IN THE COURT OF APPEALS OF IOWA

No. 2-438 / 11-1578
Filed July 25, 2012

IN RE THE MARRIAGE OF
ANGELA M. DILLON
AND JON C. DILLON

Upon the Petition of
ANGELA M. DILLON,
Petitioner-Appellant,

And Concerning
JON C. DILLON,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge.

Angela Dillon appeals the custodial and economic provisions of a dissolution decree. **AFFIRMED.**

Robert S. Gallagher of Gallagher, Millage & Gallagher, P.L.C., Bettendorf, for appellant.

Jennifer Hall De Kock of Cartee Law Firm, P.C., Davenport, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Danilson, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

Angela Dillon appeals the custodial and economic provisions of a decree dissolving her marriage to Jon Dillon. She contends the district court acted inequitably in (1) declining to grant her request for physical care of their child and (2) allocating their property and debts.

I. Background Facts and Proceedings

Angela and Jon married in 1995, had a daughter three years later, and divorced in 2011. Following trial, the district court granted Jon's request for joint physical care of the child rather than Angela's request to have the child placed in her primary care. The court ruled that the child would be transferred between homes on a weekly basis.

With respect to the division of personal property, the court found the parties "spent the majority of the two days arguing over custody issues and spent very little time providing the court documentation regarding the personal property." The court accordingly awarded them the personal property they had each requested and treated the award as an equal distribution. The court additionally awarded Jon the home along with the associated debt and gave Angela a vehicle valued at $10,350 and a life insurance policy in the child's name.

As for the parties' remaining debts, the court ordered Angela to be solely responsible for repaying any loans to her family members and her student loans, as well as attorney fees incurred in a prior action. Jon was ordered to pay joint credit card debt, medical bills, and outstanding utility bills. Using the joint statement of liabilities filed by the parties, the court found that "with the exception

of the marital residence, this distribution of marital debt results in an almost equal split with Angela slightly higher due to her student loans."

The court subsequently denied motions to enlarge or amend the court's findings and conclusions. Angela appealed.

II. Physical Care

Angela contends she is "best suited to continuously attend to her child's physical and emotional needs" and, accordingly, she "should be awarded primary care of the minor child." On our de novo review of the record, we disagree. *See In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007) (setting forth standard of review).

Stability and continuity of caregiving are important factors in the physical care determination and "tend to favor a spouse who, prior to divorce, was primarily responsible for physical care." *Id.* at 696; *see also* Iowa Code § 598.41(3)(d) (2009). Although Angela contends she was the child's primary caretaker throughout the child's life and Jon was simply "a paycheck," the record reveals that both parents actively participated in the child's care. Angela herself testified that, after the child was born, her "shifts revolved around Jon's work schedule . . . so that the [child] never had to go to day care." When the child began school, Angela dropped her off in the mornings and Jon picked her up, caring for her until he began his evening work shift. Jon attended most of the child's many extracurricular activities, missing them only for a fishing trip or for work. Angela's friend, called to testify on her behalf, confirmed Jon's involvement in parenting, going so far as to state she would leave her own children with him. Based on this evidence, we conclude the "stability and

continuity of caregiving" factors favor rather than undermine the district court's decision to grant the parents joint physical care of the child. *See Hansen*, 733 N.W.2d at 697–98 ("All other things being equal . . . we believe that joint physical care is most likely to be in the best interest of the child where both parents have historically contributed to physical care in roughly the same proportion.").

Also relevant to the joint physical care determination is the ability of spouses to communicate and show mutual respect. *Id.* at 698. The record is replete with examples of Angela's failings in this area. She refused to keep Jon apprised of key developments such as the child's decision to attend counseling sessions during the dissolution proceedings; she showed inflexibility in rearranging visitation schedules; and she refused to acknowledge anything positive about Jon or his parenting abilities. In contrast, Jon testified that Angela was a "good mom," was "loving" with her child, and got "along great" with the child. He also gave Angela the benefit of the doubt with respect to her communication difficulties, stating "maybe when things settle down, she will get along better." Angela's refusal to interact civilly with Jon augurs against either joint physical care or primary placement with her.

This brings us to another consideration, "the degree of conflict between parents." *Id.* Our previous discussion highlights the conflicts that directly affected the child. There were also altercations between the parents and their families that indirectly affected the child by heightening tensions in the homes. We find it unnecessary to summarize those altercations. Suffice it to say that they paint an unflattering picture of both parents. At trial, the conflict escalated, with each parent hurling at the other largely unsupported accusations of personal

and legal misconduct. Their vitriol raises doubts about the long-term viability of a joint physical care arrangement.

Nonetheless, joint physical care was Jon's preferred arrangement and, on appeal, he simply seeks affirmation of that arrangement rather than placement of the child with him. More importantly, the overall picture is of a child who thrived in the care of both parents, at least until the dissolution proceedings. By all accounts, the child was self-motivated, disciplined, good-natured, and wise beyond her years. While Angela suggested the child feared her father, even Angela's friend did not second this accusation, testifying that she never witnessed Jon acting inappropriately with the child or scaring or threatening her. As the court found, "The child is . . . very well bonded to both parents and enjoys participating in recreational activities that both parents enjoy. It would be in her best interest to have maximum contact with both parents during non-school hours." We concur in this finding.

