IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 5-580 94-1960

IN RE THE MARRIAGE OF EILEEN MARILYN RAUSCH AND ABDULRAHIM ABDULLAH AL-DOSARI

Upon the Petition of
EILEEN MARILYN RAUSCH,

Petitioner-Appellee,

And Concerning
ABDULRAHIM ABDULLAH AL-DOSARI,

Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

Abdulrahim Abdullah Al-Dosari appeals from the decree dissolving his marriage to Eileen Marilyn Rausch. **AFFIRMED AS MODIFIED.**

Michael W. Fay, Cedar Rapids, for appellant.

James W. Affeldt of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee.

Heard by Habhab, P.J., Cady, J., and McCartney, S.J.*, but decided by Hayden, P.J., Cady, J., and McCartney, S.J. Habhab, J., takes no part.

*Senior judge from the 2nd Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

Abdulrahim Abdullah Al-Dosari (Abdul) married Eileen Marilyn Rausch on February 14, 1983. Abdul is a permanent resident alien who holds Saudi Arabian citizenship. He and Eileen have lived at various locations during the marriage, including Iowa, Florida, and Saudi Arabia. They have three children, Mussad Abdulrahman Al-Dosari, born July 3, 1984, Zyid Abdulrahman Al-Dosari, born August 13, 1987, and Monirah Abdulrahman Al-Dosari, born November 30, 1992.

Eileen received a bachelor of science degree in dental hygiene in 1991. She is employed with an annual gross income of $29,578.68.

Abdul had sporadic employment prior to 1991 and spent much of the time pursuing a college education. In 1991, however, Abdul was involved in a serious car accident in North Liberty. As a result, he received serious injuries and was hospitalized for four months after the accident and almost died. Since the accident, Abdul has been unemployable and his primary source of income has been from social security disability payments.

Testimony revealed Abdul's personality traits have changed since the accident. His short temper has become exaggerated and he has experienced short-term memory problems. In 1993, he was charged with domestic assault with a weapon. Eileen was the victim of this assault. Soon after, a domestic abuse petition was filed and a protective order was entered. This order was later violated and Abdul served seven

days in jail as a result. Also, in March 1994, a CINA petition was filed based on Abdul's alleged physical abuse of Mussad. The petition was apparently dropped.

Eileen filed a petition for dissolution of marriage. At the time of trial, she was thirty-three years old, Abdul was thirty-six, Mussad was ten, Zyid was seven, and Monirah was one and one-half.

Following trial, the court entered its judgment and decree. The court found Abdul had improved since the accident, but concluded he was not a suitable custodian for the children due to problems stemming from the closed-head injury. The court determined the safety of the children would be jeopardized if it awarded joint legal custody or allowed unsupervised visitation. In particular, the court noted Abdul's threats to remove the children to Saudi Arabia. Therefore, the district court awarded sole custody to Eileen and provided Abdul would have up to two hours supervised visitation twice per week.

The court also found Abdul was unemployable and did not order him to pay child support. To offset the lack of support, the court gave Eileen all of the equity in the house (about $16,400). The court also awarded Eileen a 1992 Ford Tempo valued at $8640, and Abdul was given two Toyota vehicles of negligible value. The court split the other personal property. Neither party was awarded alimony.

The court required Eileen to assume the $65,600 mortgage on the house as well as the $2800 debt on the Tempo. The court ordered each party to pay debts

incurred under their own names, their own attorney fees, and one-half the court costs.

Abdul appeals.

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 district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Abdul contends the district court erred in awarding Eileen sole custody of the children. Abdul argues the court should have awarded joint custody.

In awarding custody of minor children, the district court is to be reasonable and act in the best interests of the child. Iowa Code § 598.41(1) (1993). The district court is to:

> order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated . . . unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result . . . and which will encourage parents to share the rights and responsibilities of raising the child.

