

IN THE COURT OF APPEALS OF IOWA

No. 6-1086 / 06-1014
Filed February 28, 2007

**IN RE THE MARRIAGE OF CHRISTINA RUTH POTTS
AND RYAN RAY POTTS**

**Upon the Petition of
CHRISTINA RUTH POTTS,**
Petitioner-Appellee,

**And Concerning
RYAN RAY POTTS,**
Respondent-Appellant.

Appeal from the Iowa District Court for Page County, Jeffrey Larson,
Judge.

Ryan Ray Potts appeals the district court's ruling in his dissolution decree.

AFFIRMED AS MODIFIED.

Charles Hannan of Hannan & Dreismeier, P.L.C., Council Bluffs, for
appellant.

Mark Swanson of Swanson Law Firm, Red Oak, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Ryan Ray Potts appeals the district court's ruling in his dissolution decree. He argues the district court erred in (1) awarding primary physical care of the parties' children to Christina Potts; (2) dividing and valuing the parties' property; and (3) awarding alimony. We affirm as modified.

I. Background Facts and Proceedings

Ryan and Christina were married in October 1995. They have two sons, born in December 1996 and March 1999, respectively. Christina filed a petition for dissolution on November 16, 2005. A temporary order was entered granting Christina primary physical care, granting Ryan visitation every other weekend and one overnight every week, and ordering Ryan to pay \$1010 in child support per month.

Christina is forty-two years old and works part-time for a church in Bedford. She has a college degree in business. The parties agreed early in their marriage, however, that she would home school the children. Therefore, she has not worked full-time for several years. The court assigned her an imputed income of \$20,800.

Ryan is thirty-nine years old and owns his own business, Gutter-Tech, Inc. According to the district court, the parties agreed his income is \$55,568 per year.

During the marriage, Ryan's mother gave the parties ten acres on which to build a home. Both parties' names are on the deed. Further, when Ryan's father became ill, the parties acquired his farm. They assumed a mortgage and were to pay additional sums, but never did.

In its decree, the district court granted the parties joint legal custody and Christina primary physical care. It determined Christina was the children's primary caretaker, but that Ryan was also involved with the boys. It refused joint physical care, finding Ryan and Christina were unable to communicate openly. Ryan was awarded the same visitation arrangement he received in the temporary order: every other weekend and one overnight every week. Ryan was also ordered to pay \$910 in child support per month. In the property division, Ryan was awarded the farm property and personal property. Christine was awarded the marital home. The court determined Ryan's mother's gift of land was a gift to both parties and declined to classify the farm as Ryan's inheritance. Ryan was ordered to pay Christine \$500 per month in rehabilitative alimony for a period of sixty months and a property settlement of \$40,703. Ryan appeals the physical care ruling, the property valuation and distribution, and the alimony award.

II. Standard of Review

We review dissolution decrees de novo. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Though we are not bound by them, we give weight to the district court's factual findings and credibility determinations. *Id.*

III. Merits

A. Physical Care

Ryan argues the district court erred in awarding Christina primary physical care. He also claims the court incorrectly based its decision not to award joint physical care on its finding that the parties were unable to communicate.

We review numerous factors in determining which parent should have physical care of a child. See Iowa Code § 598.41(3) (Supp. 2005); *In re*

Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974). Our primary consideration, however, is the best interests of the child. *In re Marriage of Decker*, 666 N.W.2d 175, 177 (Iowa Ct. App. 2003). Specifically, we look to which parent can administer most effectively to the child's long-term interests. *In re Marriage of Williams*, 589 N.W.2d 759, 761 (Iowa Ct. App. 1998). We also consider the emotional and environmental stability each parent offers. *Id.* at 762. There is no inference favoring one parent over the other. *Decker*, 666 N.W.2d at 177. The critical issue is determining which parent will do a better job raising the child; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain physical care in an original dissolution proceeding. *Id.*

Christina, as the children's home school teacher and stay-at-home parent, has clearly been the children's primary caretaker. While this fact does not ensure she should be the custodial parent, it does weigh heavily in her favor. *See id.* at 178, 180. It is obvious Ryan is a good father and very involved with his children. Christina admitted during testimony that he does well at "hands-on fatherhood" and that "everybody would like a dad like Ryan." Such statements do not indicate to us that she would try to disrupt the children's relationship with their father. *See id.* at 180. Ryan, on the other hand, has focused on factors that are detrimental to the children's relationship with their mother, suggesting various "character traits" that should not be passed to children. *See id.* He has also refused to give one of the children his allergy medication and displayed an unwillingness to allow them social interaction insofar as extracurricular activities are concerned.

We also conclude that shared physical care is not a viable long-term option for this family. The district court cited the parties' inability to communicate, but the problem is more than that: the parents are unwilling to cooperate with one another's parenting decisions. See *In re Marriage of Ellis*, 705 N.W.2d 96, 101 (Iowa Ct. App. 2005). We therefore affirm the district court's ruling.

B. Property Valuation and Distribution

Ryan argues the district court failed to consider the parties' ability to comply with the terms of the decree, the assets and liabilities each brought to the marriage, and gifted or inherited property.

Ryan concedes, however, that the court's valuations are within the range of the evidence. We agree. All of the court's valuations are in the permissible range of the evidence. We therefore decline to disturb the valuation on appeal. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993).

Our de novo review of Ryan's other claims leads us to the conclusion that the district court's property distribution should be affirmed.

C. Alimony

Ryan argues the district court erred in the amount and length of alimony it awarded Christina.¹ Alimony is not an absolute right. *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005). In determining whether to award alimony, the district court is to consider the factors in Iowa Code section 598.21A(1). That section allows the court to consider

the earning capacity of the party seeking maintenance, including educational background . . . length of absence from the job market, responsibilities for children under either an award of custody or

¹ He admitted in his testimony he should have to pay rehabilitative alimony.

physical care, and the time and experience necessary to acquire sufficient education or training to enable the party to find appropriate employment.

Iowa Code § 598.21A(1)(e). We only disturb the district court's determination if there is a failure to do equity. *Anliker*, 694 N.W.2d at 540; see Iowa Code § 598.21A(1).

We conclude the district court correctly awarded Christina rehabilitative alimony. However, we agree with Ryan that the amount and duration of the award is excessive. Christina has a college degree in business. It is true she has been out of the full-time workplace for several years. It is also true this arrangement was by agreement of the parties. Since Christina already has a four-year degree and has been working part-time, she should not require extensive retraining. We therefore conclude rehabilitative alimony in the amount of \$300 for twenty-four months is appropriate. See *In re Marriage of Francis*, 442 N.W.2d 59, 66-67 (Iowa 1989); *In re Marriage of Roberts*, 545 N.W.2d 340, 340 (Iowa Ct. App. 1996).

The district court's decree is affirmed as modified. Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED.