respondent, on the other hand, has a weekly wage of approximately $135. From this she must pay for rent, utilities and groceries. Whatever expenses incurred in raising the children, which exceed $70 per week will also come out of this.

More important, the two years of alimony were awarded in lieu of a property settlement. We are not convinced that respondent left for Louisville with her fair share of the marital property. We are convinced that the applicances furnished by petitioner's stepfather were intended to be gifts and respondent is entitled to a portion of their value.

Respondent has requested that we order that her attorney's fees be paid petitioner. "Such allowances are generally based on the parties' respective abilities to pay." In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Considering the respective financial condition of both petitioner and respondent, we hereby order petitioner to pay respondent the sum of $500 toward her attorney's fees. Costs are assessed to petitioner.

AFFIRMED.