Id. If joint custody is not ordered, the district court is required to cite clear and convincing evidence that joint custody is unreasonable and not in the best interests of the child. Iowa Code § 598.41(2) (1993). Hostility between the parents and their inability to effectively communicate, however, may overcome the preference for joint

custody. *In re Marriage of Miller*, 390 N.W.2d 596, 602 (Iowa 1986); *In re Marriage of Eilers*, 526 N.W.2d 566, 569 (Iowa App. 1994); *In re Marriage of Brainard*, 523 N.W.2d 611, 614 (Iowa App. 1994).

In making the sole custody determination, the district court made the following findings:

> The Court finds by clear and convincing evidence that: (a) [Abdul] is not a suitable custodian for the children because of his disabilities relating to his closed-head injury detailed above; (b) because of the closed-head injury, the parents cannot communicate with each other regarding the children's needs; (c) [Eileen] has been the primary caretaker for the children throughout their entire lives; (d) [Abdul] is unwilling to support [Eileen]'s relationship with the children and, in fact, threatens to remove them from the country; (e) the safety of the children will be jeopardized if there is an award of joint custody and unsupervised or unrestricted visitation because of the founded child abuse and the disabilities relating to the head injury.

We agree with the district court the factors cited strongly militates against an award of joint custody. Abdul is not a suitable custodian due to his abusive past, his inability to effectively communicate with Eileen regarding the children, and his threats to harm Eileen and remove the children from the country. We find the district court properly cited clear and convincing evidence supporting the finding that joint custody is unreasonable in this case.

Abdul contends the district court erred in the visitation award. Abdul argues visitation should be increased and unsupervised.

Generally, we have considered liberal visitation rights to be in a child's best interest. *In re Marriage of Stepp*, 485 N.W.2d 846, 850 (Iowa App. 1992). The

visitation rights of a parent will not be restricted unless direct physical harm or significant emotional harm to the child, other children or a parent is likely to result from such contact. *In re Marriage of Rykhoek*, 525 N.W.2d 1, 4 (Iowa 1994); *In re Marriage of Gillilland*, 487 N.W.2d 363, 366 (Iowa App. 1992).

The district court stated supervised visitation was awarded for the same reasons joint custody was not awarded. We find these reasons to be more than adequate. Both the children and Eileen could potentially be put in significant danger if unsupervised visitation had been awarded. This is true due to Abdul's past abusive history, his threats to physically harm Eileen, and his threats to remove the children from the country.

Indeed, we find the potential danger to be significant enough to warrant modifying the district court's decree regarding visitation. The district court decree allows the children, once they become twelve years of age, to determine on their own whether they desire expanded visitation with Abdul. In view of the present dangers presented by Abdul, we strike this provision from the decree. A future change for the better in these present conditions may permit more liberal visitation at that time.

Abdul contends the district court erred in making the property distribution. He argues the division of the property was not equitable.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts, but we do not require an equal division or percentage division. *In re Marriage of Russell*, 473 N.W.2d 244, 246

(Iowa App. 1991). The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1993). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). We reject precise percentage divisions because "[t]he question is always what is an equitable and just award in a given set of circumstances." *In re Marriage of Cooper*, 225 N.W.2d 915, 919 (Iowa 1975).

We view the economic aspects of a dissolution decree as an integrated whole. *In re Marriage of Behn*, 385 N.W.2d 540, 543 (Iowa 1986); *In re Marriage of Bornstein*, 359 N.W.2d 500, 503 (Iowa App. 1984). Abdul was only employed sporadically during the marriage. Abdul was not ordered to make child support payments. Eileen will not be receiving any alimony and will be providing all child support. Eileen was ordered to pay the mortgage and all other debts associated with the house. We conclude the distribution of property by the district court was equitable under the circumstances in this case.

Upon consideration of all arguments raised by the parties on appeal, we affirm the ruling of the district court as modified in this opinion.

AFFIRMED AS MODIFIED.