

FILED

APR 30 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ELLEN L. DOLEZAL AND LARRY JAMES DOLEZAL

Upon the Petition of	)	
ELLEN L. DOLEZAL,	)	Filed April 30, 1985
Petitioner-Appellee,	)	
And Concerning	)	5-95
LARRY JAMES DOLEZAL,	)	<u>84-870</u>
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Tama County - William R. Eads,
Judge.

Respondent appeals the economic and child support provisions of his
dissolution decree. **AFFIRMED IN PART AND MODIFIED IN PART.**

Theodore R. Hoglan of Farall, Farall & Kaplan, Marshalltown, Iowa, for
respondent-appellant.

Dennis D. Appelgate, Toledo, Iowa, for petitioner-appellee.

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

SCHLEGEL, J.

Respondent, Larry Dolezal, appeals the economic and child support provisions of his dissolution decree. He also asks that he be granted joint custody of the parties' child. We modify in part and affirm in part.

Larry was married to petitioner, Ellen Dolezal, for sixteen years. They had one son. During most of the marriage Larry worked as an independent truck driver and part-time farmer. Ellen helped with the farming during the first years of marriage. She was a school bus driver at the time of trial.

Our review in this equity case is de novo. Iowa R. App. P. 4.

I. Property Division. As part of the property division the trial court ordered Larry to pay Ellen \$15,000 over a three-year period. Larry asks that we reduce the payment. We decline to do so.

Ellen made a significant contribution to the marriage of sixteen years. She worked as a homemaker and as a bookkeeper for Larry's trucking business. She at times helped with the farm work. She also earned outside income as a bus driver. Ellen would have earned more outside income, but for several years Larry persuaded her to not take an outside job.

Applying the criteria set out in Iowa Code section 598.21(1) (1983), we believe equity demands that Ellen's contributions to the marriage be recognized in the property division. Unfortunately, the parties acquired few possessions during their marriage. In light of that fact, the \$15,000 payment is appropriate. We realize that the property division leaves Larry with a large debt burden. He received, however, possession of income-producing assets: a truck and trailer and farm equipment. We affirm the property division.

II. Joint Custody. The trial court granted sole custody of the parties' child to Ellen even though Larry had requested that the court establish joint custody. The trial court's reasons for doing so were that Larry is on the road most of the time and that Ellen opposed joint custody. We do not believe that these

factors are sufficient for us to conclude that joint custody is unreasonable and not in the best interests of the child. See Iowa Code § 498.41(2) (1985). We thus award Larry joint custody of the child, but leave the physical care with Ellen.

Ellen has argued that we should not consider the code section we just cited because it was not in effect at the time of the trial. We do not agree. We believe the recent amendments to section 598.41 were clarifications of legislative intent, making the legislature's preference for joint custody crystal clear to the courts. We must act in conformity to such clearly expressed policy.

III. Child Support. The trial court ordered Larry to pay \$500 per month child support. He asks that we reduce the amount to \$350 per month. After considering the facts of this case, we conclude that the support payments should be reduced.

Larry, according to the tax returns submitted as evidence in the trial, lost money in his trucking and farming ventures for the years 1978-1982. This was due in large part to his farming losses. Because Larry testified at trial that farming is a hobby for him, we will base the child support payments solely on his trucking earnings.

Larry's total trucking earnings for the years 1978-1982 were \$24,510 according to his tax returns. Such a total is clearly insufficient to justify ordering \$500 per month support payments.

In considering the amount of support to award, we note that tax returns do not always give an accurate picture of a person's financial situation. We also consider Larry's own statement that he thinks his business will turn the corner in the next year or two, and evidence presented at trial that Larry's claimed trucking expenses have been higher than normal for the trucking industry. We set the child support payments at \$400 per month.

AFFIRMED IN PART AND MODIFIED IN PART.