FILED
MAY 25 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF GLENDA CATHERINE MEIS AND MATTHEW A. MEIS

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UPON THE PETITION OF GLENDA CATHERINE MEIS,	)	Filed May 25, 1982
Petitioner/Appellee/Cross-Appellant,	)	2-153 / 2-66887
AND CONCERNING MATTHEW A. MEIS,	)	
Respondent/Appellant/Cross-Appellee.	)	

Appeal from Linn District Court, William R. Eads, Judge.

Respondent-husband appeals the economic and custody provisions of the parties' decree of dissolution. Petitioner-wife cross-appeals the court's failure to include a cost-of-living escalator clause and appeals the court's order that she is to undergo regular health treatments. The trial court's property division was equitable and the custody award was proper and both are affirmed. The court's provision that the petitioner-wife undergo regular health treatment is not supported by the evidence and is vacated. AFFIRMED WITH MODIFICATION.

Robert C. Gross, Cedar Rapids, for respondent-appellant.

James W. Affeldt of Eells, Blackstock, Affeldt & Harms, Cedar Rapids, for petitioner-appellee.

Heard en banc.

Respondent-husband appeals the economic and custody provisions of the parties' decree of dissolution. Petitioner-wife cross-appeals the court's failure to include a cost-of-living escalator clause and appeals the court's order that she is to undergo regular health treatments. The trial court's property division was equitable and the custody award was proper and both are affirmed. The court's provision that the petitioner-wife undergo regular health treatment is not necessary and is vacated.

Petitioner, Glenda Catherine Meis, and respondent, Matthew A. Meis, were married on September 20, 1975 in Le Mars, Iowa. Both parties are thirty-three years of age. Two children were born to the marriage, Lisa Ann Meis, date of birth, February 16, 1976, and Tara Lee Meis, date of birth, January 5, 1979.

At the time of their marriage, Glenda was employed as a dental technician and Matthew was employed at West Le Mars Feed & Grain. The parties resided for a period of time after the marriage in Le Mars, Iowa. They then moved to Sioux Falls, South Dakota, and then to Marion, Iowa, when Matthew found employment with Collins Radio Company in Cedar Rapids, Iowa.

Matthew is currently employed at Rockwell International. He has, however, accepted an employment offer with Ratheon Corporation in Santa Barbara, California. His salary will be $27,600.

Glenda is not currently employed. However, she has recently been employed as a nurses' aide in a nursing home on a part-time basis. She has also earned some income by babysitting since the parties were separated in October 1980.

Matthew received a degree in engineering from Iowa State University in Ames, Iowa. Glenda is a high school graduate and has received a two-year dental technician degree from Kirkwood Community College in Cedar Rapids, Iowa.

The parties have been separated since October of 1980. Matthew has had visitation with the minor children since the separation. Initially, his visitations were on Wednesday evening and on Saturday. Three weeks prior to trial, his visitations had been changed to 4:30 p.m. to 7:00 on Tuesdays and Thursdays and from 10:00 a.m. until 2:00 p.m. on Saturdays.

Before proceeding with discussion of the merits of this case, we direct respondent-appellant's counsel to the mandatory requirements as to the form of appellate briefs contained in Iowa R. App. P. 14. Particular reference is made to counsel's failure to heed Iowa R. App. P. 14(a)(2), (a)(3), (a)(5) and (e).

I. Scope of review.

Our review of this case is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to the findings, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7). In reviewing each individual economic provision of dissolution decree, we consider all the provisions together as an integrated whole. See In re Marriage of McFarland, 239 N.W.2d 175, 179 (Iowa 1976). In reviewing the property provision of a dissolution decree, we consider the factors articulated in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968), except fault, In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972), and the factors enumerated in section 598.21, The Code 1981.

II. Custody.

Matthew appeals the trial court's order placing custody of the parties' two minor children with Glenda. Matthew claims placing the children with Glenda is not in their long-term best interests since Glenda is plagued by frequent emotional problems.

Our review of the record, in light of the considerations enumerated in In re Marriage of Winter, 223 N.W.2d 165, 166-67 (Iowa 1974), leads us to the conclusion

Glenda will "minister more effectively to the long-range best interests of the children." Id.

