IN THE COURT OF APPEALS OF IOWA

No. 3-190 / 12-1364
Filed June 26, 2013

IN RE THE MARRIAGE OF ANNISSA C. ROBINSON AND JADE ROBINSON

Upon the Petition of
ANNISSA C. ROBINSON,
Petitioner-Appellant,

And Concerning
JADE ROBINSON,
Respondent-Appellee.

Appeal from the Iowa District Court for Marshall County, Steven J. Oeth, Judge.

A wife appeals the physical care and economic provisions of a dissolution decree. **AFFIRMED.**

Barry S. Kaplan and Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellant.

Kevin R. Hitchins of Grimes, Buck, Schoell, Beach & Hitchins, Marshalltown, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

Annissa and Jade Robinson married in 2006 and divorced in 2012. They had two children together, one who was going into third grade at the time of trial and the other who was still in daycare. Also living in the home was Annissa's child from a prior relationship.

Throughout the marriage, Jade was the primary wage-earner and Annissa the children's primary caretaker. After Annissa filed a dissolution petition, the district court issued a temporary order granting the parents joint physical care of the children. Following trial, the court granted Jade physical care, subject to liberal visitation with Annissa. The court also allocated a retirement plan, divided the parties' personal property, and allocated the dependent exemptions for tax-filing purposes.

On appeal, Annissa challenges the court's (1) physical care determination, (2) visitation order, and (3) economic provisions.

I. Physical Care

Annissa contends the district court should have granted her physical care of the children because: (A) she was the children's primary caretaker; (B) the court's decision separated the children from their half-sibling, (C) in her view, Jade would not maximize the children's contact with her, and (D) Jade intended to transfer the older child from the school he had been attending to a school in Marshalltown. On our de novo review, we are not persuaded that these factors militate in favor of a different physical care determination.

A. We begin with Annissa's parenting role. On that question, the Iowa Supreme Court has stated "stability and continuity of caregiving are important

factors that must be considered in custody and care decisions." *In re Marriage of Hansen*, 733 N.W.2d 683, 696 (Iowa 2007).

Jade does not dispute that Annissa continuously served as the children's primary caretaker. He focuses on her stability. He asserts, and the district court found, that several incidents revealed her unstable character.

We agree that Annissa was unnecessarily confrontational on several occasions. The district court provided a detailed description of each incident, which Annissa does not dispute. Indeed, she concedes the incidents were "not admirable" but suggests that the court placed undue weight on her behaviors "during a highly emotional stressful time rather than viewing the big picture."

It is true that, "when a marriage is being dissolved we would find excellent communication and cooperation to be the exception and certain failures in cooperation and communication not to be surprising." *In re Marriage of Ellis*, 705 N.W.2d 96, 103 (Iowa Ct. App. 2005) (disagreed with on other grounds by *Hansen*, 773 N.W.2d at 692). But Annissa's conduct went well beyond miscommunication or noncooperation. She attempted to damage a vehicle in Jade's driveway, pushed her way into Jade's home against his wishes and with the children watching, and confronted Jade shortly after a no contact order was entered against her. Her behaviors evinced a disregard for the law and a basic lack of civility and respect for her co-parent.

B. We turn to the children's relationship with their half-sibling. There is no question "[s]iblings [and half-siblings] in dissolution actions should be separated only for compelling reasons." *See In re Marriage of Quirk-Edwards*, 509 N.W.2d 476, 480 (Iowa 1993). The district court considered this principle

and concluded that a liberal visitation order would allow for "meaningful contact between the half-siblings." We agree.

The parents lived just twelve to fifteen miles apart and Annissa was afforded midweek as well as every-other-weekend visitation, with expanded time in the summers. This visitation schedule allowed the children to maintain the bond they had developed with their older sister. *In re Marriage of Kurth*, 438 N.W.2d 852, 854 (Iowa 1989). While there is no question the older high-school-aged child would have seen the children more if the court had granted her mother physical care, the age difference rendered the separation less of an issue. *See*, *e.g.*, *In re Marriage of Will*, 489 N.W.2d 394, 398 (Iowa 1992) (affirming award of split physical care which separated sixteen-year-old sibling from pre-teen siblings); *Kurth*, 438 N.W.2d at 854 (affirming split physical care decision separating seventeen-year-old child from ten-year-old child).

C. This brings us to the question of whether Jade was better able to maximize the children's contact with the other parent, as the district court found. On this question, we have less cause for concern with Jade's attitude than with the attitude of his adult sister, who lived with him and helped care for the children. At least initially, Jade worked hard to implement the temporary joint physical care arrangement. At trial, he conceded Annissa could "be a very good mother." His sister, on the other hand, expressed unvarnished disdain for Annissa's parenting skills, stated she "absolutely" was attempting to usurp Annissa's authority, and said she "[a]bsolutely" just had to put up with her.

