

FILED

JAN 31 1978 66

IN THE COURT OF APPEALS OF IOWA } CLERK SUPREME COURT

IN RE THE MARRIAGE OF IRIS RAYHONS AND FRANK RAYHONS

UPON THE PETITION OF)

IRIS RAYHONS,)

Filed January 31, 1978

Appellee,)

AND CONCERNING)

FRANK D. RAYHONS,)

369
2-60305

Appellant.)

Appeal from Hancock District Court - L. E. Plummer, Judge.

Appeal from property settlement and visitation provisions of dissolution decree.

AFFIRMED AS MODIFIED.

Edward R. Boyle, of Boyle, Schuler & Stanton, of Clear Lake, counsel for appellant.

William Pappas, of Pappas & McGuire, of Mason City, counsel for appellee.

G. W. Templeton, of Garner, counsel for children.

Submitted to Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Respondent-Frank D. Rayhons appeals the property settlement and visitation provisions of a dissolution decree. Respondent and petitioner-Iris Rayhons have been married to each other twice. They were first married in 1952 and petitioner subsequently obtained a divorce from respondent in 1967. The parties remarried in 1968, and the present dissolution action was commenced in 1974. Respondent and petitioner have seven children. Four of the children, whose ages range from 6 to 16 years, reside with petitioner.

The trial court ordered the parties' 120-acre farm valued at \$225,000 sold and the proceeds divided equally between the parties after the \$19,541.55 outstanding balance on the contract is paid. The court also awarded petitioner an additional property settlement of \$5,000 with 7 percent interest per annum. Respondent was to assume all other debts incurred before April 1, 1974 and was awarded all other assets. Although not an aspect of this appeal, respondent was ordered to pay \$60 per child per month in support for the four minor children until they reach 18 or become married or emancipated, whichever occurs first. No alimony was awarded.

Although permanent custody of the four minor children was awarded to petitioner, the trial court indicated that it was experiencing a great deal of difficulty in establishing visitation rights for respondent. The court found that the "bitter, downright explosive" kind of animosity which exists between the parties has resulted in a serious alienation of the children from their father. Both the juvenile probation officer and the attorney for the children confirmed this state of affairs by indicating that the children expressed that they wanted to have nothing to do with their father.

As a result of the atmosphere of hostility existing between the parties, all attempts at achieving a workable temporary visitation arrangement have proven futile, and there is nothing in the record to indicate that efforts to work out a permanent visitation schedule will meet with more success. As the trial court keenly observed, the various applications, temporary orders, and custody, contempt and visitation hearings occurring in the instant case provide a difficult and dismal record upon which to base reasonable visitation provisions. The actions of the parties have been so destructive to the perpetuation of any kind of family relationship that the children have developed an active opposition to having any visitation with their father.

In dealing with the visitation question, the trial court stated that it was aware that the right of access to one's children should not be denied unless the court is convinced that such visitations are detrimental to the best interests of the children. In the absence of extraordinary circumstances a parent should not be denied the right of visitation. *Wiley v. Wiley*, 253 Iowa 1294, 1302, 115 N.W.2d 833 (1962); *Spotts v. Spotts*, 197 N.W.2d 370, 372 (Iowa 1972); *Lamansky v. Lamansky*, 207 N.W.2d 768, 770-772 (Iowa 1973); *In re Marriage of Morton*, 244 N.W.2d 819, 822 (Iowa 1976). However, the court concluded that extraordinary circumstances exist under the facts of the instant case and that respondent's right of visitation should be denied, at least temporarily. Consequently, the court ordered that respondent not be permitted visitation for a six-month period, after which time either one or both of the parties may submit an appropriate application to the court setting forth a reasonable and mutually agreeable plan for the resumption of visitation. The question of the propriety of the six-month denial of visitation now appears to be moot since we are aware of no application to stay the district court judgment.

Our review in this matter is *de novo*. Rule 4, Rules of Appellate Procedure. Although we give weight to the findings of the trial court, we are not bound by them. Rule 14(f)(7), R. App. P. Upon a review of the record, we share the frustrations expressed by the trial court and hold, as it did, that extraordinary circumstances exist in the instant case. Therefore, we conclude that the trial court was justified in denying respondent visitation rights for six months and encouraging one or both of the parties to submit an appropriate and reasonable visitation plan to the court. However, we also conclude that upon the expiration of that six-month period, the trial court must impose specific terms and conditions of visitation if the parties fail to submit a plan and if no new extraordinary circumstances arise which necessitate other action.

After reviewing the record in light of the criteria set forth in *Schantz v. Schantz*, 163 N.W.2d 398, 405 (Iowa 1968), we are convinced that the property division must be modified. Consequently, we direct that the \$17,259.91 debt incurred during the pendency of the marriage be paid from the proceeds of the sale of the farm before the balance is distributed to the parties. We further direct that the \$8,000 crop rental value of the farm be divided equally between the parties. Whatever federal and state income tax liabilities and real estate expenses that result from the sale of the farm are to be borne equally by respondent and petitioner.

We conclude that respondent's other allegations are without merit and affirm the judgment of the district court as modified.

AFFIRMED AS MODIFIED.