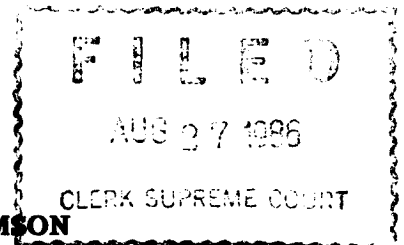


IN THE COURT OF APPEALS OF IOWA

IN THE MARRIAGE OF DEBRA LYNN WILLIAMSON
AND JAMES A. WILLIAMSON



Upon the Petition of	)	499
DEBRA LYNN WILLIAMSON,	)	
Petitioner-Appellee,	)	Filed August 27, 1986
And Concerning	)	
JAMES A. WILLIAMSON,	)	<u>6-164</u>
Respondent-Appellant.	)	85-1444

Appeal from the Iowa District Court for Hamilton County (No. D.M. 1015)
- Dale E. Ruigh, Judge.

Respondent husband appeals from the decree dissolving the parties' marriage, asserting that: (1) the trial court erred in not awarding him physical care of the parties' children in its joint custody arrangement, (2) his child support obligation is excessive, (3) the property division is inequitable, and (4) the trial court should not have awarded petitioner wife attorney fees. **AFFIRMED AS MODIFIED.**

Dan T. McGrevey of McGrevey & Sherman, Ft. Dodge, for appellant.

Keith Van Doren and Bridget A. Chambers of Bottorff & Van Doren, Webster City, for appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

PER CURIAM

Petitioner Debra Lynn Williamson and respondent James A. Williamson were married on September 28, 1974. They have three children: Chad, born April 30, 1977; Daniel, born September 15, 1980; and Tia, born June 10, 1982.

Debra is thirty-one years old. In 1973, she completed a one-year secretarial training program at a community college. She worked as a secretary for six years in Credit Bureau offices. In 1977, she began working as a checker at a Hy-Vee grocery store where she is still employed. Debra grosses approximately \$6,600 annually from Hy-Vee. Debra also mows lawns and cleans houses, earning an additional thirty to fifty dollars per month.

James is thirty-seven. He attended an automotive mechanics trade school in 1966 and was employed as a mechanic for a number of years. When the parties married, he worked at a Ford dealership. He left that job over a dispute with the management. In 1980, he began working for Hamilton County on a secondary road crew as a mechanic in diesel repair, where he earned \$19,000 per year. In February of 1984, James opened his own appliance sales and service business as a representative of General Electric. This operation closed in August of 1985. James is presently working on a road crew cutting brush, where he earns \$5.50 per hour, or net monthly pay of \$648. Because this employment is seasonal, he also hopes to work for the county in the winter removing snow.

In its dissolution decree, the trial court set up a joint custody arrangement with Debra having physical care of the children. The court assumed that James will earn approximately \$13,000 annually and ordered him to pay \$360 per month child support so long as he is liable for the support of three children, reducing to \$275 for two children and \$200 for the last child, and \$380 toward Debra's attorney fees. The trial court established the parties' net worth to be \$4,771. It awarded each party his or her clothing and personal effects and the household

goods in his or her possession. It awarded James a truck, his coin collection, and any remaining assets of his business. It awarded Debra a car. It severed the parties' joint tenancy in their house, leaving them tenants in common. The bank is presently foreclosing on the mortgage, and the unpaid principal and interest exceed the current market value. The trial court directed each party to pay specified debts.

On appeal, James contends that: 1) the trial court erred in awarding physical care of the children to Debra; 2) the property division is inequitable; 3) Debra should not have been awarded attorney fees; and 4) his child support obligation is excessive.

Our review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

Child Custody. James does not contest a joint custodial arrangement. However, he contends that he should be awarded physical care of the parties' children because Debra hires baby-sitters frequently and often displays frustration and a short temper.

"In child custody cases the first and governing consideration of the courts is the best interest of the child." Iowa R. App. P. 14(f)(15). It is not just the short-range interests of the children with which we are concerned, but their long-range interests as well. In re Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974). The factors considered in awarding custody are enumerated in Iowa Code section 598.41(3) and In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and need not be repeated here. Gender is irrelevant to the determination of which parent will do better in raising the child. In re Marriage of Ullerich, 367 N.W.2d 297, 299 (Iowa Ct. App. 1985).

