

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 23 1989

CLERK SUPREME COURT

IN RE THE MARRIAGE OF MERLIN BELLINGER
AND DIANE MARIE BELLINGER

Upon the Petition of
MERLIN BELLINGER,

)

23

Petitioner-Appellee,

)

And Concerning
DIANE MARIE BELLINGER,

)

8-509
88-243

Respondent-Appellant.

)

Appeal from the Iowa District Court for Bremer County
(No. CD 86067), Paul W. Riffel, Judge.

Wife appeals and petitioner husband cross-appeals the
decree dissolving the parties' marriage. **AFFIRMED.**

Roger L. Sutton, Charles City, for appellant.

Gaylen V. Hassman, of Engelbrecht, Ackerman & Hassman,
Waverly, for appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ.

OXBERGER, C.J.

Appellant Diane Bellinger (Diane) appeals from several provisions of a dissolution decree under which appellee Merlin Bellinger (Merlin) was granted sole custody of the parties' child. The principal issue is whether the court should have provided for joint custody. Diane also appeals other economic issues. Merlin cross-appeals contending the trial court correctly ordered sole custody with him and that any visitation with Diane should be under supervision. He also cross-appeals on economic issues. We first address the issue of child custody, then the economic and other issues raised by the parties. Affirmed.

Merlin and Diane Bellinger were married in 1983. It was Merlin's second marriage and Diane's first. One child, Melonie, was born of the marriage in December 1984. Merlin is now forty-eight years old and Diane is thirty-seven. Merlin is a semi-truck driver and earns \$1,774 gross per month. Diane was a hair stylist, a retail sales clerk, and a secretary before the marriage but did not work outside the home during the marriage.

I. Child Custody

The district court awarded Merlin sole custody of Melonie and allowed Diane visitation of alternate weekends, alternate holidays, and three weeks (not necessarily consecutive) during the summer.

Our review is de novo. Iowa Rule App. P. 4. Prior cases have little precedential value; we must base our decision primarily on the particular circumstances of the parties in this case. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983) (citing In re Marriage of Kehrli, 241 N.W.2d 923, 926 (Iowa 1976)). Our first and foremost consideration in determining custody is the best interest of the child involved. Iowa R. App. P. 14(f)(15).

The record reveals Merlin is a recovering alcoholic. Diane suffers from a seizure disorder and depression. She is currently undergoing counseling for emotional problems. Both Diane and Merlin resist a joint custody arrangement. Much of the testimony at trial was for the purpose of making the other party look bad. A DHS home study concluded Melonie would best be placed with her father. The parties' counselor opined Merlin was better capable of ministering to Melonie's needs. In determining child custody in marriage dissolution proceedings, we necessarily rely to some extent upon the judgments of the district court judge who actually saw and listened to the parties. See Baker v. Baker, 243 N.W.2d 234 (Iowa 1976). Our review of the records indicates while both parents love Melonie, we find insufficient evidence to change the trial court's ruling.

In considering whether a joint custody arrangement is in the best interest of the minor child we turn to the

factors enumerated in Iowa Code section 598.41(3)(1987). Prior to trial the parties exchanged Melonie every third day. These exchanges exhibited Merlin and Diane's incompatibility. The custodial exchanges which have taken place pursuant to the prior consent decree have been marred by both verbal and physical confrontations. Diane admits she will never overcome her bitterness toward Merlin, and she predicts future problems with visitation arrangements. The evidence is that Diane continues to initiate confrontations with Merlin in Melonie's presence. This conduct is not in Melonie's best interest. Therefore, we find the circumstances in this case to warrant a grant of sole custody of Melonie to Merlin. We are in accord with the trial court's order of visitation. We do not feel it necessary to order Diane have only supervised visitation of Melonie as Merlin requested on cross-appeal.

II. Alimony

Diane asserts her alimony award is inadequate. Merlin cross-appeals that it should not have been awarded. Diane was not ordered to pay any child support. She was awarded alimony of \$100 per month for eighteen months to enable Diane to reacquire job skills and secure appropriate employment. In a determination of whether to order alimony and what amount, we look to the factors enumerated in Iowa Code section 598.2(3) (1987). Alimony is an allowance to the ex-spouse in lieu of a legal obligation to support that

person. See In re Marriage of Hitchcock, 309 N.W.2d 432 (Iowa 1981). We determine the alimony provision made by the trial court to be appropriate.

III. Property Division

Merlin cross-appealed contending the district court should not have awarded Diane the parties' 1986 federal and state income tax refunds or assigned him the responsibility of Diane's medical bills. The district court set aside to each party the property he or she brought into the marriage, subject to any debt. Merlin was awarded his cash and bank accounts, his life insurance policies, the personal property in his possession except specific items awarded to Diane, and specified items of personal property in her possession. Diane was awarded the parties' 1986 federal and state income tax refunds, her cash and bank accounts, her insurance policies, the personal property in her possession except the items awarded to Merlin, and specified items of personal property in Merlin's possession. Merlin was directed to pay the bills listed on his affidavit of financial status, which were medical and dental bills incurred by Diane and covered at least in part by Merlin's company's insurance.

A justifiable property division is one that is equitable under the circumstances. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); In re Marriage of Stewart, 356 N.W.2d 611, 612 (Iowa App. 1984). We determine the property division made by the trial court to be equitable.

IV. Attorney Fees

Diane contends the attorney fee award is inequitable. The trial court awarded \$1,000 in attorney fees including \$250 in temporary attorney fees. Attorney fees are not recoverable as a matter of right but rests within the trial court's discretion and depend upon one spouse's financial needs and the other spouse's ability to satisfy them. See In re Marriage of Orgren, 375 N.W.2d 710, 714 (Iowa App. 1985). We affirm the attorney fee award.

Diane also requests attorney fees on appeal. We award Diane an additional \$500 in attorney fees on appeal.

AFFIRMED.