

IN THE COURT OF APPEALS OF IOWA
IN RE THE MARRIAGE OF CYNTHIA LOUISE CLINGAN
AND DAVID LEE CLINGAN

FILE

JAN 27 1988

CLERK SUPREME COURT

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Upon the Petition of	)	
CYNTHIA LOUISE CLINGAN,	)	Filed January 27, 1988
Petitioner-Appellant,	)	
And Concerning	)	<u>7-500</u>
DAVID LEE CLINGAN,	)	<u>87-232</u>
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Keokuk County (No. DM 1-673),
Robert Bates, Judge.

Petitioner wife appeals the decree dissolving the parties' marriage.

AFFIRMED.

H. Michael Neary of Gerard & Neary, Sigourney, for appellant.

Emil Trott, Jr. and John N. Wehr of Barrett & Trott, Des Moines, for
appellee.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ. Schlegel, J.
takes no part.

OXBERGER, C.J.

Petitioner Cynthia Clingan appeals the provisions of the decree dissolving the parties' marriage. She asserts: (1) the trial court should have given her the physical custody of the parties' two children, and (2) that the property division is inequitable. She also requests appellate attorney fees. Respondent David Clingan has not cross-appealed but asserts Cynthia should be sanctioned for failing to comply with Iowa Rules of Appellate Procedure 14(a)(5) and 14(g). *We affirm.*

David and Cynthia were married in June 1982. Two children, Christopher and Cody, were born of the marriage. The parties separated permanently on October 1, 1985. They had separated on two prior occasions.

Both parties graduated from high school. David is working for Pella Rolscreen. He has been employed full-time since 1983. Cynthia has pursued some further education and is currently seeking a bookkeeping degree. She was employed seasonally during the marriage and is currently unemployed.

In June 1984 the parties purchased a \$10,000 home on contract. The contract balance is \$7,154.00. The parties improved the home by remodeling. A fire destroyed this house in February 1986. The majority of contents destroyed belonged to David since Cynthia removed all her possessions in October. The insurance David maintained on the house provided for actual replacement costs. David is rebuilding the house and it is nearly finished. An insurance settlement of \$96,000 was agreed upon.

The decretal court granted physical custody of the children to David for nine months of the year. Cynthia would have physical custody during the summer months. Visitation was granted to both parties. David was also ordered to pay child support to Cynthia while the children were in her care.

In dividing the parties' property the court awarded \$18,923.00 of the insurance settlement to Cynthia. This amount was calculated by determining the home's current value, less the contract balance, and then dividing the balance. David was given the option to pay this amount in one lump sum or in six annual installments with interest. Cynthia did not receive any of the insurance proceeds covering the personal property.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact but are not bound by them. Iowa R. App. P. 14(f)(7). We must determine which parent is capable of administering more effectively to the long-term best interests of the child. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982). The factors considered in this decision are enumerated in Iowa Code section 598.41(3) and In re Marriage of Winter, 223 N.W.2d 165 (Iowa 1974).

We find no reason to disturb the trial court's custody decision. David has shown stability in employment and location. He has demonstrated his maturity. The psychologist testified that, while David is moderately defensive, he is a well-adjusted adult. David is also very comfortable with the children. He is also under very little stress. He prefers to stay home during his nonworking hours.

Cynthia, conversely, has shown less stability. She is currently unemployed and living in a low-rent unit in What Cheer. The psychologist also felt Cynthia would need support help for the stress if she was given custody.

For these reasons, we conclude David should retain physical custody of the children for nine months and Cynthia three months as set out in the trial court's decree. The best interests of the children will be furthered by this arrangement.

Cynthia contends the property division is inequitable. She claims she should receive one-third of the insurance proceeds rather than the amount she did receive. We again see no reason to disturb the trial court's ruling.

An equal division is not required in dividing the property; the determinative issue is what is equitable and just under the facts of each particular case. In re Marriage of Hoak, 364 N.W.2d 185, 194 (Iowa 1985); In re Marriage of Byall, 353 N.W.2d 103, 106 (Iowa App. 1984). The division must be based on each spouse's right to an equitable share of the property accumulated as the result of their joint efforts. In re Marriage of Hitchcock, 309 N.W.2d 432, 437 (Iowa 1981). The division of the appreciated property is to be based upon the tangible contribution of each party, not the mere existence of a marital relationship. In re Marriage of Lattig, 318 N.W.2d 811, 815 (Iowa App. 1982). Other factors are set forth in Iowa Code section 598.21(1).

The record in this case clearly supports the trial court's decision. Cynthia did not make a substantial financial contribution to the marriage to warrant a larger award. While she was the primary homemaker, she treated any additional money she earned as hers and not as marital property. David maintained the premises and paid for the insurance. The personal property destroyed in the fire was mostly David's. In these circumstances, we conclude the property division fair and equitable and affirm it.

Cynthia also requests appellate attorneys fees. The allowance of fees on appeal is not a matter of right, but is based on the parties' respective abilities to pay. In re Marriage of Butler, 346 N.W.2d 45, 47 (Iowa App. 1984). David is heavily indebted, while Cynthia has received an ample property settlement. In view of the parties' financial conditions, Cynthia's request for fees is denied.

David requests Cynthia be sanctioned for failure to comply with Iowa Rules of Appellate Procedure 14(a)(5) and 14(g). These rules require citation to the record in the argument portion of the brief.

This court has the power to dismiss an appeal for the violation of an appellate rule. See Iowa R. App. P. 19; McKinney v. Wilson, 300 N.W.2d 87 (Iowa 1981) (dismissal of appeal appropriate for lack of prosecution). We remind counsel that compliance with the appellate rules is required. Noncompliance can lead to dismissal and possible attorney discipline.

We conclude, however, that the violation in this case does not justify a sanction. Cynthia gave full citation to the record in her Statement of Facts. The argument section of the brief did not argue facts outside those cited earlier. The violation was not as egregious as David would portray and his request for sanctions is denied. Costs of this appeal are to be divided evenly between the parties.

The district court is affirmed.

AFFIRMED.