

FILED

NOV 30 1983

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SYLVIA A. PATTERSON AND JOSEPH H. PATTERSON

Upon the Petition of)

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SYLVIA A. PATTERSON,)

Petitioner-Appellant,)

Filed November 30, 1983

And Concerning)

JOSEPH H. PATTERSON,)

3-234

83-286

Respondent-Appellee.)

Appeal from Pocahontas District Court - Russell J. Hill, Judge.

Petitioner-wife appeals from the decree dissolving the parties' marriage.

AFFIRMED AS MODIFIED.

C. Daniel Connell of Connell & Duffy, Storm Lake, for petitioner-appellant.

Claire F. Carlson and Greg Knoploh of Kersten, Opheim, Carlson & Trevino,
Fort Dodge, for respondent-appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

Petitioner-wife appeals from the decree dissolving the parties' marriage. On appeal, petitioner-wife asserts: (1) that the best interests of the parties' two children require that she be awarded custody; (2) that the trial court's award of property between the parties is unjust and inequitable; and (3) that the noncustodial parent should not be required to pay child support. We affirm as modified.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. While the findings of the trial court are not binding upon us, we view them with considerable weight. In re Marriage of Burham, 283 N.W.2d 269, 274 (Iowa 1979).

I.

The paramount consideration in determining custody is the best interests of the child. Iowa R. App. P. 14(f)(15). No hard and fast rule governs which parent should have custody. Rather, it is necessary to view the record as a whole and consider the characteristics and needs of the children, the characteristics of the parents, their respective abilities to provide for the emotional, social, moral, material and educational needs of the children, the nature of each proposed environment, available alternatives, and any other relevant matters disclosed in the particular case. In re Marriage of Bowen, 219 N.W.2d 683, 688 (1974). As in all cases of this type, precedent is of little value and our decision will ultimately depend on the particular facts of the case. In re Marriage of Castle, 312 N.W.2d 147, 148 (Iowa Ct. App. 1981).

The parties, Joe and Sylvia, were married in 1970 and have two minor children, Robert, age 11 and Julie, age 7. Both petitioner and respondent are in good physical and mental health and are high school graduates. While there is evidence that both parents have abused alcohol in the past, both have made efforts to control this problem.

One of the considerations that led the trial court to conclude that Joe should

be the custodial parent was the fact that both children have resided with their father since March 1981. During this time, Joe has attempted to provide a stable environment for his children. They have been attending the same school since their father has had custody and have developed friendships. Moreover, Joe has a good relationship with Sylvia's family, and the maternal grandmother has maintained better contact with the children through Joe than through Sylvia. Removing the children from this relatively stable environment would only serve to unnecessarily disrupt their lives. While Joe has had some lapses in good behavior shortly after the separation, these have been minimal and pose no threat to the children's well-being.

In contrast, Sylvia has demonstrated an inability or lack of desire to provide a good environment for her children. Sylvia is alienated from various members of her family and testimony reveals that on more than one occasion she has taken her children to the bar where she was employed and allowed them to drink alcohol. There is also some indication that Sylvia is less than discreet about her relationships with other men.

Based on these considerations, we cannot say that the trial court erred in awarding custody to Joe. We therefore affirm the trial court's decision in that regard.

II.

The petitioner has also argued that the division of property was inequitable. The trial court listed the parties' divisible assets as follows:

Machinery	\$38,000.00
Livestock	5,300.00
Pickup	1,750.00
Automobile	500.00
Guns	175.00
Stock	450.00
Accts. Rec.	<u>2,860.00</u>
	\$47,035.00

Excluded from this list was \$23,822.00 worth of grain currently in storage. Joe

was given credit for the \$30,000.00 worth of assets he brought into the marriage, and Sylvia was awarded the automobile, leaving a balance of \$16,535.00. This amount was divided equally, and Sylvia was given a judgment for \$8,267.50. The parties were also awarded the household items in their possession.

The petitioner has raised four primary reasons why she considers this distribution inequitable: (1) the grain should be considered a divisible asset; (2) the entire value of a house purchased by Joe for his brother should be considered a marital asset; (3) the assets Joe brought into the marriage were inappropriately valued; and (4) the trial court should have considered all of Joe's debts paid.

Our analysis of the property division is governed by section 598.21 of the Iowa Code which codifies many aspects of our prior case law. A percentage division of property is not statutorily sanctioned. Rather, the ultimate question is whether the distribution is equitable under the specified facts of the particular case. In re Marriage of Callenius, 309 N.W.2d 511, 514 (Iowa 1981).

We agree with Sylvia that the grain on hand should be considered a divisible marital asset. Although the sale of the grain will undoubtedly result in adverse income tax consequences for Joe, we note that all the expenses for that grain, the 1981 crop, have been paid. We therefore increase the property award to Sylvia by \$9,000. This added amount will be paid without interest in three equal annual installments due on the first, second, and third anniversary of the decree.

The petitioner also maintains that a house purchased by Joe for his brother should be considered a marital asset. Joe recently purchased the house in question for \$9,300.00. At the date of sale, he made a down payment of \$1,860.00. No deed conveying the house to Joe has been filed. Importantly, Joe's brother has agreed to pay back the down payment and assume the loan. The trial court considered the \$1,860.00 owed to Joe as an asset, yet did not include the full value of the house. In light of the fact that Joe's brother has assumed full financial responsibility for the purchase, we find no cause to dispute this decision.

We also find that petitioner's final two points regarding the property division are without merit. The trial court based its value of the assets Joe brought into the marriage on Joe's estimated value of their worth. The only testimony to the contrary was given by a witness with no knowledge of depreciation schedules. It was entirely appropriate for the trial court to rely on Joe's testimony. Finally, it is argued that Joe's debts should be considered paid. A review of the trial court's decision reveals, however, that these debts were not considered in determining the property division. For these reasons, we affirm the division of property in all respects.

III.

Sylvia also argues that she should not be required to pay child support at the rate of \$130 per month.

Both parties to a marriage 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 Heinemann, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981).

Our examination of the record convinces us that the support obligation imposed upon Sylvia should not be disturbed. Sylvia has a gross monthly income of \$860.00 and estimated monthly expenses of \$570.00. It was not unreasonable for the trial court to conclude that she had the ability to contribute \$130.00 toward the support of her children, especially in light of Joe's expenses which exceed his income.

Except for the modification described above, the decree is affirmed in all respects.

AFFIRMED AS MODIFIED.