



[T] In re Stahl

662 N.W.2d 374 (2003) | Cited 0 times | Court of Appeals of Iowa | February 28, 2003

Robyn Stahl appeals from the property distribution and child custody provisions of the decree dissolving her marriage to Lee Stahl. **AFFIRMED.**

Robyn Stahl appeals from the property distribution and child custody provisions of the decree dissolving her marriage to Lee Stahl. We affirm.

I. Background facts and proceedings.

Robyn and Lee were married on August 4, 1991. They are the parents of two children, Lee, who was born on January 23, 1991, and Kaitlyn, who was born on August 23, 1994. On July 31, 2001, Lee filed a petition to dissolve the marriage, and Robyn subsequently appeared pro se. At the March 12, 2002, trial, Robyn again appeared pro se, while Lee was represented by counsel. At the commencement of the hearing, the court had the following colloquy with Robyn:

Court: Ms. Stahl, I noticed you're without counsel. Is that the way you wish to proceed in this matter?

Robyn: Yeah.

Court: Do you understand you have the right to hire an attorney on your own and to bring him into court on your own to represent you in this matter?

Robyn: I couldn't afford one.

Court: But do you understand that you do have that right that you can try to make an arrangement with an attorney?

Robyn: I still can, or is it past time? Is it past the time, or I still can?

Court: It's too late now. But what I am telling you is you understood you had that right, and you chose to come down here on your own; is that correct?

Robyn: Yeah.

The day following the trial, the court signed a proposed decree by Lee's counsel. The decree, among other things, dissolved the marriage, divided the property, ordered joint child custody, and placed



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physical care of the children with Robyn. Robyn appeals.

II. Scope of review.

In this equity action, our review is *de novo*. In *re* Marriage of Bonnette, 584 N.W.2d 713, 713 (Iowa Ct. 1998). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In *re* Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact-findings of the trial court, especially when considering the credibility of the witnesses, but are not bound by them. In *re* Marriage of Vrbán, 359 N.W.2d 420, 423 (Iowa 1984).

III. Right to counsel.

Robyn argues the court should have asked her if she "intended or desired to have an attorney present" and granted her a continuance in order to retain one. She also contends generally the court treated her unfairly and violated her constitutionally protected interest in fundamentally fair judicial proceedings.

First, we reject Robyn's contention the court failed to inquire whether she wished to have an attorney present. Stahl responded affirmatively when asked if she wished to proceed without counsel. We also note Robyn did not request additional time to secure counsel and made no motion for continuance. She therefore has failed to preserve for our review the contention the court should have granted her additional time to acquire counsel. As a rule, an objection must be made at the earliest opportunity after the grounds for the objection become apparent. *State v. Johnson*, 476 N.W.2d 330, 333 (Iowa 1991).

This rule applies equally to constitutional issues. *Patchette v. State*, 374 N.W.2d 397, 401 (Iowa 1985); see also *State v. Grosvenor*, 402 N.W.2d 402, 406 (Iowa 1987) (noting a party's *pro se* status does not excuse the failure to abide by rules).

We also conclude Robyn was not denied equity or fundamental fairness in these proceedings. She was served with process on August 2, 2001, and thus had more than six months to hire counsel before the March 12, 2002 trial date. Moreover, we reject Robyn's claim to the extent she argues she has a constitutional right to counsel in a dissolution proceeding. See *In re Marriage of McGonigle*, 533 N.W.2d 524, 525 (Iowa 1995).

IV. Property distribution.

Robyn argues the record was inadequate for the court to reach the conclusions it did with regard to the distribution of the assets and debts of the parties. She also contends the distribution scheme was inequitable and requests a new trial to make an adequate record.



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The parties to a marriage are entitled to a just and equitable share of the property accumulated during the marriage. *In re Marriage of Starcevic*, 522 N.W.2d 855, 857 (Iowa Ct. App. 1994). Equitable distribution does not necessarily mean an equal division of property, nor does it mean a percentage division of the property. *In re Marriage of Hoak*, 364 N.W.2d 185, 194 (Iowa 1985).

Lee requested the court to divide the property as agreed in the mediation and as indicated in the proposed decree, and he suggested the parties had divided their assets by agreement. During Robyn's testimony, she testified she "[didn't] have a problem with property or anything. That's all been split up and settled." We conclude the record was adequate to permit the district court to divide the property.

We decline to address Robyn's contention the court erred in failing to divide Lee's pension. She did not present this issue to the district court, and therefore failed to preserve it for appellate review. See *In re Marriage of Horstmann*, 263 N.W.2d 885 (Iowa 1978) ("It is our duty to examine the whole record and adjudicate rights anew on those propositions properly presented, provided issue has been raised and error, if any, is preserved in the course of the trial proceedings").

On our de novo review, we conclude the property distribution was equitable and affirm on this issue.

V. Deviation from child support guidelines.

The court ordered that the "Petitioner [Lee] will have overnight visitation with the children more than one hundred twenty eight (128) nights per year" Accordingly, the court concluded Lee is entitled to a twenty-five percent reduction in the gross amount of child support. See Iowa Court Rule 9.72. Robyn argues the court improperly "deviated" from the child support guidelines. We disagree.

The overnight visitation schedule was addressed both in the mediator's "parenting plan" and in Lee's direct testimony. Robyn was given an opportunity to cross-examine Lee or testify herself on the issue, but she made no complaints about the schedule or amount of child support proposed by Lee. Accordingly, she failed to preserve error on this issue. However, even if she had preserved error, we would affirm the court's visitation and support conclusions as appropriate.

VI. Adoption of "draft mediation agreement."

Robyn further contends the court "exceeded its jurisdiction" by including portions of a "draft mediation agreement" in the "Child Custody and Parenting" portion of its decree. We find no objection in the record indicating Robyn disapproved of the mediation agreement. In fact, the mediator's letter to the parties noted: "Please find enclosed a written draft of your proposed mediation agreement. I hope that I have accurately recorded your agreements from our two sessions." Lee testified the parties had agreed to custodial and property division issues during the mediation. The evidence thus indicates Robyn approved of the agreement prior to trial. Thus, based



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on the evidence indicating Robyn's general approval of the draft agreement and on our conclusion its terms are equitable under the circumstances, we affirm the adoption of portions of the draft mediation agreement into the court's decree.

VII. Medical matters.

The decree requires Lee to maintain medical insurance for the children "so long as [Lee] is employed with his present employer and receives medical insurance benefits from that employer" and orders each party to pay half of all "out of pocket" medical expenses for the children. It further states "neither party shall be responsible to the other . . . for . . . non-emergency treatment, unless that party has been notified in advance of the intent to seek such [treatment]."

Robyn contends on appeal the court should not have included the notification requirement and asserts the court should have required division of uncovered medical expenses in proportion to the parties' income. On our de novo review, we find the district court's disposition of this issue equitable and therefore affirm.

VIII. Conclusion.

We have considered all arguments made in Robyn's brief and, whether we expressly addressed them or not, find them to be without merit. We therefore affirm the dissolution decree.

AFFIRMED.

