IN THE COURT OF APPEALS OF IOWA

No. 2-451 / 12-0105
Filed June 27, 2012

IN RE THE MARRIAGE OF HEATHER MARIE KNUDSON AND GAIGE ALAN KNUDSON

Upon the Petition of
HEATHER MARIE KNUDSON,
Petitioner-Appellee,

And Concerning
GAIGE ALAN KNUDSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Shelby County, James M. Richardson, Judge.

A husband appeals the physical care and property division provisions in the parties' dissolution decree. **AFFIRMED.**

William T. Early, Harlan, for appellant.

J. C. Salvo and Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellee.

Considered by Eisenhauer, C.J., Potterfield, J., and Huitink, S.J.*

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

HUITINK, S.J.

I. Background Facts & Proceedings.

Gaige and Heather Knudson were married in 1997. They have three children, born in 1997, 2000, and 2002. Heather filed a petition for dissolution of marriage on February 14, 2011. The parties separated in March 2011, but both continued to live in Harlan, Iowa.

A hearing was held on November 18, 2011. At the time of the hearing Gaige was forty-two years old. He had a high school degree and was employed by Remington Seed Company as a tower treatment operator, where he earned approximately $38,700 per year. Gaige had also been engaged in farming since 2007. He did not own any land, but had purchased farm machinery he used to farm land he rented. Gaige was in good health.

Heather was thirty-five years old at the time of the hearing. She had a bachelor of nursing degree from Nebraska Methodist College and was a registered nurse. She was employed in the neonatal intensive care unit at Nebraska Methodist Women's Hospital in Omaha, Nebraska. Heather was employed part time, working two twelve-hour shifts per week and earned about $36,200 per year. She was in good health.

The district court entered a dissolution decree for the parties on December 19, 2011. The court granted the parties joint legal custody of the children, with Heather having physical care. Gaige was granted visitation on alternating weekends, one mid-week evening, alternating holidays, and two weeks in the summer. He was ordered to pay $1088 per month in child support for the three children and to provide health insurance for them.

The court set aside to Gaige three vehicles he brought to the marriage. The court divided the parties' property to award Gaige two vehicles, his life insurance policy, his retirement account, one-half of a bank balance, the farm machinery, and the 2011 crops. Heather was awarded the marital residence, a vehicle, her life insurance policy, her retirement accounts, and one-half of a bank balance. To recognize Heather's share of the value of the 2011 crops, the court ordered Gaige to pay her $150,000. Gaige was also ordered to pay Heather a cash property settlement of $55,871.50. Gaige has appealed the physical care and property division provisions of the 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.

Gaige contends the district court should have granted the parties joint physical care of the children, instead of awarding physical care to Heather. He acknowledges that Heather was the primary caretaker during the marriage, but asserts that he assisted more with the children than Heather now gives him credit for. He points out that the parties live in the same town and in the same school district and asserts joint physical care would be a workable solution in this case.

In determining physical care for a child, our first and governing consideration is the best interests of the child. Iowa R. App. P. 6.14(6)(o). Our objective is to place the child in an environment likely to promote 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 child'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 child 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).

We concur in the district court's decision placing the children in Heather's physical care, rather than in the joint physical care of the parties. Heather clearly has been the primary caretaker for the children throughout their lives. After the second child was born in 2000, Heather began working part-time in order to spend more time with the children. Heather was the parent who took the children to doctors' appointments, stayed home when they were sick, and went to parent-teacher conferences. On the two days each week Heather worked, her mother took care of the children before and after school, while Gaige was working.

Gaige worked full-time and engaged in farming, and so was not available to spend as much time with the children.

There was little evidence in the record concerning the other three factors—the ability of the parents to communicate, the degree of conflict between the parents, and their ability to agree about parenting. *See Hansen*, 733 N.W.2d at 697-99. Heather did raise concerns about Gaige's parenting based on his consumption of alcohol. Heather testified there had been incidents where she came home and found Gaige passed out, when he should have been watching the children. She stated she had found numerous alcohol bottles hidden in the house and the garage. Heather also testified that she had concerns Gaige might drive while intoxicated when the children were in the car, stating, "He has driven home drunk before many times."

On our de novo review of all of the evidence presented in the case, we affirm the district court's decision placing the children in the physical care of Heather.

IV. Property Division.

Gaige asserts the district court's division of property was not equitable to him. He claims Heather should not have been awarded $150,000 for her share of the 2011 crops because she had filed a petition for dissolution of marriage in February 2011, and did not do anything to assist in the production of those crops. He also claims the court improperly valued his farm machinery at $185,267, rather than $176,624.[1]

[1] On appeal, Gaige also contends the court should have set aside to him three vehicles he brought to the marriage. The court specifically found, however, these three

In matters of property distribution, we are guided by Iowa Code section 598.21 (2011). Iowa courts do not require an equal division or percentage distribution. *In re Marriage of Campbell*, 623 N.W.2d 585, 586 (Iowa Ct. App. 2001). The determining factor is what is clear and equitable in each particular circumstance. *In re Marriage of Miller*, 552 N.W.2d 460, 463 (Iowa Ct. App. 1996). In considering the economic provisions in a dissolution decree, we will disturb a district 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) (citations omitted).

Although Heather filed a petition for dissolution of marriage on February 14, 2011, the parties remained married until the district court issued a dissolution decree on December 19, 2011. Under section 598.21(5), all property, except inherited property or gifts received by one party, should be equitably divided between the parties. *See In re Marriage of Schriner*, 695 N.W.2d 493, 496 (Iowa 2005). The court properly considered the 2011 crops as a marital asset subject to division in the dissolution decree. *See In re Marriage of Martin*, 436 N.W.2d 374, 376 (Iowa Ct. App. 1988) (finding that growing crops may be considered a marital asset).

Heather valued the farm machinery at $185,267. All of the machinery had been purchased since 2007, and she added up the amounts paid for the machinery. There was no debt on the farm machinery. Gaige disputed the valuation for two pieces of machinery, a grain cart and a sprayer, which he claimed had depreciated since they had been purchased. He valued the farm

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vehicles "were Gaige's premarital assets and will be awarded to him without value." Therefore, they have already been set aside to Gaige.

machinery as a whole at $176,624. We will not disturb the district court's valuation of assets when the valuation is within the permissible range of evidence. *Hansen*, 733 N.W.2d at 703. We conclude the evidence supports the court's valuation of the farm machinery at $185,267.

Considering the property division as a whole, we conclude the court equitably divided the parties' assets and liabilities. We look to the economic provisions of the decree as a whole in assessing the equity of the property division. *In re Marriage of Dean*, 642 N.W.2d 321, 325 (Iowa Ct. App. 2002). We affirm the division of property in the dissolution decree.

V. Attorney Fees.

Heather requests attorney fees for this appeal. This court has broad discretion in awarding appellate attorney fees. *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). An award of appellate attorney fees is based upon the needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Berning*, 745 N.W.2 at 94. We determine Gaige should pay $1000 toward Heather's appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Gaige.

AFFIRMED.