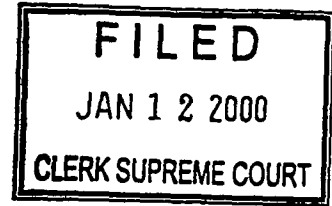


IN THE COURT OF APPEALS OF IOWA

No. 1999-446 (9-703) / 98-1618
Filed January 12, 2000

**IN RE THE MARRIAGE OF SUSAN ROEMER AND
THOMAS ROEMER**



Upon the Petition of
SUSAN ROEMER,
Petitioner-Appellee/Cross-Appellant,

And Concerning
THOMAS ROEMER,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Scott County, David E.
Schoenthaler, Judge.

Thomas Roemer appeals the custody provisions of a dissolution decree
contending the court erred in denying him more extensive visitation. Susan
Roemer cross-appeals, contending the court erred in awarding her former husband
the entire dental practice as nonmarital property. **AFFIRMED.**

Daniel Bernstein of William J. Bribriesco & Associates, Bettendorf, for
appellant.

Carol M. Pentuic of Anderson & Nelson, P.C., Rock Island, Illinois, for
appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

STREIT, J.

Thomas and Susan Roemer each appeal separate portions of the district court's dissolution decree. Thomas claims the trial court erred in limiting his visitation with his son, while Susan alleges the trial court erred in not dividing Thomas's dental practice. Upon reviewing the evidence de novo, we find the trial court's decree both fair and equitable, and we affirm.

I. Background Facts & Proceedings.

Thomas and Susan Roemer are thirty-seven-year olds who were married in 1991 and had one child, Michael, in 1997. Thomas graduated from dental school in 1988 and began practicing with his father. Thomas's dental practice moved to a Davenport mall in 1990, and in 1993 or 1994 he opened another dental practice at the Interstate 80 truck stop, near Walcott, Iowa. At the time of the parties' marriage, Thomas had an estimated 650-700 patients, and 750-800 at the time of dissolution. Susan had a degree in financial and marketing management and worked in a related field. Susan occasionally did accounting work for Thomas's dental practice. The parties dispute the extent of the work but agree she was paid for the services.¹ The incomes of Thomas and Susan are roughly equal.

In 1997 Susan filed a petition for dissolution of the marriage. The parties agreed Susan should have primary physical care of their son. Thomas sought extensive visitation, citing the great flexibility of owning his own dental practice

¹ The parties maintained separate bank accounts.

as support for his claim. Susan's primary contention was the division of the dental practice. She claimed although the practice existed prior to the marriage she had substantially contributed to its growth and should have a portion of its assets.

In its order of dissolution, the court awarded the dental practice in its entirety to Thomas, finding equity and fairness demanded Thomas retain possession of a practice he started prior to the marriage. The court also granted Thomas liberal visitation with his son, but declined to allow Thomas to pull Michael from daycare if he was free during that particular day.

Thomas appeals, contending the court erred when it denied his request to include in the visitation schedule those days he occasionally may have off. Susan cross-appeals, contending the court erred in awarding Thomas his entire dental practice.

II. Visitation.

A. Standard of Review. Our review of a trial court's grant of visitation in a dissolution proceeding is de novo. *In re Marriage of Drury*, 475 N.W.2d 668, 670 (Iowa App. 1991).

B. The Merits. In granting visitation, the best interest of the child predominates. *Id.* In a situation where both parents foster healthy relationships with the child, active involvement with both parents is normally in a child's best interest. *In re Marriage of Toedter*, 473 N.W.2d 233, 234-35 (Iowa App. 1991). Thus to "assure the child the opportunity for the maximum continuing physical and emotion contact with both parents after the" dissolution, a court should grant

liberal visitation. Iowa Code § 598.41(1)(a) (1997); *In re Marriage of Kerber*, 433 N.W.2d 53, 54 (Iowa App.1988). That overarching goal, however, is tempered by the structural necessity of a court's order. A district court's visitation schedule must have well delineated parameters in order to have some binding effect. The court's order must be based on the somewhat certain availability of the parents, not on mere possibilities or when convenient to a particular party.