The evidence establishes Glenda was awarded temporary custody of the children in October of 1980. Testimony indicates the children have been well cared for while in Glenda's custody. The children have been well fed and clothed. There was testimony Glenda disciplined the children. There was also testimony Glenda was a more patient, loving and attentive parent than Matthew. The children seem to be well adjusted to living with Glenda. See In re Marriage of Bowen, 219 N.W.2d 683, 687 (Iowa 1974). Evidence in the record indicates both Glenda and Matthew have had some medical problems in the past. We do not think the evidence establishes either party's current medical condition would impair their ability to minister to the children's needs. Cf. In re Marriage of McDowell, 244 N.W.2d 238, 239 (Iowa 1976). Giving weight to the trial court's findings and conclusions, see id., to the fact Matthew is moving to California, see Herron v. Herron, 258 Iowa 1052, 1062, 141 N.W.2d 562, 568 (Iowa 1966), and to the evidence in the record, particularly the parties' relationship with the children, we think the trial court properly placed custody of the children with Glenda. The court's custody order is affirmed.

Related to this issue is the trial court's order requiring Glenda to obtain regular health care and counseling and to submit a report to Matthew's counsel. We feel that provision is not supported by the evidence and is unnecessary. Accordingly, we vacate that portion of the court's order requiring Glenda to obtain regular health care and counseling and to submit reports to Matthew's counsel.

III. Property Settlement.

Matthew contends the trial court's property settlement was inequitable. He claims since the marital assets were purchased primarily with the money he contributed to the marriage, the amount he received was too small. He also claims he should have received the newer automobile.

In response to Matthew's argument, we are guided by the notion that although an equal division of the assets is frequent, there is no requirement that parity between the parties be effected. In re Marriage of Schissel, 292 N.W.2d 421, 423 (Iowa 1980); In re Marriage of Conley, 284 N.W.2d 220, 223 (Iowa 1979). Even if the trial court's goal was to divide the assets equally, there is no requirement that the division be mathematically precise. Conley, 284 N.W.2d at 223. The test for an acceptable allocation of assets is whether the distribution constitutes an equitable and just award under the particular circumstances of the parties. Locke v. Locke, 246 N.W.2d 246, 251 (Iowa 1976); Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968); In re Marriage of Williams, 199 N.W.2d 339, 345 (Iowa 1972). We have considered the provisions of the property settlement in relation to the other economic provisions of the decree and relevant case law and conclude the property settlement is reasonable and equitable. The award is affirmed.

IV. Automatic Increases in Child Support

Glenda claims the trial court should have provided for the effects of inflation by ordering the child support payments to increase in proportion to the increase in the Consumer Price Index. See In re Marriage of Stamp, 300 N.W.2d 275, 277-80 (Iowa 1981). In Stamp, the court indicated automatic increases in child support to offset the effects of inflation were not always appropriate. Id. at 277, 279-80. After considering the parties' income history, employment, health, and the foreseeability of special needs for the children, see id. at 277, we conclude this case presents an appropriate situation for incorporation of a provision for

adjustments to the child support payments. We modify the trial court's decree so that the following provision is included:

> On or before each anniversay date of this decree, the parties shall file a stipulation with the clerk of court providing for increased or decreased child support payments based upon the following: Child support payments shall be increased or decreased by the same percentage as the percentage change in the National Consumer Price Index as published by the United States Department of Labor for the most recent twelve month period for which data is available, provided that Matthew's gross income for the like period has increased by at least the same percentage. If Matthew's gross income increased by a lesser percentage, then the payments to Glenda shall increase by this lesser percentage. In the event Matthew claims the benefit of the above limitation, he shall submit copies of his federal tax returns or other sufficient proof of income to Glenda for the relevant years. If the parties are unable to stipulate to the correct adjustment amounts, either may request that the court determine the same, either itself or by appointment of a special master. The cost of such proceedings shall be shared equally by the parties and any adjustment made shall relate retroactively if necessary to the appropriate anniversary date.

V. Attorney Fees.

Glenda claims the trial court should have awarded her some attorney fees. Glenda incurred $2451.50 of attorney fees for trial work and $1500 attorney fees on appeal (25 hours at $60 per hour). We note the trial court has considerable discretion respecting awards of attorney fees. In re Marriage of Schissel, 292 N.W.2d 421, 428 (Iowa 1980). Our primary consideration in reviewing that determination is each party's resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Assessing the parties' resources in this case, we grant Glenda's request for attorney fees. Matthew is to be responsible for the payment of $1000 of the attorney fees incurred by Glenda for the prosecution of this case.

AFFIRMED WITH MODIFICATION.