FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-415 / 90-213

IN RE THE MARRIAGE OF LINDA WATTERS AND DAVID WATTERS

Upon the Petition of

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LINDA WATTERS,

Appellee,

And Concerning

DAVID WATTERS,

Appellant.

Appeal from the Iowa District Court for Jackson County, C. H. Pelton, Judge.

David Watters appeals the economic and custody provisions of the parties' dissolution decree. **AFFIRMED.**

Joseph J. Bitter, Dubuque, for appellant.

Corliss C. Baty, Maquoketa, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

DONIELSON, J.

Linda and David Watters were married in 1968. Two children were born of the marriage; at the time of the trial, Tom was an emancipated adult, and John was seventeen years old. Linda was forty-seven years old and employed full-time as a seamstress, earning $570 net pay per month. David was forty-two years old and unemployed. David worked as a skilled welder for Caterpillar Tractor Company until March 1988 when he was permanently laid off. He received supplemental pay from Caterpillar in the amount of $865 per month from the time of the layoff until January 26, 1990. He began a job search shortly before the dissolution trial.

The dissolution decree was filed January 12, 1990. The issues before the district court at the trial and addressed in the decree were (1) the physical care and support of the minor child and (2) the disposition of several acres of real estate. The division of personal property and of an additional ten lots of real property are not in dispute. The parties stipulated to the appropriate division of all marital assets except the seventeen and one-half acres of real estate. The decree placed John in joint legal custody and in Linda's primary care. The court ordered David to pay child support of $40 per week. The decree awarded the real estate to Linda and required her to pay David the sum of $6,000 for his equity in the real estate.

David appeals. He contends he should have primary care of John because John desired to live with him. He also

argues the court incorrectly calculated the amount of child support. Additionally, David claims the court inequitably divided the real estate.

Both parties request appellate attorney's fees.

I. **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 we are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

II. **Custody.** David contends the district court ignored or gave inadequate consideration to John's stated preference of living with his father.

The question is what part does John's wish play in determining his long-range interests. Deciding custody is far more complicated than asking a child what parent they want to live with. See In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981); In re Marriage of Ellerbroek, 377 N.W.2d 257, 258 (Iowa App. 1985). The ultimate question is which parent can minister more effectively to the long-range best interests of the child. In re Marriage of Castle, 312 N.W.2d 147, 149 (Iowa App. 1981).

Contrary to David's assertion, the trial court did not ignore John's expressed preference. Rather, the district court appropriately considered the preference in light of John's age and maturity level and with an eye to the long-term best interests of John. See Ellerbroek, 377 N.W.2d at 258-60; see also In re Marriage of Winter, 223 N.W.2d 165, 167 (Iowa 1974); Iowa Code § 598.41(3)(f). While the district court recognized John's stated preference, it found John to be "quite immature" and his preference "more in the nature of what he thinks is easiest, rather than what is necessarily in his long[-]range best interests." The court specifically found Linda was more capable than David of providing for John's long-term needs "including John's emotional needs, social needs, moral needs, material needs, and educational needs," and concluded John's best interests called for his physical care being placed with Linda. We find no reason to disagree with the trial court's findings and conclusions and we therefore affirm the custody provisions of the dissolution decree.

III. Child Support. It is well established that parents have a legal obligation to support their children. In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). See also Iowa Code § 598.21(4) (child support factors).

The district court found Linda's net monthly income was $570 and David's net monthly income was $865. The district court properly considered the criteria of section 598.21(4) and the child support guidelines and ordered David to pay child support in the amount of $40 per week. The amount of child support ordered by the district court is equitable and we affirm.

IV. Real Estate Division. At issue is the disposition of seventeen and one-half acres of real estate (which includes the homestead) purchased by Linda prior to the marriage. David contends he should be awarded one-half the present value of this property.

The partners in a marriage are "entitled to a just and equitable share of the property accumulated through their joint efforts." In re Marriage of Havran, 406 N.W.2d 450, 452 (Iowa App. 1987). The distribution of the property of the parties should be that which is equitable under the circumstances after consideration of the criteria codified in Iowa Code section 598.21(1). In re Marriage of Estlund, 344 N.W.2d 276, 280 (Iowa App. 1983).

The district court found Linda owed approximately $11,700 on the real estate at the time the parties married. It also found both parties contributed to the monthly payments on the real estate and that the contract was now paid off. Further, the court found Linda had brought the real estate to the marriage, Linda had made the greater contribution toward the payments of the real estate

and the greater contribution toward the marriage. The court awarded the property to Linda but ordered Linda to pay David $6,000 for his equity in the real estate.

Upon our review of the record, we find the division of property equitable under the circumstances and we affirm.

V. Appellate Attorney Fees. Both parties are seeking the award of appellate attorney fees. 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). Guided by these general principles, David's request for attorney fees is denied, Linda's request for attorney fees is granted. David is ordered to pay $500 toward Linda's appellate attorney's fees.

For the foregoing reasons, the decision of the district court is affirmed in all respects. The costs of this action are taxed to David.

AFFIRMED.