**IN THE COURT OF APPEALS OF IOWA**

No. 8-878 / 08-0181
Filed November 26, 2008

**IN RE THE MARRIAGE OF LARRY GORDON BULLOCK, JR. AND THERESA MARIE BULLOCK,**

**Upon the Petition of THERESA M. BULLOCK,**
Petitioner-Appellee,

**And Concerning LARRY BULLOCK, JR.,**
Respondent-Appellant.

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Appeal from the Iowa District Court for Hamilton County, Timothy J. Finn, Judge.

A husband appeals a district court order upon a petition for dissolution filed by his wife, claiming that the court acted inequitably in awarding both parties joint physical care of the couple's teenage son and in distributing the couple's marital property and debts. **AFFIRMED.**

Elizabeth Overton of Sullivan & Ward, P.C., West Des Moines, for appellant.

Christine Keenan, Ames, for appellee.

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

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

**VAITHESWARAN, J.**

Larry and Theresa Bullock married in 1989, had a son, Jacob, in 1991, and divorced in late 2007. At the time of trial, Larry was living on an acreage owned by his parents and Theresa was staying with friends. Jacob spent most of his time at the acreage but visited his mother on Wednesday evening through Thursday morning and every other weekend from Friday evening through Monday morning.

At the dissolution trial, Theresa requested joint physical care of Jacob, and Larry requested physical care. The district court granted the parents joint physical care as Theresa requested. The court also entered a property distribution scheme.

Larry appeals that order. He contends the district court acted inequitably in granting joint physical care and in dividing the property. Our review of these issues is de novo. Iowa R. App. P. 6.4.

***I. Joint Physical Care***

The primary consideration in determining physical care arrangements is the best interests of the child. *In re Marriage of Hansen*, 733 N.W.2d 683, 691 (Iowa 2007). The district court had "little difficulty" concluding that Jacob's best interests would be served by maximum contact with both parents. We agree with this conclusion.

Jacob was sixteen years old at the time of trial. He testified outside the presence of his parents that he liked the existing arrangement but he wished he could see both of his parents equally. A therapist who visited with Jacob and met separately with each of his parents testified that Jacob voiced a similar desire at

a meeting eight months earlier. The therapist supported Jacob's wishes. He stated,

> My sense is that more of a shared [physical care arrangement] would minimize the win/lose attitude coming out of this. [Jacob] wouldn't have to be concerned about either parent being -- feeling disadvantaged in terms of financially, child custody payment, nor time shared with him.

The therapist continued, "I think that would probably minimize his emotional struggle with being caught in the middle. Kind of feel that he has a fairly balanced opportunity to share his time with both parents."

We recognize the parents experienced some communication difficulties following their separation. *See id.* at 698. These difficulties were understandable, given the circumstances of the separation. *See In re Marriage of Ellis*, 705 N.W.2d 96, 103 (Iowa Ct. App. 2005) ("[W]hen 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."), *overruled on other grounds by In re Marriage of Hansen*, 733 N.W.2d 684 (Iowa 2007). In our view, they did not preclude a joint physical care arrangement, given Jacob's age, maturity, and relative independence, as well as each parent's willingness to promote his relationship with the other and each parent's commitment to fostering Jacob's well-being. Accordingly, we affirm this aspect of the court's decree.

### *II. Property Division*

Larry contends the district court inappropriately (A) "included property not owned by the parties in the property division" and (B) allocated "approximately 83 percent of the marital debt" to him.

***A. Property Subject to Division***

Only property of the parties to the dissolution is divisible. *In re Marriage of Sullins*, 715 N.W.2d 242, 251 (Iowa 2006). Larry maintains that "assets worth approximately $8000 were not owned by the parties and should not have been included in the property distribution." He points to the fact that the district court included in his asset column fixtures that were part of the home his parents let him use. The items he labeled as fixtures were the following:

> (1) blue swing doors—vintage, (2) furnace approx. 5 y/o, (3) water heater, (4) windows/drywall/lighting etc., (5) door/hardware/screen door, (6) ceiling fans, (7) front porch, (8) yard fence, (9) garage-concrete slab, (10) garage door opener, (11) shutters/awnings, (12) lot fence/panels,[1] (13) automatic water—3, and (14) propane tank.

He valued these items at $6130.

Theresa does not question Larry's characterization of the items as fixtures. *See Young v. Iowa Dep't of Transp.*, 490 N.W.2d 554, 556 (Iowa 1992) (explaining when personal property becomes a fixture).[2] Indeed, at trial, she conceded, "They are fixtures to the property." On appeal, Theresa simply contends the property should be subject to division because the couple "made

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[1] There is some indication that the panels were movable. However, Theresa does not argue that the panels were not fixtures by virtue of this fact.

