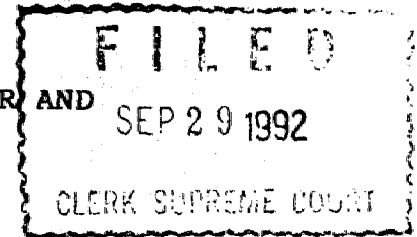


IN THE COURT OF APPEALS OF IOWA

No. 2-287 / 91-1130

IN RE THE MARRIAGE OF CHRISTINA LOKER AND
DOUGLAS EASTMAN

Upon the Petition of
CHRISTINA LOKER,

Petitioner-Appellee/Cross-Appellant,
And Concerning
DOUGLAS EASTMAN,

Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Woodbury
County, James L. McDonald, Judge.

Douglas appeals and Christina cross-appeals a district
court decision which held that Christina Loker failed to
prove a common law marriage and which ordered the parties
to divide property accumulated during their relationship.

AFFIRMED AS MODIFIED.

Paul W. Deck of Deck & Deck Law Offices, Sioux City,
for appellant.

Bradford F. Kollars, Sioux City, for appellee.

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

OXBERGER, C.J.

Douglas, "Doug" Eastman challenges the district court's exercise of jurisdiction over a property dispute arising out of his cohabitation with Christina Loker. Christina and Doug had a child together. Doug appeals the court's decision to award real estate and certain personal property to Christina. He also challenges the child support award.

On September 24, 1990, Christina filed a petition for dissolution of her common-law marriage to Doug. The petition alleged the parties had been married for one and one-half years and one child resulted from the marriage. Doug filed an answer denying the marriage.

The district court entered a temporary order for child support and gave Christina possession of the parties' home.

On May 21, 1991, a hearing was held on the dissolution petition. Christina testified the parties began cohabiting in February 1989 when Doug moved into her apartment. She testified she supported Doug so he could save for the down payment on a home. In May 1989, Doug asked Christina to marry him, but she declined, although they later purchased wedding rings. The parties purchased a home in October, 1989. She testified she helped look for the home and contributed \$200 used to make a bid on the home. Their son, Kyle, was born March 14, 1990.

In September 1990 Doug announced he intended to marry another woman the next day. Doug returned a day later with his new wife.

Doug testified the parties had a casual relationship. He testified he purchased the wedding rings to give to the right woman when she came along. Doug testified he purchased the home for himself and asked Christina to live there as a guest. Doug testified Christina's participation in purchasing the home was limited to viewing the house once. He testified his name is on the title and deed and he is liable for the mortgage payments.

On May 24, 1991, the district court filed its decision. The court held Christina failed to prove a common-law marriage but stated sufficient allegations to support the exercise of equity jurisdiction. The district court found Doug's testimony deserved no credibility whatsoever. Christina was awarded the parties' home because she had lived in the home since its purchase and made a home there for her family. The home has almost no equity value. The district court awarded Doug personal property and ordered him to pay \$288 per month child support.

On June 3 and 10, 1991, Doug filed a rule 179(b) motion and a motion to modify and/or substitute judgment. He argued that Christina had no legal or equitable interest in the home. Christina filed a resistance. On June 21, 1991, the district overruled the motions, finding that the evidence does not support the findings Doug urged.

Doug appeals and Christina cross-appeals.

Scope of Review

In this equity action, our review 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. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). 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).

I. Equity Jurisdiction

Doug challenges the district court's exercise of jurisdiction over this matter. He argues the court did not have jurisdiction to determine property distribution or child support under Iowa Code § 598 once it determined there was no common law marriage. Christina notes she filed a motion for leave to amend her petition to include a request that the court proceed to rule in equity. Doug did not resist Christina's motion.

A court may take jurisdiction of a case in equity if the allegations of the petition state a claim cognizable in equity. Metten v. Benge, 366 N.W.2d 577, 579 (Iowa 1985). A court of equity has the power to determine questions of child custody and support. Id. A court of equity may also partition real and personal property. Id.

This petition, as amended, stated claims cognizable in equity. We conclude the district court had jurisdiction to hear this case.

II. Award of Real Estate

Doug next contends the district court erred in awarding the family home to Christina. He argues she did not assist in the purchase or payment of the home and notes the deed and mortgage are solely in his name..

Both parties agree and the trial court found there was virtually no equity in the home. The overriding question involves Christina's contribution to and interest in the property. While Doug argues Christina made no contributions to the home, the trial court judge found Doug's testimony wholly lacking in credibility. Christina testified she partially supported Doug while he resided with her which enabled him to save for a down payment, assisted in locating the home and paid \$200 towards purchase expenses. She also contributed towards all household expenses so that Doug could pay the monthly mortgage payments. Christina has lived in the home since it was purchased and has established a home environment for the parties' son Kyle and a son from a prior marriage. In addition, the home is very close to the baby-sitter's and next to her other son's school. Doug has resided with his wife since their sudden marriage.

We note the trial court judge was in a superior position to evaluate the credibility of the parties and accordingly, we give weight to his findings. We affirm the trial court's decision awarding the real estate to Christina.

III. Property Distribution

Doug contends the trial court erred in awarding an excess of property to Christina. Specifically, he complains he was not awarded one couch, one dresser, one-half of the wash cloths and towels, one electric fan, one-half the blankets, one string of Christmas lights, and one-half the drinking glasses and drop cords.

The list of property awarded both parties was included with the decree. The bulk of the property awarded to Christina is necessary for the maintenance of the household. Doug was awarded a substantial portion of the property he requested. Accordingly, we affirm the distribution of the assets.

IV. Child Support

Both parties appeal the child support award. Doug contends his amount should have been reduced in accordance with the child support he pays for a child from a previous relationship. Likewise, Christina contends she should receive a reduction in her considered income, since she supports her other son also. In addition, she contends the district court failed to follow the Child Support Guidelines.

We apply the Uniform Child Support Guidelines to determine the child support Doug is required to pay. Doug's net monthly income, (gross monthly income minus deductions permissible under the uniform guidelines), is

\$1238 and Christina's is \$1102; thus Doug is required to pay 22.5 percent of his income for child support. The amount of child support Doug is required to pay is \$279 per month.

II. Attorney Fees

Both parties request attorney fees on appeal.

An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

In considering both Christina and Doug's request for attorney fees, we consider the property distribution, respective incomes, and child support award. We have considered the relative financial condition of each party and require both parties to pay their own attorney fees on appeal. Costs are charged to the appellant, Doug.

AFFIRMED AS MODIFIED.