Remaining is a fourth non-exclusive factor articulated in *Hansen*, "the degree to which the parents are in general agreement about their approach to daily matters." *Id.* at 699. The parents disagreed on appropriate conduct during the child's sports activities. Jon accused Angela of unduly coaching the child from the sidelines, an accusation that the child's coach corroborated. The parents also disagreed on where the child would be schooled following the dissolution. Angela stated she could not commit to leaving the child in the same school district because she was not sure where she would be living. The district court did not believe she was undecided about her living arrangements, noting that she had a boyfriend outside the school district. The court's adverse

credibility determination is supported by Angela's additional testimony that she was not inclined to live in the same town as Jon. We agree with the court that Angela's claimed indecision and apparent willingness to transfer the child to another school district did not serve the child's best interests. As the court found:

> [The child] has resided all of her school years in Eldridge and has attended the North Scott School District. She has a group of friends in that district and will be making the transition from elementary school to junior high. That transition can be difficult in the best of times, even with one's own group of friends. However, it would be even more difficult if she should have to move to a new town and a new school district without the support of teachers and friends that are familiar to her. It doesn't seem that Angela has considered those factors in her decision to delay determining her residence with the child and her school enrollment.

In the end, despite several factors that do not bode well for joint physical care, it is clear the district court chose this arrangement to minimize the opportunity for unilateral decisions about the child's schooling, extra-curricular activities, and other matters and to maximize contact with both parents. *See* Iowa Code § 598.41(3)(e) (stating in determining what custody arrangement is in the best interest of a child, the court must consider whether "each parent can support the other parent's relationship with the child"); *In re Marriage of Will*, 489 N.W.2d 394, 399 (Iowa 1992) ("In custody and physical care determinations, we are also mindful that the court must consider the denial of one parent of the child's opportunity to have meaningful contact with the other parent is a significant factor in determining the custody or physical care arrangement."); *see also In re Marriage of Vrban*, 359 N.W.2d 420, 423–24 (Iowa 1984) (deferring to court's custody decision and relying heavily on its findings of fact, which were "clearly expressed, supported by substantial evidence, and led to a sound and

equitable determination of the sensitive" issue of child custody, where the testimony of the witnesses "was irreconcilably in conflict on several key issues"). Under the particular circumstances of this case, we conclude the court fashioned an equitable solution.

III. Property Division

Angela appears to take issue with the following aspects of the district court's property division: (1) the failure to assign values to the items of personal property awarded to each party and (2) the characterization and assignment of debts. She contends the court did not "consider certain evidence that was properly submitted at trial when deciding how to equitably divide" these assets and debts. She seeks an equalization payment in an unspecified amount.[1]

We begin with the court's personal property division, which was based on exhibits provided by the parties. Jon's exhibit only listed tools and provided no values. Angela's list was much more exhaustive and included values from the online sites eBay and Craigslist, as well as the Internal Revenue Service. The district court did not find these valuations credible, reasoning:

> The valuations provided on the financial affidavits and the exhibits provided by Angela for the most part do not have any documentation for the Court to use in determining the true value and the current condition of the items. . . . The amended schedule of personal property filed with the Bankruptcy Court in 2008 lists some of the same property concerned in this action. In each

[1] Jon also takes issue with the district court's division of the parties' assets and debts, arguing the court should not have (1) required him to pay the couple's credit card debt; (2) awarded certain items of personal property to the parties that were not properly accounted for; (3) declined to award him the life insurance policy for the child; and (4) allowed Angela to claim the tax deduction for the child every year. Jon did not file a cross-appeal and, accordingly, may not challenge the court's decision on these issues. *See Field v. Palmer*, 592 N.W.2d 347, 350 n.2 (Iowa 1999); *In re Marriage of Carr*, 591 N.W.2d 627, 628 (Iowa 1999).

> instance, the personal property in this action was given a higher current value by Angela and a zero current value by Jon.

In its post-trial ruling, the court stated:

> The Court painstakingly went through these documents, tried to reconcile the discrepancies in the trial testimony and the signed and sworn affidavits and statements provided to the Court and could not do so. The Court therefore in lieu of forcing the parties to sell their guns and fishing equipment, which meant a lot to each party, and in lieu of forcing the parties to have a public auction of all their personal items . . . opted to grant each party the items that they had requested and consider that an equitable distribution of the property, and the Court declines at this time to reconsider that ruling.

We conclude the court's decision to divide the personal property based on the parties' requests and without valuing the individual items was equitable under the circumstances. *See In re Marriage of Gensley*, 777 N.W.2d 705, 720 (Iowa Ct. App. 2009) ("It is not a wise use of judicial resources to list every piece of property once owned by the parties and expect the district court to wade through the lists to determine the value of each item.")

We turn to the parties' debts. The court provided a detailed explanation of its debt allocation, an explanation that is supported by the record. No useful purpose would be served by summarizing that record. What matters is that the court did equity as best it could, given the state of the record.

AFFIRMED.