Thomas, in support of his request for expanded visitation, stated:

And then, Your Honor, I have the ability with my job—I'm off on Tuesday, Thursday and all day every other Friday. Rather than stick my son in day care, if I had the ability to be with him on Friday, I'd like to be with him on Friday instead of day care. . . . Not that I can every Friday, but if I have a Friday off, then if he's available and she [Susan] doesn't disagree with me.

Thomas's comments are simply too speculative. A concrete visitation schedule is necessary to provide structure in the child's life and to ensure the court's order can be followed with some measure of ease. Affirming the trial court's visitation schedule, we find it would be impossible to set forth a schedule that could be relied upon with any real degree of accuracy.²

III. The Status of Thomas's Dental Practice.

Susan in her cross-appeal claims the trial court erred in determining it was fair and equitable for Thomas to retain complete ownership of his dental practice.

² Despite our ruling, parents are nonetheless "expected to actively encourage positive relations between the other parent and the children." *In re Marriage of Toedter*, 473 N.W.2d at 235. Guided by that expectation, Susan does have an informal responsibility to encourage her son's relationship with his father. In accordance with that responsibility, it is our sincere hope that Thomas's request for expanded visitation can be addressed by mutual agreement of the parties.

She claims her independent contributions to the practice make its division both fair and equitable.

A. Standard of Review. Our review of the trial court's property division is de novo. *In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993). "We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented." *Id.*

B. The Merits. The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* When distributing the property, we take into consideration the criteria codified in Iowa Code section 598.21(1) (1997). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983). Among the many factors to consider are: the property brought to the marriage by each party, the length of the marriage, the age and health of the parties, the earning capacity of each party, and the contribution by one party to the education of the other. Iowa Code § 598.21(1). An additional factor in dividing appreciated property acquired before the marriage is whether the appreciation which occurred during the marriage was fortuitous or due to the efforts of the parties. *In re Marriage of Lattig*, 318 N.W.2d 811, 815 (Iowa App. 1982). An equitable property division of the appreciated value of the property should be a

function of the tangible contributions of each party and not the mere existence of the marital relationship. *Id.*

Where the accumulated property is not the product of the joint efforts of both parties, or where one party brings property into the marriage, there need not necessarily be a division. This is especially true where the marriage was of short duration.

Id.

Given the unique circumstances of the present case, we find the trial court was fair and equitable in awarding Thomas the dental practice. Thomas started the dental practice three years before the parties' marriage. This fact alone, however, is not dispositive of the issue. Unlike gifts or an inheritance, there is no statutory demarcation for assets brought to the marriage versus assets accumulated in the course of the marriage. Rather, the characterization of an asset as premarital is simply one factor that is to be weighed in combination with the numerous other factors contemplated in Iowa Code section 598.21(1). The parties were married a relatively short amount of time. If a marriage lasts only a short time, the claim of either party to the property owned by the other prior to the marriage is minimal at best. *In re Marriage of Wallace*, 315 N.W.2d 827, 831 (Iowa App. 1981); *see also In re Marriage of Steenhoek*, 305 N.W.2d 448 (Iowa 1981) (granting husband credit for property brought into marriage when marriage lasted only five years). The parties are roughly the same age, in fair health, and possess equivalent earning capacities. Neither party made significant educational or professional sacrifices for the sake of the marriage, nor did one support the other through additional

schooling. Given their roughly identical age, health, and salaries, it would not appear fair or equitable to divide one party's assets as to upset that balance. *Compare In re Marriage of Garst*, 573 N.W.2d 604, 607 (Iowa App. 1997) (dividing assets brought by the husband to the marriage because the wife quit her job, sacrificed educational advancement, moved, and assisted in ensuring her husband's business ventures were successful). The dental practice has not appreciated significantly in value since the marriage. Furthermore, any modest appreciation that did occur was not the result of Susan's contributions. She did work occasionally for the dental practice, but she was paid for those services. Additional contributions to the practice, although from Susan's personal checking account, were marital funds. In weighing all the factors in Iowa Code section 598.21(1), we find the trial court properly awarded the dental practice solely to Thomas. Such a division was fair and equitable. The trial court is affirmed.

AFFIRMED.

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