



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JAN MITCHELL SKOLA  
AND CONCERNING BRENDA ELAINE SKOLA

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| Upon the Petition of  | ) |                        |
| JAN MITCHELL SKOLA,   | ) |                        |
| Petitioner-Appellee,  | ) | Filed January 27, 1988 |
| And Concerning        | ) |                        |
| BRENDA ELAINE SKOLA,  | ) | <u>7-461</u>           |
| Respondent-Appellant. | ) | 87-868                 |

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Appeal from the Iowa District Court for Washington County (No. 1040),  
Richard J. Vogel, Judge.

Respondent former wife appeals from the trial court's ruling on her applica-  
tion for modification of a dissolution decree. **AFFIRMED AS MODIFIED.**

Thomas E. McDonald, Iowa City, for appellant.

Thomas D. Hobart of Meardon, Sueppel, Downer & Hayes, Iowa City, for  
appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

**DONIELSON, P.J.**

Respondent former wife appeals from the trial court's ruling on her application for modification of a dissolution decree. We affirm as modified.

The marriage of petitioner, Jan Mitchell Skola, and respondent, Brenda Elaine Skola, was dissolved in August 1985. The decree incorporated the parties' stipulations that Jan would have sole custody of the parties' two children (Natalie, born in September 1978, and Blake, born in June 1981) and that Brenda would have visitation at "times agreed upon by the parties."

In September 1986, Brenda filed an application to modify the decree. She asked that a joint custody arrangement be set up with her having physical care and Jan having specified visitation times. Hearing was held. The trial court entered its ruling awarding joint custody to the parties with Jan having physical care of the children. The court noted that Brenda's main complaint was that Jan spent little time with the children because of his job and his community work. The court found, however, that Jan had succeeded in lightening his work load and cutting his participation in some community projects and that he was thus able to spend considerable time with the children. The trial court refused to set specific visitation times for Brenda; it noted that Brenda and Jan could more easily coordinate Brenda's visitations with the children's scheduled activities if no specific visitation times were set. Brenda has appealed from the trial court's ruling.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the factfindings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties in this case. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983). Our paramount consideration in

determining custody is the best interests of the children. Id.; Iowa R. App. P. 14(f)(15).

To succeed in modifying the custodial provisions of a dissolution decree, the moving party carries a heavy burden. The Iowa Supreme Court has set forth the criteria to review in order to modify the custodial provisions of a dissolution decree in In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983), as follows:

To change a custodial provision of a dissolution decree, the applying party must establish by a preponderance of evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. The changed circumstances must not have been contemplated by the court when the decree was entered, and they must more or less be permanent, not temporary. They must relate to the welfare of the children. A parent seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. The heavy burden upon a party seeking to modify custody stems from the principle that once custody of children has been fixed it should be disturbed only for the most cogent reasons. In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980).

The district court is granted reasonable discretion in determining whether modification is warranted, and that discretion will not be disturbed on appeal unless there is a failure to do equity. E.g., In re Marriage of Vetternack, 334 N.W.2d 761, 762 (Iowa 1983) (application to modify child support provisions); Norenberg v. Norenberg, 168 N.W.2d 794, 797 (Iowa 1969) (application to modify visitation).

I. On appeal, Brenda asserts that the trial court should have awarded her physical care of the children. She believes Jan does not spend sufficient time with the children. We do not find that Brenda has met her burden in establishing that conditions since the decree have materially and substantially changed. In fact, Brenda admits that Jan's life-style, activities, and habits have not changed from the years of their marriage until the modification was filed. However, we note that Jan has taken steps to increase the amount of time available for

him to spend with the children. We affirm the trial court's award of the physical care of the children with Jan. Brenda has not demonstrated a superior job of ministering to the children's needs.

II. In the alternative, Brenda asserts that the trial court should have established specific visitation times for her. She contends that she and Jan have not been able to compromise in determining visitation periods. Brenda did not submit a visitation schedule which would be agreeable to her. Jan submitted a visitation schedule which we find, on the whole, to be reasonable to both parties.

Visitation by Brenda with the children shall be as follows:

1) Brenda will have the children every other weekend to coincide with the weekends that the children of Jan's new wife are with their father. Visitation shall be from 6:00 p.m. on Friday until 7:30 p.m. on Sunday.

2) Brenda and Jan will divide the following holidays with the children, alternating the following days between odd and even years:

- a) New Year's Day
- b) Easter
- c) Memorial Day
- d) Independence Day
- e) Labor Day
- f) Thanksgiving
- g) Christmas Eve until 10:00 p.m.
- h) Christmas to commence at 10:00 p.m. on Christmas Eve
- i) Natalie's Birthday
- j) Blake's Birthday

Visitation for the above holidays will be from 9:00 a.m. until 8:00 p.m., unless specifically noted above, or unless the holiday falls on a school day, in which case the hours will be from the time school is dismissed until 8:00 p.m. These holidays take precedence over weekend or summer visitation.

3) The children will spend from 9:00 a.m. until 8:00 p.m. on Mother's Day with Brenda and the same hours with Jan on Father's Day. These days take precedence over any weekend or summer visitation.

4) Summer visitation for Brenda with the children will be for six weeks, two blocks of three weeks each. Jan is entitled to weekend

visitation during this time on the same basis as Brenda is during the remainder of the year, provided the children are not away on vacation with Brenda. Brenda shall provide notice to Jan on April 1 concerning what time periods she desires to exercise her summer visitation.

III. Brenda requests attorney fees on appeal. The primary considerations in awarding attorney's fees are the needs of the requesting party and the ability of the other party to pay. In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). We have no evidence before us of Brenda's needs or her ability to pay. We decline to make such an award.

**AFFIRMED AS MODIFIED.**