IN THE COURT OF APPEALS OF IOWA

No. 9-043 / 08-0732
Filed March 26, 2009

IN RE THE MARRIAGE OF GRANT C. BRINTNALL AND LINDA K. BRINTNALL

Upon the Petition of

GRANT CHRISTOPHER BRINTNALL,
Petitioner-Appellee,

And Concerning

LINDA K. BRINTNALL,
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Michael J. Moon, Judge.

Respondent appeals the child custody and financial provisions of the decree dissolving her marriage to petitioner. **AFFIRMED**.

John J. Wood of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellant.

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

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ.

SACKETT, C.J.

Linda Brintnall appeals from the decree dissolving her fifteen-year marriage to Grant Brintnall. She contends (1) she should have been named primary custodian of the parties' three children, (2) the children should not have been placed in the parties' joint physical care, and (3) if the award of joint physical care is approved we should modify the decree and adopt her proposed schedule for exchanging the children. She also contends the district court's division of assets was not equitable. We affirm.

SCOPE OF REVIEW. Equity proceedings, such as dissolution decrees, are reviewed de novo on appeal. Iowa R. App. P. 6.4; *In re Marriage of McCurnin*, 681 N.W.2d 322, 327 (Iowa 2004).

BACKGROUND AND PROCEEDINGS. The parties, both born in 1959, were married in 1993. Grant is a middle school teacher in the Marshalltown Community School District and earns about $68,000 annually. He holds a bachelor and master's degree from Iowa State University and has earned forty-five hours towards a doctorate. Linda, a half-time teacher in the same school district, earns about $30,000 annually. She holds a bachelor and master's degree from the University of Northern Iowa and has earned forty-five hours towards a doctorate. If employed in education on a full-time basis her earnings would be comparable to Grant's. The parties have two sons, born in 1998 and 2000, respectively, and a daughter, born in 2002.

In the summer of 2007 Grant filed the petition for dissolution of their marriage. He sought joint physical care of the children and an equitable division

of assets. Linda answered, denying that the children should be placed in the parties' joint physical care. She contended that the children should be in her primary physical care.

The matter came on for trial in March of 2008. The district court entered a decree in April of the same year. The court found Grant and Linda both to be exceptional parents and the children to be bright, articulate, well-behaved, and fun-loving, who were faring well under the circumstances. The court noted the parties had agreed they should have joint legal custody of the children. After analyzing the applicable law and considering the facts, the court concluded the parties should have shared physical care alternating on a weekly basis. The court found such an arrangement to be in the best long-range interest of the children. Grant was ordered to pay child support to Linda of $658.86 a month. Medical support and college support issues were addressed. The district court divided the parties' assets and in doing so considered inherited and gifted property, property brought to the marriage, and property accumulated during the marriage. The division reached by the district court resulted in Grant receiving equities of $336,950 and Linda receiving equities of $290,307. Grant was awarded the additional amount based on the district court's determination he brought more assets to the marriage than did Linda.

CUSTODY. Linda contends she should be the primary care parent and if she is not so named then the arrangement for exchanging the children should be modified. Grant contends the district court was correct in awarding joint physical care and the district court should be affirmed in all respects on this issue.

When considering issues of child custody we give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*). This is because the trial court has a firsthand opportunity to hear the evidence and view the witnesses. *In re Marriage of Will*, 489 N.W.2d 394, 397 (Iowa 1992). Prior cases have little precedential value with respect to custodial issues, and this court must make its decision on the particular circumstances unique to each case. *In re Marriage of Rierson*, 537 N.W.2d 806, 807 (Iowa Ct. App. 1995).

The district court ordered joint physical care and found it to be in the best interest of the children. Only if joint physical care is not warranted would we choose a primary caretaker who would be solely responsible for decisions concerning the children's routine care. *In re Marriage of Hansen*, 733 N.W.2d 683, 691 (Iowa 2007). Consequently, the first issue we need address is whether on our de novo review we agree with the district court's conclusion that joint physical care is in the children's best interest.

"Joint physical care" means an award of physical care of a minor child to both joint legal custodial parents where both parents have rights and responsibilities toward the child. Iowa Code § 598.1(4) (2007). The rights and responsibilities include, but are not limited to, shared parenting time with the child, maintaining homes for the child, and providing routine care for the child. *Id*. With joint physical care, "neither parent has physical care rights superior to those of the other parent." *Id.*

Joint physical care is a relatively new concept. *See Hansen*, 733 N.W.2d at 690-92 (discussing at length its history in Iowa). Joint physical care should not be granted if it is not in the best interest of the children. *See* Iowa Code § 598.41(5)(a).[1] Physical care issues are not to be resolved based upon perceived fairness to the spouses, but primarily upon what is best for the children. 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 695-96; *Phillips v. Davis-Spurling*, 541 N.W.2d 846, 847 (Iowa 1995); *In re Marriage of Courtade*, 560 N.W.2d 36, 38 (Iowa Ct. App. 1996).

Both parties work outside the home. Linda taught full-time at the time of the marriage. She took time off following the birth of the first and second children but returned to full-time teaching. She took time off following the birth of the third child and returned to work on a part-time basis. She had not returned to full-time work at the time of the dissolution hearing but there was an indication she might be able to do so. Grant has held full-time employment during the entire course of the marriage.

When the matter came on for trial in March of 2008, the parties were still both living in the same house with their three children though they had not

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[1] Iowa Code section 598.41(5)(a) provides in relevant part:

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

(Emphasis supplied.)

maintained a marital relationship for five years. Grant slept in the basement and Linda in an upstairs bedroom. The couple jointly cared for their children and attended many of the children's events together. The children were not aware their parents were seeking to dissolve their marriage until the day of trial.

