IN THE COURT OF APPEALS OF IOWA

No. 6-640 / 06-0183
Filed November 16, 2006

IN RE THE MARRIAGE OF RHONDA RACHELLE MCGUIRE AND MICHAEL MYRON MCGUIRE

Upon the Petition of
RHONDA RACHELLE MCGUIRE,
Petitioner-Appellant,

And Concerning
MICHAEL MYRON MCGUIRE,
Respondent-Appellee.

Appeal from the Iowa District Court for Henry County, William L. Dowell, Judge.

Rhonda Rachelle McGuire appeals the district court's decree dissolving her marriage to Michael Myron McGuire. **AFFIRMED.**

Roger A. Huddle of Weaver & Huddle, Wapello, for appellant.

Patrick C. Brau of Brau Law Office, Mt. Pleasant, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Rhonda Rachelle McGuire appeals the district court's decree dissolving her marriage to Michael Myron McGuire. She argues the district court erred when it (1) awarded primary physical care of the couple's children to Michael and (2) determined the value of the marital home. Both parties also request appellate attorney fees.

I. Background Facts and Proceedings

Rhonda and Michael were married in November 1990. They have three children born in November 1997, October 2000, and November 2002, respectively. Rhonda works as a housekeeper for Heartland Inn in Mt. Pleasant. Michael works for Wal-Mart and is also a tae kwon do instructor.

Rhonda filed a petition for dissolution on November 15, 2004. In December 2004, the parties entered into a consent order. The order provided for joint legal custody and shared physical care. Rhonda was also awarded child support. Rhonda remained in the marital home in Mt. Pleasant until March 2005. She then moved with the children to Oakville, approximately thirty-eight miles from Mt. Pleasant.

The period between the time the petition was filed and the decree was entered was marked by discord. Shared physical care between the parties became difficult when Rhonda moved to Oakville. Eventually, the children were exchanged at the local law enforcement office. Further, Rhonda's allegations of a marital affair involving Michael and a woman named Angela eventually led to

an altercation between Rhonda and Angela. One of the children either was present or heard the argument.

The district court entered the dissolution decree on December 29, 2005. It awarded the parties joint legal custody, but determined that shared physical care would no longer work. After evaluating the evidence, the court found Michael to be the better caretaker, and awarded him primary physical care. Rhonda was awarded visitation and ordered to pay child support. Further, the court determined the marital home to be worth $55,000. Rhonda appeals.

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

First, Rhonda argues she should have been granted primary physical care of the children. We review numerous factors in determining which parent should have primary physical care of a child. *See* Iowa Code § 598.41(3) (2005). Our primary consideration, however, is the best interests of the children. *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 children'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 children; gender is irrelevant, and neither parent should have a greater burden than the other in attempting to gain primary care in an original dissolution proceeding. *Id.*

In this case, joint physical care failed. It is clear that the parents are unable to cooperate or respect each other's lifestyles. *See In re Marriage of Ellis*, 705 N.W.2d 96, 101 (Iowa Ct. App. 2005). We are concerned about Rhonda's anger toward Michael. The argument she had with Angela in the presence of one of her children shows she may not be able to get past her anger and protect her children's best interests in a similar situation.[1] We are also concerned about her apparent unilateral move to another town, where she had not, as of the time of trial, looked for employment. Finally, given the condition of the home, both when she was living in it and when she left it, we are uncertain about her ability to make a safe and healthy environment for the children. The exhibits introduced illustrating the condition of the home are quite disturbing. They depict both an unhealthy living environment and exposure to prescription medications.

In arriving at its custody determination, the district court stated in part:

> The Court is satisfied that either Rhonda or Michael would be a fit and proper person to have primary physical care of their children. Rhonda and Michael each love their children. Nevertheless, the long-term best interests of Gannon, Morgan and Kiran require that Michael be granted physical care.

[1] Rhonda testified she received a fine as a result of this incident.

We acknowledge that this is a close case. However, the record certainly supports the decision of the district court. Therefore, we defer to the district court's decision to grant Michael primary physical care.

B. Valuation of the Marital Home

Second, Rhonda argues the district court incorrectly valued the couple's marital home. She introduced into evidence an estimate the couple had done in 2004 for the purposes of refinancing. It valued the house at approximately $98,500. However, Michael introduced a trial appraisal valuing the house at approximately $55,000. The district court then determined the house is worth $55,000. Because (1) the estimate made at the time of trial is more recent, (2) it more closely matches the increase in value of other comparable homes, and (3) the earlier estimate appears to have been inflated for the purposes of refinancing, we conclude the district court's valuation is within the permissible range of evidence. We decline to disturb it on appeal. *In re Marriage of Steele*, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993).

C. Attorney Fees

Finally, both parties request attorney fees. An award of appellate 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 consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999). Both

parties' requests for appellate attorney fees are denied. Costs of the appeal are taxed one-half to each party.

AFFIRMED.