

IN THE COURT OF APPEALS OF IOWA

No. 1-836 / 11-1034
Filed November 23, 2011

**IN RE THE MARRIAGE OF JACQUELINE M. MELAND
AND SCOTT R. MELAND**

**Upon the Petition of
JACQUELINE M. MELAND,**
Petitioner-Appellee,

**And Concerning
SCOTT R. MELAND,**
Respondent-Appellant.

Appeal from the Iowa District Court for Clinton County, Mark D. Cleve,
Judge.

A husband appeals the custody, child support, and alimony provisions of
the parties' dissolution decree. **AFFIRMED.**

Robert J. McGee of Robert J. McGee, P.C., Clinton, for appellant.

Cynthia Taylor of Zamora, Taylor, Woods & Frederick, Davenport, for
appellee.

Considered by Vogel, P.J., Eisenhauer, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.**I. Background Facts & Proceedings.**

Scott and Jacqueline Meland were married in 1991. They have three children, born in 1994, 1996, and 1999. On September 23, 2010, Jacqueline filed a petition for dissolution of marriage. The dissolution hearing was held on March 23, 2011.

At the time of the hearing, Jacqueline was forty-four years old. She has an associate's degree in nursing and is a registered nurse. Jacqueline was employed two days each week at the DeWitt Family Health Clinic and earned about \$18,727 per year. She was diagnosed with multiple sclerosis (MS) in 1987. She testified the disease causes her fatigue, and it was questionable whether she could work more than two days each week. Jacqueline receives an infusion every month which would cost \$4300 if she was not covered by Scott's health insurance.

Scott was forty-five years old at the time of the dissolution hearing. He has an associate's degree in electrical automechanics. He was employed as an area leader with TMK Ipsco, where he received a salary of \$90,800 per year. Scott also worked part-time mowing lawns in the summer and plowing snow in the winter, and he testified he earned about \$7000 per year from these activities. Scott was in good health.

The district court entered a dissolution decree for the parties on April 8, 2011. The court granted the parties joint legal custody of the children, with Jacqueline having physical care. Scott was granted regular visitation and was ordered to pay child support of \$1692 per month for the three children. Scott was

ordered to pay spousal support of \$600 per month until he reached the age of sixty-five or retired, whichever occurred later. Additionally, Scott was ordered to maintain Jacqueline under his existing health insurance plan as long as the coverage was available in an amount not to exceed that which he currently paid.

Both Scott and Jacqueline filed motions pursuant to Iowa Rule of Civil Procedure 1.904(2). The court increased the alimony award to \$700 per month. The court denied Scott's request for joint physical care of the children. The court adjusted its treatment of Scott's 401(k) plan. The court also adjusted Scott's child support obligation so he was required to pay \$1508 per month for three children, \$1303 per month for two children, and \$916 per month when support for only one child was required. Scott appeals certain provisions of the parties' dissolution decree.

II. Standard of Review.

In this equity action our review is de novo. Iowa R. App. P. 6.907. In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App. P. 6.904(3)(g). We examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999).

III. Physical Care.

Scott contends the district court should have granted the parties joint physical care of the children. He disputes the court's finding that Jacqueline was the primary caretaker during the marriage. He points out that he was very involved in the children's extracurricular activities in sports, and that he has

coached all three of the children. Scott also claims he involved the children in his part-time work, and they have helped him in order to earn extra income. He states Jacqueline only spent more time with the children because she was not working as much.

In determining physical care, our first and governing consideration is the best interests of the children. Iowa R. App. P. 6.14(6)(o). Our objective is to place the children in an environment likely to promote a healthy physical, mental, and social maturity. *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007).

A court may grant the parents joint physical care, or choose one parent to be the caretaker of the children. *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). Joint physical care is a viable option when it is in the children's best interests. *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). The court considers the following factors in determining whether to grant joint physical care: (1) the historical care giving arrangement for the children between the parents; (2) the ability of the parents to communicate and show mutual respect; (3) the degree of conflict between the parents; and (4) the degree to which the parents are in general agreement about their approach to parenting. *Hansen*, 733 N.W.2d at 697-99; *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007).

The petitioner's change in work hours during the early part of the marriage was a result of a joint decision of the parties. This decision gave the petitioner more time to focus on raising the children. The evidence presented at the dissolution hearing shows Jacqueline was historically the primary caretaker. She

got the children ready for school in the morning, took them to doctor's appointments, and attended their parent-teacher conferences. Jacqueline also attended their sporting events. The evidence showed she was involved in all aspects of their lives. On the other hand, Scott was primarily involved in their extracurricular activities, especially sports. We agree with the district court's statement, "[Jacqueline] has clearly acted as the primary physical caretaker of all three children from birth to the present, and has done a very good job in that role."

The evidence also showed there was very little communication between the parents. For instance, Scott had little knowledge about Jacqueline's disease and treatment. The parents did not communicate about the children. However, there was also very little evidence of conflict or animosity between the parents. Finally, there was little to no evidence as to whether the parents had similar parenting styles.

After considering all of the evidence, we concur in the district court's conclusion that the children should be placed in Jacqueline's physical care. The children are doing very well. We see no need to change or disrupt the physical care arrangement. *See Hansen*, 733 N.W.2d at 197 (imposing a new physical care arrangement on children that significantly contrasts from their past experience can be unsettling, cause serious emotional harm, and thus not be in the children's best interests). In the event we modified the physical care provision, Scott asked that we adjust his child support obligation. Because we have not modified the physical care provision in the dissolution decree, we therefore do not modify the child support provision.

IV. Spousal Support.

Scott claims the award of spousal support is excessive. He states Jacqueline's physician has not prohibited her from working more than two days per week. Scott asserts that if Jacqueline worked full-time at her current hourly rate she would earn in excess of \$40,000 per year. He also states that if she worked full-time she would be eligible for benefits, such as health insurance and a retirement plan. He asks to have the award of spousal support decreased to ten years.

The district court found Jacqueline had the ability to earn an income in the range of \$30,000-\$35,000 per year if she continued working in the nursing profession. As amended in the ruling on the motions pursuant to Iowa Rule of Civil Procedure 1.904(2), the court ordered Scott to pay traditional alimony of \$700 per month beginning April 15, 2011, until Scott attained the age of sixty-five or until he retired, whichever occurred later.

Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). Alimony is not an absolute right; an award depends upon the circumstances of the particular case. *Id.* In making an award of alimony, the court considers the factors set forth in Iowa Code section 598.21A(1) (2009). *In re Marriage of Olson*, 705 N.W.2d 312, 315 (Iowa 2005). We give the district court considerable discretion in awarding alimony; we will disturb the court's ruling only when there has been a failure to do equity. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998).

We determine the award of spousal support is equitable under the facts of this case. Jacqueline's health concerns make it unlikely that she would be able to work full-time. Jacqueline testified that when she works two days in a row she rests on the following day. The main symptom associated with her disease at this time is fatigue. Scott has the ability to pay alimony. Even after the alimony award, Scott's disposable income will be much greater than that of Jacqueline. We affirm the award of spousal support.

We affirm the district court on all of the issues raised in this appeal. Costs of this appeal are assessed to Scott.

AFFIRMED.