These children have flourished because while both parents worked outside the home and the children spent time in school and or at day care, the parents both have a strong relationship with the children and both have assumed substantial responsibility though not necessarily equal responsibility for the children's care. Despite the breakdown of the marriage in the five years prior to divorce, the parents have jointly provided for their children's care and both have remained a substantial influence in the children's lives. The joint physical care plan provided by the district court judge will approximate in a reasonable way the post-divorce care of the children to the past care giving of the parents and will not make a detrimental change to the historical care giving arrangement for the children between the two parties. Long-term successful joint care is a significant factor in considering the viability of joint physical care after divorce. *Hansen*, 733 N.W.2d at 697 (citing *In re Marriage of Ellis*, 705 N.W.2d 96, 103 (Iowa Ct. App. 2005)). Furthermore, because the parents now live and plan to live in close geographic proximity to each other, the parenting plan will allow the children to attend the same school and associate with the same peers in whichever home they are residing.

Yet our inquiry does not end here. We must also assure that the arrangement will not put the children in a place where they are the victims of their

parents' failure to cooperate, communicate, and show respect for each other and that the parents seek the same general goals for their children.[2] *See Hansen*, 733 N.W.2d at 697-99.

The only conclusion that can be drawn from this record is that both Linda and Grant are fully committed to their children's well-being and historically both have been substantially engaged with their children's care. They appear to have the same general goals for their children. Linda is Catholic and Grant is not, yet Grant supports Linda's decision to send the children to Catholic school. In fact Grant seems very willing without reservation to support Linda's place in the children's lives. Linda is more reluctant to support his. Her position at trial was that she should be the primary care parent and she seemed unwilling to recognize that might not be the case. Furthermore, she testified that if she were the primary care parent that Grant should only have the children two weekends a month and for two separate weeks in the summer. Her attitude causes us some concern that if Grant is not granted joint care, that Linda may seek to limit his time in the children's lives. If this were to happen it would not be in the children's interests.

The record fails to support a finding that joint physical care is not in the children's best interest and we find no reason to disagree with the district court that it is in their best interest. Consequently we do not address the issue of a primary care parent.

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[2] In saying this we do not mean to infer that these factors are less important in cases where one parent has primary care and the other visitation. *See* Iowa Code § 598.41(5)(b) (requiring the parent awarded physical care to support the other parent's relationship with the children).

That said, we address Linda's contention that the arrangement for the children should be modified. The district court alternated weeks. Linda believes that is too long for the children to be away from one parent. She contends that the children should have two consecutive school nights each week with each parent and then alternate weekends. The parents submitted different parenting plans and the court elected to adopt Grant's selection. Each plan has strengths and drawbacks. The district court saw the parties and is in a better position to assess the plans. *See In re Marriage of Engler*, 503 N.W.2d 623, 625 (Iowa Ct. App. 1993) (noting the district court was able to observe the parties and thus was in a better position to evaluate them as custodians). Giving that discretion to the district court, we affirm on this issue.

PROPERTY DIVISION. Linda contends the property division is not equitable and the district court failed to properly consider assets she contends she brought to the marriage and it gave too much consideration to property that Grant brought to the marriage. She specifically argues that while the district court considered property Grant brought to the marriage, the court failed to recognize $30,000 in assets she brought to the marriage that she now claims on appeal[3] was used to assist in the purchase of the family home.

Iowa is an equitable division 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 Robison*, 542 N.W.2d 4, 5 (Iowa Ct. App. 1995). Iowa courts do not require an equal division or

[3] Her trial testimony does not support the argument she now makes.

percentage distribution. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa Ct. App. 1991). The determining factor is what is fair and equitable in each particular circumstance. *Id*. When distributing property we take into consideration the criteria codified in Iowa Code section 598.21(5); *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa Ct. App. 1983).

Property which a party brings into the marriage is a factor to consider in making an equitable division. Iowa Code § 598.21(5)(b). In some instances, this factor may justify a full credit, but does not require it. *In re Marriage of Miller*, 552 N.W.2d 460, 465 (Iowa Ct. App. 1996). However, these assets are not set aside in the same manner that we set aside gifted and inherited property. *Id.* Instead, the fact property is brought to a marriage is a factor to consider, together with all the other circumstances, in making an overall division. *Id.* Its impact on the ultimate distribution will vary with the particular circumstance of each case. *Id.* In determining what constitutes a fair and equitable property division we consider the overall property division, rather than the treatment of a particular item or items in isolation. *See, e.g.*, *In re Marriage of Pittman*, 346 N.W.2d 33, 37 (Iowa 1984). We do not divide property as if we are dealing with a business venture. *See In re Marriage of Briggs*, 225 N.W.2d 911, 913 (Iowa 1975). We find no reasons to disagree with the district court's determination of the property brought to the marriage and find its division of these assets equitable.

Linda further contends it was inequitable for the court to award Grant $46,000 more than she received. Linda also challenges the court giving Grant credit for a $10,000 gift his parents gave him that went to the purchase of a

pickup truck. Linda asks for an additional $25,000, arguing that she should have received more assets than did Grant because she was out of the job market to raise the children, has done a good job in doing so, and because she spent money she brought to the marriage for family expenses. Grant contends the division made by the district court is equitable. We have carefully examined Linda's arguments and find no reasons to modify the district court's division.

We award no appellate attorney fees. Costs on appeal are taxed to Linda.

AFFIRMED.