FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-234 / 88-1411

IN RE THE MARRIAGE OF KATHLEEN AGNUS OLSON AND MICHAEL LOUIS OLSON

Upon the Petition of

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KATHLEEN AGNUS OLSON,

Petitioner-Appellant,

And Concerning

MICHAEL LOUIS OLSON,

Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, James L. Beeghly, Judge.

Petitioner appeals certain provisions of the decree of dissolution entered for the parties in district court. **AFFIRMED AS MODIFIED.**

Don E. Gottschalk of Gottschalk & Shinkle, Cedar Falls, for petitioner-appellant.

D. Quinn Martin of Martin, Nutting, Miller, Keith & Pedersen, Waterloo, for respondent-appellee.

Timothy J. Luce of Randall, Afinson & Luce, Waterloo, for the minor children.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

HABHAB, J.

Appellant Kathleen Agnus Olson appeals the district court's decision awarding primary care of the parties' three minor children to appellee. She also challenges several economic provisions of the dissolution decree. We affirm as modified the decision of the district court.

Kathy and appellee Michael Louis Olson were married on July 14, 1973. Their marriage has produced three children: Tracey Olson, born March 28, 1975; Jonathan Olson, born October 30, 1977; and Matthew Olson, born October 14, 1981. Kathy is currently attending the University of Northern Iowa and is expected to receive a bachelor's degree in education in July 1990. She has a part-time job from which she has an income of $375 per month. Michael's gross income is $2,653 per month.

The district court awarded joint legal custody of the children, with Michael being given physical care. Kathy was awarded liberal visitation rights and ordered to pay $350 per month in child support commencing in July 1990. The district court awarded Michael $57,899 in assets and $47,040 in debts. The trial court gave Kathy $6,935 in assets. In its decision, the trial court did not mention a $4,700 student loan of Kathy's. The trial court did not grant Kathy rehabilitative alimony.

Our review of this matter is de novo. Iowa R. App. P. 4. While we give weight to the district court's

findings of fact, we are not bound by them. Iowa R. App. P. 14(f)(7). Prior decisions have minimal precedential value in view of the fact that we must base our decision primarily upon the particular circumstances of the parties currently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

In resolving a question of primary physical care, our first and governing consideration is the best interests of the children. Iowa R. App. P. 14(f)(15). We must determine which parent can minister more effectively to the children's long-term interests. In re Marriage of Welbes, 327 N.W.2d 756, 758 (Iowa 1982). Tracey, age thirteen at the time of the hearing, expressed a desire to live with her father. Such an expressed preference is to be accorded some weight. See In re Marriage of Zabecki, 389 N.W.2d 396, 400 (Iowa 1986). Upon viewing all the evidence, the trial court determined that it was in the best interests of the children that primary care of them be given to Michael. We agree. Michael is currently better acclimated to minister to the long-term interests of the children. Accordingly, we affirm the decision of the trial court.

Kathy also takes exception with the district court's property division. She argues that the trial court should have set off to her the sum of $3,500 as nonmarital property. This sum represents the amount Kathy received through an inheritance and as a gift from her parents. Section 598.21(2), Iowa Code (1989) provides:

> Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

This requirement, however, is not absolute. See In re Marriage of Mentel, 359 N.W.2d 505, 506 (Iowa App. 1984). Here, the $2,000 gift was used as a down payment on the marital residence. Because of the declining real estate values, however, the marital home is saddled with a mortgage equal to the property's current value. As such, the gift was totally dissipated by the decline in real estate values. Under such circumstances, there is simply no property left to set aside.

Similarly, one-half of the $1,500 inheritance was used for a family trip, with the other one-half being used for appliances for the parties' camper. At this late date, it would be patently unfair to Michael to have the value of the inheritance set aside for Kathy when the inherited funds were used during the marriage for family expenditures which have minimal, if any, residual value at the time of the dissolution.

While Kathy did mention at trial that she has taken out a $4,700 Guaranteed Student Loan, she failed to include this loan on her statement of affairs. This loan does not become due until six months after her graduation. Even when this loan is taken into account, however, we believe

that the property division is equitable. Therefore, we affirm the trial court's division of property.

The district court's denial of alimony is also disputed by Kathy. Alimony is not an absolute right, but is dependent upon the circumstances of each particular case. See In re Marriage of Fleener, 247 N.W.2d 219, 220 (Iowa 1976). The relevant factors to be considered in deciding if such an award is appropriate are detailed in Iowa Code section 598.21(3) (1989). Upon consideration of those factors, we find the trial court's denial of alimony was proper in this case. Kathy currently is receiving a pell grant which pays for her tuition and books. She also has a part-time position which provides her with $375 a month. In addition, she takes from the marriage no debts which are currently due. Michael, on the other hand, has assumed responsibility for all of the parties' debts as well as the children's support. Under such circumstances, we do not believe alimony is appropriate here.

Finally, Kathy questions the trial court's decision that she should commence paying child support in July of 1990. This ruling was premised upon the trial court's assumption that Kathy will graduate in July of 1990 and find work as a full-time teacher. We believe the trial court's decree should be modified so as to provide that Kathy's child support payment is to commence January 1, 1991. It is generally agreed in the briefs that the

earliest that Kathy can expect employment is September 1, 1990, with her first check payable several weeks thereafter. Since Michael will not be paying rehabilitative alimony, we are of the opinion that the extra months she receives prior to paying child support will better enable her to get her finances in order.

It is a well-established principle that both parents have a legal obligation to support their children and that each parent should contribute to this obligation in accordance with his or her ability. In re Marriage of Richards, 439 N.W.2d 876, 878 (Iowa App. 1989). Kathy's ability should allow her to make the appointed child support payments. If she does not graduate according to plan or is unable to locate employment, then she is free to seek modification. Accordingly, we affirm the district court's order as to child support as modified herein.

AFFIRMED AS MODIFIED.