The evidence in this case indicates that both James and Debra are loving and caring parents. In fact, each party and all of the witnesses admitted that James and Debra love and take good care of the children. Each has participated in an active parenting role during the marriage as James worked days and Debra worked evenings for an extended period. All of the witnesses testified that the children are healthy and well-adjusted and emotionally attached to both parents.

Of course both parties exhibit some weaknesses. There is no question that Debra has a short temper and a sharp tongue. She also has excessively used baby-sitters at times throughout the marriage and separation. James, while seemingly calmer in his dealings with the children, has exhibited an explosive temper toward Debra, putting his fist through a wall and striking her hard enough to perforate her eardrum. In the last years of the parties' marriage, James exercised poor financial judgment and his present financial situation is insecure.

Throughout the marriage Debra carried the primary parenting responsibility as far as playing with the children and organizing their day-to-day activities. She has demonstrated a greater capacity and interest in providing and caring for the children over a longer period. Debra has also demonstrated greater concern regarding the impact of the divorce on the emotional health of the children. Debra visited the minister at their church for advice on how she and her children should cope with the stress of the separation. Debra has also taken Chad to the Youth Service Center on a weekly basis for counseling. Debra has made an honest and open effort to help herself and the children deal with the trauma of the breakup of the family. James, to the contrary, still evidences a deep-rooted animosity toward Debra, which renders suspect his voiced approval of the children's continuing relationship with Debra. He repeatedly referred

to Debra as "that woman" at trial and stated that he had given up trying to communicate with her.

After weighing the strengths and weaknesses of the parties and deferring to the trial court's credibility assessment, we conclude that the children's best interests will be served if Debra is given responsibility for their physical care.

Child Support. James also contends that the trial court's award of \$360 in monthly child support is excessive. We must consider the factors enumerated in Iowa Code section 598.21(4) (1985) to determine the propriety of an award of child support. Both parties have an obligation to support their children, but this obligation is not necessarily to be borne equally by them. It should be apportioned according to the fair ability of each to contribute. In re Marriage of Heineman, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981).

Under James's new employment, he had received three paychecks at the time of trial. James presently earns \$5.50 an hour. His hours averaged 27.3 per week over a period of five weeks, although he testified he should work forty-five hours per week, weather permitting. His average weekly net pay was \$149.50, making his net monthly pay approximately \$650.00. Moreover, James leaves the marriage with a minimum amount of assets and certainly none that are income-producing.

Under these circumstances, we find that the amount awarded by the trial court is not reasonable. We are confident, however, that support of \$250 per month will not be unduly burdensome to James. This amount shall be reduced to \$200 at such time as he is only liable for the support of two children and \$125 at such time as he is liable for the support of but one child. James's liability for child support payments shall terminate in accordance with the child support provision in the trial court's dissolution decree.

Property Division. James next asserts that the trial court's property division is inequitable because Debra receives the majority of the parties' assets, including the parties' 1979 Cougar, their furniture and appliances, and her Hy-Vee retirement account (valued at \$1,115.50).

The factors we consider to determine if property division is equitable are set forth in Iowa Code section 598.21. The crucial issue in reviewing property division in a dissolution decree is whether the distribution under the particular circumstances was equitable. In re Marriage of Wallace, 315 N.W.2d 827, 830 (Iowa Ct. App. 1980). We reject any rule based on a percentage division of the assets. In re Marriage of Lattig, 318 N.W.2d 811, 814 (Iowa Ct. App. 1982). We are not bound to achieve a precisely equal division in property awards. In re Marriage of Anderson, 243 N.W.2d 562, 564 (Iowa 1976).

Given the fact that Debra is awarded physical custody of the children and James mortgaged the \$10,000 equity which had existed in the parties' home to capitalize his business proposition, we conclude that the trial court's allocation of property was reasonable.

Attorney Fees. James contends that the testimony regarding Debra's attorney fees was improperly admitted as rebuttal evidence and, therefore, her attorney fees should not have been awarded. The trial court is vested with considerable discretion in allowing attorney fees to be awarded. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa 1983). So too is it afforded discretion in regulating what evidence may be presented in rebuttal. The allowance of attorney fees here appears fair and reasonable and should not be disturbed.

AFFIRMED AS MODIFIED.