IN THE COURT OF APPEALS OF IOWA

No. 2-439 / 11-1585
Filed July 25, 2012

IN RE THE MARRIAGE OF
LORI A. REINKING AND
JEFFREY B. REINKING

Upon the Petition of
LORI ANN REINKING,
n/k/a LORI ANN ROEDER,
Petitioner-Appellee,

And Concerning
JEFFREY BERNARD REINKING,
Respondent-Appellant.

Appeal from the Iowa District Court for Howard County, Todd A. Geer, Judge.

Jeffrey Reinking appeals the economic and child custody provisions of the decree dissolving his marriage to Lori Reinking. **AFFIRMED AND REMANDED.**

Christopher F. O'Donohoe of Elwood, O'Donohoe, Braun & White, L.L.P., New Hampton, for appellant.

Erik W. Fern of Putnam Law Office, Decorah, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

Jeffrey (Jeff) Reinking appeals the economic and child custody provisions of the decree dissolving his marriage to Lori Reinking, now known as Lori Roeder. Jeff contends the district court miscalculated his annual income for purposes of child support; erred in its assessment of the value of farmland; should not have placed the parties' minor child in Lori's physical care; and should have assessed some of the tax consequences of the sale of farmland that would be required to pay Lori the property settlement. Because we find the property valuation was within the permissible range of evidence; no failure to do equity in the court's distribution of marital property; and that physical care was properly placed; we uphold these provisions of the decree. However, we remand for recalculation of child support. We therefore affirm and remand.

I. Background Facts and Proceedings.

The district court entered extensive findings of fact, which we adopt as our own[1] and find no reason to restate them here. In summary, Jeff and Lori were married in 2000 and have one child together who was ten years old at the time of the dissolution trial in May 2011. Jeff and Lori each have children from prior relationships. These children are now all adults.

Following trial, the district court entered a dissolution decree on August 12, 2011. The parties were awarded joint legal custody of their son, who was placed in Lori's physical care. The court found the farm and acreage had a net

[1] We note only one error in the court's findings: the court noted that Lori worked second shift during much of the time the parties were married, which explained why she would sleep during some of the daytime hours. In fact, Lori worked the third shift, 10 p.m. to 6 a.m. Despite the misstatement of the shift worked, the district court's reasoning is sound.

value of $422,388.50, but Jeff's premarital/inherited property interest in that real estate was $184,000, leaving a balance subject to division as property accumulated during the marriage of $238,388.50. The court found this amount should be equally divided, but the court also found that because more personal assets were being awarded to Jeff, a "small additional adjustment" was required to equitably divide the property. The court therefore ordered Jeff to pay Lori the sum of $125,000. In a supplemental September 14, 2011 order, "[u]pon consideration of the Decree previously entered and the parties' guidelines calculations," the court ordered Jeff to pay child support in the amount of $555 per month.

II. Scope and Standard of Review.

We review dissolution of marriage cases de novo. *In re Marriage of Veit*, 797 N.W.2d 562, 564 (Iowa 2011). But we give weight to the district court's findings, especially with regard to credibility determinations. *In re Marriage of Hansen*, 733 N.W.2d 683, 690 (Iowa 2007). Precedent is of limited value due to the fact-driven nature of each case. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). We afford the district court considerable latitude in its property distribution determination pursuant to the statutorily enumerated factors, and will disturb its finding only when the award is inequitable. *In re Marriage of Anliker*, 694 N.W.2d 535, 542 (Iowa 2005).

III. Discussion.

A. Property distribution. On appeal, Jeff objects to the court's valuation of the farm and homestead acreage. He also claims he will be required to sell some of the farmland to pay Lori the equalization payment ordered and,

therefore, the property equalization amount should be reduced to account for any tax consequences of such a sale.

"Ordinarily, a trial court's valuation will not be disturbed when it is within the range of permissible evidence." *Hansen*, 733 N.W.2d at 703. Here, the court's valuations of the farmland and marital home plus acreage were well within the permissible range of evidence and we find no reason to disturb those valuations. On our de novo review, we also find the trial court's distribution of those assets was equitable and we find no reason to disturb the court's ruling that Jeff pay Lori $125,000 to equalize the distribution of assets. *See id.* at 702.

