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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BEVERLY S. JENSEN AND DONALD W. JENSEN

Upon the Petition of)
BEVERLY S. JENSEN,)
Petitioner-Appellant,)
And Concerning)
DONALD W. JENSEN,)
Respondent-Appellee.)

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Filed February 25, 1987

6-447
86-413

Appeal from the Iowa District Court for Cass County (No. CDM 829 Eq. DM1035) - Glen M. McGee, Judge.

Petitioner wife appeals from the decree dissolving the parties' marriage, asserting that the trial court should have given physical care of the parties' two children to her rather than to respondent husband in the joint custody arrangement and that the trial court failed to divide the parties' property. **AFFIRMED IN PART AND REMANDED WITH DIRECTIONS.**

W Edward Anstey, Atlantic, and Terrance G. Rutherford of Howard & Rutherford, Atlantic, for appellant.

William F. Denman of Denman & Albers, Des Moines, for appellee.

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

PER CURIAM 73

The parties to this appeal, Beverly and Donald Jensen, were granted a dissolution of their marriage by the District Court for Black Hawk County on March 5, 1986. The district court, as part of the dissolution decree, awarded the parties joint legal custody of their children, Ryan and Jessica, with physical custody being granted to Donald. On the date the dissolution decree was entered, these children were five and three years old, respectively. Child support obligations were imposed on Beverly in the amount of fifty dollars per month. The district court made no division of the parties' property. Beverly has brought this appeal, challenging both the award of physical custody and the failure to divide the marital property. Our review is de novo. Iowa R. App. P. 4. Although we are not bound by the district court's findings of fact, we give them weight. Iowa R. App. P. 14(f)(7).

We begin our analysis of the custody issue with the recitation of what is certainly one of the most firmly-established propositions in the jurisprudence of our state: In child custody cases, the best interests of the child is the first and governing consideration. Iowa R. App. P. 14(f)(15); In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). The general principles applicable to the custody issue are summarized in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), and In re Marriage of Bowen, 219 N.W.2d 638, 687-88 (1974), and need not be set out at length here. In addition to the cases, we find guidance in the statutes. Iowa Code Chapter 598 (1985).

We note initially that neither party challenges that portion of the district court's decree which established joint legal custody in the parties. The sole custodial issue before us concerns the propriety of that court's award of physical custody to Donald. With respect to that question, the district court found that both parties are good parents, love their children, and have demonstrated the

ability and desire to meet the children's needs. Faced with this apparent equipoise of ability, the district court considered as at least partially determinative the support and assistance given by the paternal grandparents towards seeing that the children were properly cared for. Sharon contends the district court unduly emphasized this factor while failing to resolve the custody issue in accord with those principles enunciated in Bowen, Winter, their progeny, and the statutes. We disagree.

Our courts recognize a child's relationship with his or her grandparents as an appropriate consideration in child custody determinations. See In re Marriage of Kramer, 297 N.W.2d 359 (Iowa 1980); In re Marriage of Guyer, 238 N.W.2d 794 (Iowa 1976). The record in the present case demonstrates that the paternal grandparents enjoyed substantial amounts of contact with Ryan and Jessica as a result both of baby-sitting necessitated by the parties' concurrent work schedules and of the fact that Donald was employed by his father as a farmhand and would oftentimes bring the children with him to work. The support and care given by the paternal grandparents to the children is apparent from the record. We think the district court was correct in considering this relationship and gave the relationship an appropriate amount of emphasis in its determination.

In addition, we think that, in light of the relevant factors set forth in precedent and the statutes, an award of custody to Donald is appropriate. We think both Sharon and Donald are capable of giving, and willing to give, adequate care and equal affection to the children. While neither party possesses parenting abilities markedly superior to the other, we agree with the district court that both would work towards meeting the children's needs. We hope, and assume, that these beneficial attitudes will carry over into the future. On the present record, we see no reason to disrupt the custodial arrangement established by the district court. See In re Marriage of Sherwood, 240 N.W.2d 669 (Iowa 1976).

We do find error, however, in the district court's failure to distribute the parties' marital property Such a distribution was requested by the parties and is mandated by the statutes Iowa Code section 598.21(1) (1985) states, in part, that "[u]pon every judgment of annulment, dissolution or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly " (emphasis added) That subsection goes on to list the criteria for consideration in reaching an equitable distribution of the marital property See Iowa Code sections 598 21(1) and (2) (1985). The district court in the case at bar failed to comply with this statutory mandate.

Accordingly, we remand this case to this district court for the limited purpose of allowing that court to equitably distribute the marital property. Iowa R App P 12(g)

AFFIRMED IN PART AND REMANDED WITH DIRECTIONS.