IN THE COURT OF APPEALS OF IOWA

No. 7-701 / 97-0535

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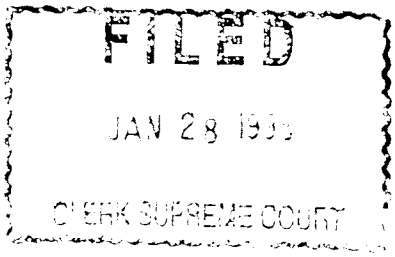
IN RE THE MARRIAGE OF JOHN DAVID GORDON AND WANETA DAWN GORDON

Upon the Petition of JOHN DAVID GORDON,

Petitioner-Appellee,

And Concerning WANETA DAWN GORDON,

Respondent-Appellant.



Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge.

Waneta Gordon appeals from the provisions of the parties' dissolution decree.

AFFIRMED.

Patricia C. Kamath, Iowa City, for appellant.

John David Gordon, Coralville, pro se.

Considered by Huitink, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Waneta Gordon appeals the provisions of the parties' decree of dissolution. She contends the court erred in: (1) awarding primary physical care of the parties' daughter, and (2) inequitably dividing the couple's property. We affirm.

The parties married on April 1, 1987, and have a daughter, Joan, born January 2, 1988. Waneta is thirty-seven years old and John D. Gordon (Dave) is fifty-one. At the time Waneta and Dave married, Dave owned a pest control business called "The Bug Man." He also owned twenty acres of timber and a house with a three-room basement apartment which he rents out. In 1994, he purchsed a three-acre parcel in a rural subdivision. Only the home had a mortgage at the time of marriage. The parties completed the payment of this mortgage in 1990.

Dave received income from his pest control business, a small disability pension of $91 per month, and less than $300 per month rent from the basement apartment in the home.

Waneta makes several allegations against Dave, including: Dave intimidated and frightened her, attempted to harm her relationship with Joan, showed a lack of respect for her wishes, and has failed to address Joan's weight problem as suggested by doctors. Dave contends none of these allegations are true. He claims he did what he could to protect Joan when Waneta had anxiety attacks. He also claims he is willing to attempt to come to an agreement regarding Joan's diet to help her lose weight.

I. STANDARD OF REVIEW. Our review of this equitable proceeding 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. 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. The critical issue before us is the best interests of the children. *Heyer v. Peterson*, 307 N.W.2d 1, 7 (Iowa 1981). This must, of necessity, be the first and controlling consideration in our discussion. The factors the court considers in awarding custody are enumerated in Iowa Code section 598.41; *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983); and *In re Marriage of Winter*, 223 N.W.2d 165, 166-67 (Iowa 1974). The issue in determining the best interests of the children 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). This decision requires selection of a custodial parent who can minister more effectively to the long-range best interests of the children. *Winter*, 223 N.W.2d at 167. The objective should always be to place the children in the environment most likely to bring them to a healthy physical, mental, and social maturity. *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996). Each custody decision is based on its own particular facts. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992).

While we note Waneta has made disturbing allegations against Dave, we also note the trial court saw the parties and their demeanor at trial. The trial court chose to believe Dave. The trial court is in the better position to make this determination. Further, Joan has been in her father's custody since Waneta left the family home in 1994.

Waneta also contends the trial court placed an improper emphasis on her Mennonite religion and let it influence its decision not to award her primary physical care of Joan. We do not agree. The trial court acknowledged it was unfamiliar with the practices of Waneta's faith and asked questions pertinent to the determination of Joan's best interests. We do not believe Waneta's religion played an improper role in the determination.

We agree with the trial court's finding and affirm the award of primary physical care to Dave.

III. PROPERTY DIVISION. Waneta alleges the trial court improperly valued the home and the twenty-acre parcel owned by Dave prior to the marriage. She also contends the trial court erred when it refused to award Waneta half of the value of the twenty-acre parcel.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). The courts are not bound to achieve a precisely equal division in awards of marital property. *In re Marriage of Kurtt*, 561 N.W.2d

385, 388 (Iowa App. 1997). The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1995). *Id.*

We find the value placed on the assets by the trial court to be within the permissible range of evidence and will not disturb them on appeal. *See In re Marriage of McKamey*, 522 N.W.2d 95, 97 (Iowa App. 1994). We also decline to disturb the property settlement as we find the trial court equitably divided the assets.

For these reasons, we affirm the terms of the parties' dissolution decree.

AFFIRMED.