[2] Personal property becomes a fixture when:

> (1) it is actually annexed to the realty, or to something appurtenant thereto;
>
> (2) it is put to the same use as the realty with which it is connected; and
>
> (3) the party making the annexation intends to make a permanent accession to the freehold.
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> The intention of the party annexing the improvement is the "paramount factor" in determining whether the improvement is a fixture . . . . [A] building which cannot be removed without destruction of a substantial part of its value becomes "almost unavoidably an integral part of the real estate."

*Young*, 490 N.W.2d at 556.

several capital improvements to the property with the realistic expectation that they would receive title to the property." The problem with this argument is that Larry and Theresa did not own the home to which the fixtures were attached either at the time they were living in it or at the time of trial. While Larry believed he would inherit the home, he stated his parents had the power to change their wills and there was presently no contract to sell it to him. He also testified that if he removed the specified fixtures he would have to replace them, because he did not own the house. Theresa similarly agreed that these items would likely remain with the house if it were sold.

Based on this testimony, we conclude the items were fixtures attached to realty that the parties did not own. We further conclude the items should not have been included in the assets subject to division. *See In re Marriage of Rhinehart*, 704 N.W.2d 677, 682–83 (Iowa 2005) (stating undistributed trust income should not have been included as an asset subject to division); *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989) (reversing trial court's award to husband of percentage of wife's expected future inheritance). Although Larry expected to inherit the acreage, that future interest in the property had yet to materialize. *See In re Marriage of Schriner*, 695 N.W.2d 493, 499 (Iowa 2005) ("[A] future interest is properly considered as a marital asset subject to distribution at the time of the divorce to the extent the future interest accrues during the marriage."). Accordingly, $6130 should have been subtracted from Larry's asset total.

Larry further contends that some of the property subject to division was not owned by either of the parties. Specifically, he states that a spreader, baler,

and one of the hayracks listed on Theresa's itemization of personal property were actually owned by his father. He also asserts his son and others owned snowmobiles and fans listed on the itemization. He maintains these items, valued at $2250 should not have been included in the assets subject to division.

The district court considered Theresa's itemization of personal property as well as Larry's response to that itemization. The district court chose to accept Theresa's itemization in all material respects and made an explicit determination that her valuation of the personal property was more credible than Larry's. We give weight to this credibility determination. *Sullins*, 715 N.W.2d at 251. Accordingly, we decline to exclude the specified items from the property subject to division.

***(1) Allocation of Debts***

The district court allocated certain debts and held Larry responsible for "the remainder of the parties' bills and loans." Larry maintains the district court allocated a disproportionate share of the debt to him. He seeks an equalization payment to compensate for this allocation.

Debt accumulated during the marriage is a factor to consider in equitably dividing property in a dissolution. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980). On our de novo review, we are persuaded that the debts explicitly identified in the district court's ruling were equitably allocated.

We turn to certain debts not explicitly mentioned in the decree. First are Jacob's medical bills that were not covered by insurance. These bills are addressed in the decree under a provision requiring Theresa to pay the first $250 of unreimbursed medical expenses and requiring the balance to be allocated

equally between the parents. Second are veterinary supply and hay bills. As Larry was awarded all the parties' sheep and three or four of seven horses, we conclude these bills were equitably allocated to him. Remaining is a $282 payment for a four-wheeler belonging to Jacob. While the district court could have required Theresa to pay half of this bill, we are not convinced the court acted inequitably in allocating the debt to Larry.

### *III. Disposition*

We conclude the district court acted equitably in granting the parents joint physical care of Jacob.

With respect to the property distribution, we conclude fixtures valued at $6130 should not have been included in Larry's asset column. This does not end our discussion, because we must also decide whether the district court's final property distribution scheme was equitable. Larry and Theresa were of similar age and health, were married for nineteen years, and had roughly the same earnings at the time of trial. These factors would support an equal property division. *In re Marriage of Fennelly*, 737 N.W.2d 97, 102 (Iowa 2007) ("Although an equal division is not required, it is generally recognized that equality is often most equitable." (citation omitted)).

The countervailing consideration is Larry's future interest in the acreage. While we may not allocate this interest to either party, we may consider it in determining an equitable division. *Rhinehart*, 704 N.W.2d at 683. Larry conceded he would likely inherit the acreage. This would afford him a payment-free residence and sixty to eighty acres of land. There is no evidence that Theresa could expect a similar financial windfall. Under these circumstances, we

conclude Theresa should not have to make an equalizing payment to Larry to compensate for the fixtures that were included in Larry's asset column. Accordingly, we decline to modify the property division.

**AFFIRMED.**