FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

409

IN RE THE MARRIAGE OF SUSAN V. DILLINGHAM AND ROGER D. DILLINGHAM

Upon the Petition of)
SUSAN V. DILLINGHAM,)
Petitioner-Appellant,) Filed December 27, 1983
And Concerning)
ROGER D. DILLINGHAM,) 3-353 / 83-225
Respondent-Appellee.)

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

Petitioner wife appeals from economic and child custody provisions of the parties' dissolution decree, asserting that the property division was inequitable and that she should have been awarded custody of the two minor children. AFFIRMED.

William J. Thatcher, Fort Dodge, for petitioner-appellant.

Frederick E. Breen of Price, Goode, Breen & Breen, Fort Dodge, for respondent-appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

PER CURIAM

Susan V. Dillingham and Roger D. Dillingham were married in 1971 and divorced in 1977. The decree entered at that time incorporated a stipulation which, inter alia, awarded the custody of the two children, now aged eleven and eight, to Roger, and also awarded to him the marital home in which the parties had an equity of approximately $20,250. Shortly after the decree was entered the parties resumed living together in a common law relationship which lasted until Susan filed her petition for dissolution of marriage in August, 1981. Susan physically took control of the youngest child at the time of separation; each parent had custody of one child during the pendency of the dissolution proceedings.

Roger, now aged thirty-four, did not complete the twelfth grade. He is employed as a railroad track laborer with a net monthly income of approximately $972. Susan, now aged thirty, completed high school and now is a factory worker with a net monthly income of approximately $945. In addition to the marital home, Roger was awarded real property with a net value of approximately $2,250, while Susan was awarded real property with a net value of approximately $6,450. The trial court found the marital home had not increased significantly in value since it was awarded to Roger under the 1977 dissolution decree.

Roger lives in the marital home with his sixty-three-year-old mother, who is available for babysitting and similar tasks. Susan lives in a rented house in Fort Dodge with her boyfriend. Conflicting evidence was presented concerning the parties' parenting abilities and stability, Roger's abuse of alcohol and violent behavior toward Susan, and the use of drugs by Susan and her boyfriend. A guardian ad litem appointed to represent the children recommended that custody be given to Roger. The trial court awarded custody of both children to Roger subject to a specified visitation schedule. Susan was ordered to pay child support

of $200 per month, to be reduced by $75 per month when the oldest child becomes ineligible for support. No alimony was awarded.

Susan appeals the dissolution decree, contesting the award of custody to Roger and the equity of the property division. Our review is de novo. Iowa R. App. P. 4 (1983). We review the entire record and adjudicate anew the rights of the parties on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). We are not bound by the trial court's findings of fact, but we give them weight, especially with regard to the credibility of witnesses. Iowa R. App. P. 14(f)(7).

I. **Child Custody.** We review the trial court's order in light of the factors enumerated in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), bearing on the determination as to which parent will better provide for the child's needs. As always, the paramount consideration in any custody dispute is the long-term best interests of the child. Iowa R. App. P. 14(f)(15); In re Marriage of Sparks, 323 N.W.2d 264, 266 (Iowa Ct. App. 1982); Schoonover v. Schoonover, 228 N.W.2d 31, 34 (Iowa 1975).

We find many important factors to support awarding custody to Roger. He has had physical custody of at least one of the two boys for the entire period since the parties separated and has demonstrated a better ability to care for them than Susan has during the limited times she has had the boys. There are many ways in which Susan has evidenced a lack of interest in her children. She voluntarily surrendered custody of the boys in the first dissolution because she felt the kids would hold her down and she wanted to go back to college. Two people testified that she had told them she did not think a mother should play with her children. She sometimes left the family for an entire weekend. When Susan was responsible for caring for the children, they appeared unkempt, unclean, and underdressed for cold temperatures. After Susan and Roger separated, Susan used money from savings accounts set up in the children's names to make major repairs to her

boyfriend's car. Because she moved so often, the youngest boy went to three different schools during the time she had him in her custody, and he frequently went to school without his glasses and with his homework incomplete. In comparison, when Roger had the boys, they were clean, well clothed, and emotionally happy. He played with the children, took them to amusement parks, helped and encouraged them in their homework assignments. The younger boy gave some indication to his teacher that he preferred staying with his father. In Roger's custody, the boys are able to stay in their family residence, in the same school district, with further stability added by the presence of Roger's mother, who lives with them and has experience as a homemaker and health aide for ill people.

In upholding the trial court's award of custody to Roger, we are not ignoring Susan's testimony of Roger's past violent behavior. She claimed he frequently beat her, however, there were only two entries in her diary of any discordance between them, one of these was called merely a "fight." Relatives lived with the couple from time to time and testified that they never observed any evidence of Roger's violent behavior, although the couple did quarrel. Roger admits to a couple of incidents when he used violence, however, these incidents appear to have occurred out of jealousy, a desire to preserve the marriage, and Roger's perturbation with Susan's extramarital affairs. There is no evidence that Roger ever exhibited violence towards the children other than spankings, which were never excessive. Susan has not shown a totally meek nature either. One day when the two boys were on their way home from school, she forcefully pulled the younger boy into her car as he was kicking and screaming in objection. He ran back and forth on the front seat in agitation. As she drove off, the door flew open and he fell out partway, but she slammed on the brakes and pulled him back inside before she sped off again. This incident upset both boys greatly and is a further

indication of her lack of concern about the effect that her actions have on the well-being of the boys.

Applying the operative facts under the Winter criteria leads us to believe that it is in the children's best interests that their custody be with their father. The children's guardian ad litem supported granting custody to Roger. Roger's living situation and apparent commitment to the well-being of the children would afford a better home situation for the two boys. Our belief is bolstered by our rule giving weight to trial court's findings. In re Marriage of McDowell, 244 N.W.2d 238, 239 (Iowa 1976); In re Marriage of Ringus, 266 N.W.2d 805, 807 (Iowa 1975); In re Marriage of Callahan, 214 N.W.2d 133, 136 (Iowa 1974). Susan has not presented a sufficiently persuasive case to cause us to change the trial court's decree. We affirm the trial court's resolution of custody of the children.

II. **Property Disposition.** Susan disputes the economic disposition of the trial court's property decree, particularly the award of the family residence to Roger. She claims she should have been awarded half the value of the house.

In reviewing each individual economic provision of a dissolution decree, we consider all the provisions together as an integrated whole, see In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976), and we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), as modified in In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972) (fault for breakdown of marriage eliminated from Schantz factors), and the factors enumerated in Iowa Code section 598.21 (1983). There is no requirement in a division of assets that parity between the parties be effected. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); Williams at 345; Schantz at 405.

In the instant case, we find the property division to be equitable and just under the circumstances. By awarding the family residence to Roger, the trial court evidently felt it would help the children in their adjustment to the new family status. The parties voluntarily entered into the property settlement and were represented by counsel in the first dissolution. There is no evidence that there was fraud or that Susan agreed to the settlement out of fear of reprisals by Roger. We have no basis on which to undertake a re-examination of the equities of the previous decree; we thus find the disposition of the trial court to be appropriate.

AFFIRMED.