

**IN THE COURT OF APPEALS OF IOWA**

No. 6-584 / 06-0191  
Filed November 16, 2006

**IN RE THE MARRIAGE OF LYLE MARTIN HANSEN  
AND DELORES LORENE HANSEN**

**Upon the Petition of  
LYLE MARTIN HANSEN,**  
Petitioner-Appellee,

**And Concerning  
DELORES LORENE HANSEN,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Washington County, Dan F. Morrison, Judge.

Delores Hansen appeals from the decree dissolving her marriage.

**AFFIRMED AS MODIFIED; REMANDED WITH DIRECTIONS.**

Constance Peschang Stannard of Johnston & Nathanson, P.L.C., Iowa City, for appellant.

Frank J. Nidey of Nidey, Peterson, Erdahl & Tindal, P.L.C., Cedar Rapids, for appellee.

Heard by Huitink, P.J., and Vogel, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**VOGEL, J.**

Delores Hansen appeals from the custody, alimony, and economic provisions of the decree dissolving her marriage to Lyle Hansen. We affirm as modified.

**Background Facts and Proceedings.**

Lyle and Delores were married in September of 1987. Two children were born during the marriage, Miranda in 1993 and Ethan in 1997. At the time of trial, Lyle had been a police officer for the City of Washington for over twenty years and was earning \$46,309 per year. Delores was a bank teller and earned approximately \$18,800 per year. Both Lyle and Delores are high school graduates, while Delores has some additional schooling through Kirkwood Community College.

In November of 2004, Lyle filed a petition seeking to dissolve the parties' marriage. Following a trial, the court granted the dissolution and, among other things, granted the parties joint legal custody of their children while designating a joint physical care arrangement whereby Lyle and Delores would alternate as physical care parents every six months. The court also entered orders concerning child support, alimony, property division, and debt division. Delores appeals, seeking physical care of the children, a modification of the asset and debt division, increased alimony and child support awards, and attorney fees.

**Scope and Standards of Review.**

Our standard of review in dissolution-of-marriage proceedings is de novo. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). We give weight to the fact findings of the district court, especially when considering the credibility of

witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g). On the issue of the children's physical care, our overriding consideration is the children's best interests. *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997).

### **Physical Care Arrangement.**

Delores maintains the court should have allocated the physical care of the children to her rather than designating a joint physical care arrangement. The objective in a physical care determination is to place the children in the environment most likely to bring them to healthy physical, mental, and social maturity. *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996). A district court may award joint physical care when it is in the best interests of the children, but the court is not required to do so. See Iowa Code § 598.41(5) (2005). Several factors are considered in determining the long-term best interests of the children. See Iowa Code § 598.41(3); *In re Marriage of Ford*, 563 N.W.2d 629, 631 (Iowa 1997). As each family is unique, the decision is primarily based on the particular circumstances of each case. *In re Marriage of Weidner*, 338 N.W.2d 351, 356 (Iowa 1983).

We first note that Delores did not request a joint physical care arrangement and that Lyle only requested one in general terms and only as an alternative to his foremost request to serve as their physical caretaker. We further note that neither party filed with the district court a schedule or plan outlining the practical workings of a possible joint physical care arrangement. Nor did either party request the unusual joint care arrangement ordered by the court in which each parent would spend alternating six-month periods as the children's physical caretaker. It is unclear from its ruling how and why the district

court arrived at it, as prior to trial the parties had alternated the care of the children on a weekly basis. We agree with Delores that alternating the children's physical care as the district court did, more closely resembles a traditional sole physical care arrangement, switching between parents every six months, rather than a joint-care arrangement whereby the children are in the care of each parent on a more frequent basis. It does not appear to us that an alternating six month schedule promotes the legislature's goals of frequent contact with both parents. *In re Marriage of Miller*, 390 N.W.2d 596, 598 (Iowa 1986) (noting the legislature's emphasis on maximum physical and emotional contact between each parent and child). We therefore find this particular joint physical care plan must be modified for these children.

Both parties agree that Delores was the primary caretaker of the children throughout the marriage. Lyle affirmed that the parties had a traditional marriage whereby he provided the family's main financial support and Delores was responsible for the care of the home and the children. Lyle has been a hard working contributor to the marriage, by frequently working long hours and occasionally holding two jobs. The care of the children then fell to Delores, tending to the children's day-to-day needs. It is clear both parties were successful in their roles—and Lyle admitted he “still think[s] Delores is a pretty good mother.”

Upon our de novo review, bearing in mind the host of considerations contained in the record, we believe that allocating the children's physical care to Delores is in their best interests. They have thrived under her parenting and are comfortable with her care. We therefore modify the decree to provide that

Delores shall serve as Ethan and Miranda's physical caretaker. However, we still recognize the many admirable parenting traits that Lyle possesses and have confidence that he will continue to play a significant role as joint legal custodian for the children. We therefore remand with directions for the district court to set forth a visitation schedule that will allow the children to liberally benefit from their contact with both parents.

### **Property Division.**

Iowa law requires that marital property be divided equitably between the parties, considering the factors in Iowa Code section 598.21(1) (2005). The court should divide the property of the parties at the time of divorce, except any property excluded from the divisible estate as separate property, in an equitable manner in light of the particular circumstances of the case. *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005). An equitable division is not necessarily an equal division. *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005).

*Marital Home.* The court found the value of the parties' marital home to be \$130,000. Delores now claims the court erred in valuing the home that high. She contends the value of the home should be placed at no more than \$112,000. Generally, we defer to the trial court when valuations are accompanied with supporting credibility findings or corroborating evidence. *In re Marriage of Vieth*, 591 N.W.2d 639, 640 (Iowa Ct. App. 1999). We will not disturb valuations by the trial court that are within the permissible range of the evidence. *In re Marriage of Griffin*, 356 N.W.2d 606, 608 (Iowa Ct. App. 1984).