As for any potential tax consequences, we first note the record does not support a finding that Jeff will be required to sell property to pay Lori.[2] More significantly, Jeff's bald assertions of tax consequences on appeal are insufficient to support his claim: he offered no evidence at trial as to possible tax consequences, or the amounts thereof. *See In re Marriage of Ales*, 592 N.W.2d 698, 702 (Iowa Ct. App. 1999) ("We examine the entire record and adjudicate anew rights on the issues *properly presented*." (emphasis added)).

B. Physical custody. The fundamental goal in determining physical care of children in an action for dissolution of marriage is to place the children in the care of that parent who will likely best minister to the long-range best interests of the children. *In re Marriage of Winter*, 223 N.W.2d 165, 167 (Iowa 1974). "[T]he basic framework for determining the best interest of the child" is well-established. *See* Iowa Code § 598.41 (2011); *Hansen*, 733 N.W.2d at 696. Generally,

[2] Jeff testified that "if I had to sell" real estate, it would be his preference to sell "the bare minimum."

stability and continuity of caregiving are important considerations. *Hansen*, 733 N.W.2d at 696.

Jeff argues that the court should have ordered joint physical care or placed the child in Jeff's physical care. After considering the factors pertinent to joint physical care, we do not find it appropriate in this instance because Lori has historically been the primary caregiver; the former spouses are unable to communicate without conflict;[3] and Jeff and Lori have very different approaches to parenting—Jeff is the permissive, "fun" parent; Lori the structured parent with the task of imposing rules and discipline. *See id.* at 697–98 (finding joint physical care most likely to be in child's best interests when parents have historically contributed care in roughly the same proportion; spouses have shown an ability to communicate and show mutual respect; there is a low degree of conflict between the parents; and parents are in general agreement about their approach to daily matters).

We also conclude that physical care was properly placed with Lori. "Stability and continuity factors tend to favor a spouse who, prior to divorce, was primarily responsible for physical care." *Id.* (citing Iowa Code § 598.41(3)(d)). Lori has been the child's primary caregiver. As a result, her successful caregiving is a strong predictor that future care of the child will be of the same quality. *See id.* at 697.

[3] In fact, the parties entered into a consent no contact order with Lori as the protected party.

The district court also made specific findings[4] related to factors relevant to Jeff as caregiver. The trial court found Jeff has a history of alcoholism and intermittent explosive disorder; continues to struggle with his anger management problems and explosive disorder; has not overcome his inability to effectively control his behaviors in emotional situations; has engaged in controlling and assaultive behaviors; and that the "primary reason for the deterioration of Lori's relationship with the children during their teenage years is that Jeff[ ] is not supportive of her relationship with them."

"The objective of a physical care determination is to place the children in the environment most likely to bring them to health, both physically and mentally, and to social maturity." *Hansen*, 733 N.W.2d at 695. The trial court here found placing the child in Lori's physical care would best achieve these goals and we agree.

C. Child support calculation. Jeff contends the district court miscalculated his annual income for purposes of child support. In the original decree, the court directed the parties to submit new child support guidelines worksheets. In a September 14, 2011 supplemental order, the district court ordered Jeff pay child support in the amount of $555 per month "[u]pon the decree previously entered and the parties' guidelines calculations." However, the record does not contain the parties' post-trial child support guideline worksheets that apparently formed the basis for the supplemental order, and we are unable to review the amount awarded based upon this record. Lori concedes that the trial court did not set

[4] The trial court found Jeff's credibility was suspect and that finding is also supported by our de novo review.

forth its methodology for determining Jeff's income, but attempts to justify the amount of support ordered. We find that the amount awarded is not supported by the record or the parties' worksheets and therefore remand to the district court for recalculation of Jeff's child support obligation.

D. Appellate attorney fees. Lori requests an award of appellate attorney fees. 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. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Because we find the parties are both able to pay their counsel, we decline to award appellate attorney fees.

Costs on appeal are taxed to Jeff.

AFFIRMED AND REMANDED.