In the end, though, our focus is on the parents. Given Anissa's confrontational incidents described above, we conclude Jade rather than Annissa was the parent who was better able to maximize contact with the other parent.

D. We are left with the issue of the children's schooling. After the parents separated, Jade lived in Marshalltown and Annissa moved to Conrad. At all times prior to trial, the third-grader attended school in a consolidated school district. If he were to stay in that school district, he would be bussed to another town at the beginning of middle school. Jade proposed he attend an elementary school in Marshalltown two blocks from his home. Annissa cites this proposal as grounds to overturn the physical care determination. While we do not doubt there will be an adjustment period should Jade follow through with a transfer, we are persuaded that this factor is not dispositive on the question of who should have physical care, because, in any event, the child is slated to change schools in two years.

After considering the arguments raised by Annissa, we conclude the district court acted equitably in granting Jade physical care of the children.

II. Visitation

Annissa asks that visitation be "expanded to include two overnights per week, three weekends per month, the opportunity to provide care when she is available and Jade is not, and every other week during the summer as the parties had previously exercised" under the district court's temporary order. She is correct that liberal visitation is the norm. Iowa Code § 598.41(1)(a) (2011). She is also correct that Jade agreed to a schedule that was broader than what the court ordered. Nonetheless, the visitation schedule she requests is

coextensive with joint physical care, an arrangement that, according to the district court, "neither party ha[d] requested." In any event, even if joint physical care had been requested, it was not a viable option. As discussed, the court chose that option on a temporary basis, only to see it devolve into chaos. We conclude the district court's visitation schedule was equitable.

III. Economic Provisions

Annissa takes issue with the district court's (A) allocation of a retirement plan, (B) distribution of personal property, and (C) allocation of dependent exemptions.

A. Annissa contends the district court should have awarded her half of the $4600 Jade accumulated in a retirement account he opened after separating from her. Jade counters that error was not preserved on this issue. We agree with Jade. Annissa did not request a portion of these funds and even argued that, because Jade had these funds, he was better able to pay a portion of her trial attorney fees. Notably, the district court accepted Annissa's argument as framed and required Jade to pay $1500 towards her trial attorney fee obligation. This was an equitable result.[1]

B. Annissa contends the district court acted inequitably in denying her request for certain property in Jade's possession, namely a push mower, a power drill, a flat screen television, a dual oven and stove, and a stereo system.

The district court addressed the push mower and flat screen television as follows:

---

[1] Even if we were to reach the merits, we would conclude Annissa was not entitled to half the retirement account proceeds because the account was created after the parents separated.

> The court declines to award Annissa the TV and lawn mower which she requested. It appears that Jade has the same need for the $50 lawn mower as does Annissa. The TVs were acquired after Annissa took the other TVs which had been in the Fremont Street residence. The big screen is also encumbered.

The court's reasoning was appropriate and we see no reason to modify it.

The court did not address Annissa's request for the remaining items but included a catch-all provision stating each party would be awarded the miscellaneous items of personal property. We question whether the stove and oven were personal items to which either party was entitled rather than fixtures that went with the real estate purchased by Jade's parents. *See Ford v. Venard*, 340 N.W.2d 270, 271 (Iowa 1983) (reciting common law rule regarding when personal property becomes fixtures). Regardless, Annissa provided no explanation to support her request for these items. The same holds true for the stereo system. As for the power drill, Annissa testified that Jade had several, but that does not mean he was obligated to give her one of them. We conclude the court's division of personal property was equitable.

C. Annissa contends the district court should have awarded her "one dependency exemption each year or both exemptions every other year."

> The "general rule" is that the parent given primary physical care of the child is entitled to claim the child as a tax exemption. However, courts have the authority to award tax exemptions to the noncustodial parent to achieve an equitable resolution of the economic issues presented.

In re Marriage of Okland, 699 N.W.2d 260, 269 (Iowa 2005) (internal quotations and citations omitted). Annissa furnished no documentation to support her assertion that she should have been awarded one of the exemptions or to counter Jade's assertion that she would receive no benefit from the exemption,

given her income level. The only documentation on the subject was submitted by Jade, who showed that, for the 2009, 2010, and 2011 tax years, the parents filed joint federal tax returns and jointly claimed three dependent exemptions.[2] In the absence of evidence supporting deviation from the general rule, we affirm the district court's allocation of the dependent exemptions on the federal and state income tax returns.

IV. Appellate Attorney Fees.

Annissa seeks an award of appellate attorney fees. Such an award is discretionary. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Because Annissa has not prevailed, we decline to order Jade to pay a portion of her appellate attorney fees.

AFFIRMED.

---

[2] The 2012 tax returns were not due when the case was tried.