IN THE COURT OF APPEALS OF IOWA

No. 8-787 / 08-0352
Filed December 31, 2008

IN RE THE MARRIAGE OF ROBERT ALAN GENAW AND LOUISE MARIE GENAW

Upon the Petition of
ROBERT ALAN GENAW,
Petitioner-Appellant,

And Concerning
LOUISE MARIE GENAW,
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge.

Robert Genaw appeals from various provisions of the parties' dissolution decree. **AFFIRMED.**

Robert J. Murphy, Dubuque, for appellant.

Robert L. Sudmeier and Jenny L. Harris of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield, J. and Robinson, S.J. *

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

POTTERFIELD, J.

Robert Genaw appeals from various provisions of the parties' dissolution decree. We affirm.

I. Background Facts and Proceedings.

Robert and Louise Genaw were married in May 1993 in Michigan. They have three children: a son, age twelve at the time of trial; a daughter, age nine; and a daughter, age six. Their son has several medical conditions, which have required extensive medical treatment at times. The children are, however, otherwise healthy and active.

Robert and Louise moved to Iowa in 2002 at which time Robert began working for John Deere. Robert has an advanced degree in electrical engineering and works as a supply-based manager. His job requires extensive travel, both domestic and international, and he was away from the family home up to seventy percent of the time. His annual salary is approximately $87,000. He has received a bonus every year while working for John Deere: in 2006 the bonus was $16,933.60, and in 2007 he was expecting between $24,000 and $25,000.

Louise attended Wayne State (as did Robert) and worked toward a degree in chemical engineering. While her name appeared in the commencement program for 1994, she apparently was three courses short of graduation requirements. She worked seasonally for McGraw-Hill (August through December and January through May) earning $10.98 per hour. She does not work in the summer. Louise has historically been the primary caregiver of the children, due in large part to Robert's extensive travel. She takes the children to

music lessons, has been a den mother for her son's scout troop, and has coached her daughter's soccer team.

Louise was also in charge of the parties' finances: Robert's paychecks were directly deposited in the bank and Louise was responsible for paying the bills. Over the course of the marriage, the parties accumulated approximately $100,000 in credit card debt, of which Robert apparently was unaware. When Robert learned of some of this debt an argument ensued, which resulted in Louise leaving the house with the children and filing for a protective order.

Robert filed a petition for dissolution. Robert and Louise each sought an award of physical care of the children.

Following a trial, the district court entered a decree of dissolution. The court found the parties' credit card debt "excessive and extremely unusual." The court found: "It is clear that the respondent was in charge of the family finances and that the credit card debt was incurred largely through her activity. In addition, she deceived the petitioner as to the existence of such debt." However, the court noted that no evidence was offered to dispute that the debt was incurred for the purchase of goods and services for the family. "As a result, all of the debt of the parties is considered marital debt and is divided accordingly." The court ordered the marital residence and specific other property sold, the proceeds of which were to pay off the credit card debt. Any remaining balance of the debt was to be evenly divided.

The court found both parties fit to serve as custodians of the children. The court noted that Louise had been the primary caregiver for the children and that the relationship between Robert and his son was strained. The court awarded

joint legal custody and concluded joint physical care was inappropriate. Robert was granted liberal visitation.

The court determined Robert's income was $107,000 annually and based his child support obligation upon that amount. Robert was ordered to pay rehabilitative alimony in the amount of $300 per month for twenty-four months to enable Louise to "refresh her professional skills in the field of chemical engineering."

Robert now appeals the custody, property distribution, and child support provisions of the parties' dissolution decree. We affirm.[1]

II. Scope and Standard of Review.

Our standard of review in this equitable proceeding is de novo. Iowa R. App. P. 6.4. 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). We give weight to the district court's findings of fact, especially in determining the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Custody.

Robert asserts the district court should have awarded him and Louise joint physical care of the children. Joint physical care means an award of physical care of a child to both parents. Iowa Code § 598.1(4) (2007). Section 598.41(5)(a) provides:

> If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the

[1] Appellee asks that we dismiss the appeal for appellant's late filed brief. Appellant has paid the penalty fee and all briefs are before us. We deny the motion to dismiss.

> request of either parent . . . . If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child.

Any consideration of joint physical care must still be based on Iowa's traditional and statutorily required child custody standard of the best interests of the child. *See* Iowa Code § 598.41(5)(a); *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007). With this consideration in mind, our supreme court recently devised a nonexclusive list of factors to be considered when determining whether a joint physical care arrangement is in the best interests of the children.

> The factors are (1) "approximation"—what has been the historical care giving arrangement for the child between the two parties; (2) the ability of the spouses 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 daily matters."

In re Marriage of Berning, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007) (quoting *Hansen*, 745 N.W.2d at 697, 699).

Here, the trial court found both parties to be fit custodians and awarded joint legal custody. The court concluded, however, that the children would be placed in Louise's physical care. The court considered the stability and continuity served by continuing Louise's role as primary caregiver. The court also noted the strained relationship between Robert and his son and found that keeping the siblings together was in their best interests. The court found: "In this case a remarkable amount of anger and mistrust exists because of the family finances. The ill feeling is so strong that it will present a significant impediment to effective co-parenting." We find no reason to disturb the custodial provisions of the dissolution decree.

IV. Property Distribution.

Robert is dissatisfied with the court's division of the marital property. He contends Louise should be held responsible for the debt amassed during the marriage. Louise emphasizes that the debt incurred was for family purposes. The district court specifically found that there was no evidence to demonstrate that the spending was for other than family expenses. Consequently, the court ruled the debt was a marital obligation to be divided accordingly.

Iowa is an equitable distribution state, which means the partners in a marriage that is to be dissolved are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Robinson*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). The allocation of marital debts between the parties is as integral a part of the property division as is the apportionment of marital assets. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980). "Although an equal division is not required, it is generally recognized that equality is often most equitable." *In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007) (citation omitted)).

The parties agreed that the marital residence should be sold. The district court ordered that the net proceeds be deposited in an interest bearing trust account controlled by Robert's counsel. Proceeds from other bank accounts and from the sale of specific items were also to be placed in the account. Counsel was to distribute those proceeds toward payment of marital debt and any remaining balance was to be equally divided. On our de novo review, we are persuaded that the district court equitably allocated the parties' property and debt.

V. Child Support.

Robert argues the district court incorrectly considered his annual bonus when calculating his child support obligation. He asserts the court should have set child support on his base salary of $87,000 plus a percentage of any bonus he might receive.

In order to apply the child support guidelines, the court must determine the net monthly income of both parties. *In re Marriage of Nelson*, 570 N.W.2d 103, 105 (Iowa 1997). All income that is not anomalous, uncertain, or speculative should be included in determining a party's income. *In re Marriage of McCurnin*, 681 N.W.2d 322, 328 (Iowa 2004). Overtime pay and bonuses are included in a party's income if they are reasonably expected to be received. *Markey v. Carney*, 705 N.W.2d 13, 19 (Iowa 2005). We look to a party's employment history over the past several years to determine whether overtime pay or bonuses were consistently paid. *Nelson*, 570 N.W.2d at 105. If overtime pay and bonuses have been consistent, they should be included in a party's income. *In re Marriage of Kupferschmidt*, 705 N.W.2d 327, 333 (Iowa Ct. App. 2005).

Robert has received a bonus every year of his employment with John Deere. The district court did not err in its income calculation. We affirm.

AFFIRMED.