Upon our de novo review, we find the best evidence supports valuing the house at \$112,000. The only evidence supporting the \$130,000 amount came from Delores's simple and wholly uncorroborated testimony that when she and Lyle had attempted to refinance the home, a realtor had appraised it at \$130,000. Although a lower value is contrary to her own financial affidavit, there is no documentary support for the \$130,000 in the record, nor did Delores provide a timeframe for when this appraisal was given. She did offer evidence of substantial repair work needed to the foundation of the house which would reduce her estimated value. The evidence supporting a \$112,000 figure, on the other hand, enjoys more solid support in the record. Lyle introduced into evidence an appraisal completed by Hayes Appraisal Incorporated in late 2001 which estimated the market value of the property at \$112,000. He also introduced a document which indicated the assessed value of the home in 2005 was \$94,200. We believe a valuation of \$112,000 to be within the range of the more credible evidence and modify the decree to reflect that determination.

*Division of Assets and Debts.* Delores argues the court ordered her to assume an excessive amount of the parties' marital debt and that her property award is insufficient. Upon our de novo of the record, we conclude the court's distribution scheme generally does equity between the parties. The court awarded Delores two of the largest assets from the marriage, the home and the Dodge Durango. The court also ordered that she assume the bulk of the marital debt, including the home mortgage and various credit card debts. Considering that Delores requested and was granted the home and the Durango, and

considering the testimony regarding the source of the credit card debt, we believe the district court's assignment of debt was equitable.

However, we do agree with both parties that the court made an apparent scrivener's error when tallying Lyle's debts. Lyle's true debt total should be \$7952, which would leave him with net assets valued at \$9237. When applied to the court's decision to order Delores to pay Lyle half of the difference in net assets, and when using its figures, it appears she should have been ordered to pay Lyle an equalization payment of \$22,543.<sup>1</sup> However, in taking into account our lowered valuation of the home, we reduce that number by \$9000 to \$13,543. That \$9000 reduction accounts for one-half of the difference in the valuation of the home. We therefore modify the decree to reflect this change in the equalization payment.

### **Spousal Support Award.**

In its decree, the court ordered that

[i]n order to assist Delores in getting established, Lyle shall pay traditional alimony in the amount of \$300 per month until January 1, 2009, or until the death of either party or Delores's remarriage, if prior to January 1, 2009.

On appeal, Delores contends this award is inadequate and requests that the alimony (1) continue until she reaches sixty-five and (2) be increased to \$600 per month.

"Alimony is a stipend to a spouse in lieu of the other spouse's legal obligation for support." *In re Marriage of Probasco*, 676 N.W.2d 179, 184 (Iowa 2004). Such an award is not an absolute right and whether it is awarded

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<sup>1</sup> We reach this figure by subtracting Lyle's net asset totals from Delores's and dividing by two.

depends on the circumstances of the particular case. *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996). When deciding to award alimony, the district court must consider the factors in Iowa Code section 598.21(3). Although our review of the district court's award of alimony is de novo, we give that court considerable latitude in making this determination based on the criteria in section 598.21(3). *Spiegel*, 553 N.W.2d at 319. We will disturb that determination only when there has been a failure to do equity. *Id.*

We agree with Lyle that the particulars of the court's alimony award appear more closely to resemble "rehabilitative" alimony. See *In re Marriage of Anliker*, 694 N.W.2d 535, 540 (Iowa 2005) (noting that rehabilitative alimony is generally awarded for a limited period of time following the divorce). Regardless of the term used, we believe the award is inadequate and does not do equity. We find it significant that the court's property division saddles Delores with the majority of the debts of the marriage, requiring income in excess of Delores's earnings to service those debts. See Iowa Code § 598.21(3) (allowing the court to consider the property division in connection with the alimony award). Delores's present employment and earning capacity is much lower than Lyle's. Furthermore, there is no evidence in the record that supports the district court's finding that Delores holds prospects of promotion and pay increases in her current job above minimal annual increases. In recognition of these facts, we modify the decree to provide that Lyle pay to Delores spousal support at a rate of \$500 per month for ten years beginning from the date of the dissolution decree.

**Child and Medical Support.**

Delores maintains the court erred in its calculation of both child support and medical support for the children. For purposes of its child support calculations, the court found Lyle's yearly income to be \$43,000. On appeal Lyle concedes this was erroneous and that his yearly income is actually \$46,309.<sup>2</sup> We concur, and therefore remand to the district court in order to recalculate Lyle's child support obligation using the correct figures, and in consideration of the modification of physical care.

Delores further maintains the court erred in ordering the parties to pay all non-covered medical expenses equally. Iowa Court Rule 9.12 provides that after the first \$250 per child per year is paid by the custodial parent, the balance of the uncovered expenses is to be paid "by the parents in proportion to their incomes." Delores requests that the decree be modified to provide that those uncovered expenses be split on a seventy percent-thirty percent ratio. On appeal, Lyle concedes these are the correct figures, and we modify the decree accordingly.

**Attorney Fees.**

Delores seeks an award of appellate attorney fees. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa Ct. App. 1997). We grant Delores \$1000 in appellate attorney fees. Costs on appeal are assessed to Lyle.

**AFFIRMED AS MODIFIED; REMANDED WITH DIRECTIONS.**

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<sup>2</sup> Delores maintains the court should have found Lyle's income to be higher based on his overtime work. We disagree. An examination of the record reveals that his history of overtime earnings is varied and speculative. Further, Lyle testified that due to changes in the department, he would not be required to work as many hours in the future.