

FILED 484

OCT - 8 1981

IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

**IN RE THE MARRIAGE OF ELVA J. McBRIDE and WILFORD D. McBRIDE**

Upon the Petition of

**ELVA J. McBRIDE,**

Petitioner-Appellant,

And Concerning

**WILFORD D. McBRIDE,**

Respondent-Appellee.

Filed October 8, 1981

1-345  
3-66233

Appeal from Polk District Court - Rodney Ryan, Judge.

Petitioner-mother appeals with permission from trial court's oral modification of the custody provisions of the decree dissolving her marriage to respondent-father.

Diane L. Dornburg, Des Moines, Iowa, for petitioner-appellant.

Gerald Crawford, Des Moines, Iowa, for respondent-appellee.

Susan L. Ekstrom, Des Moines, Iowa, guardian ad litem.

Heard by Oxberger, C.J., and Donielson, Carter and Johnson, JJ.

## PER CURIAM

Petitioner-mother, Elva J. McBride, appeals with permission from trial court's oral modification of the custody provisions of the decree dissolving her marriage to respondent-father, Wilford D. McBride. We remand this case to trial court with directions.

This case was tried to the court commencing October 22, 1980. Trial court orally ruled on January 30, 1981, that custody of the parties' two minor children should be transferred immediately to respondent. Petitioner filed her notice of appeal later that day. Trial court filed its findings of fact, conclusions of law, and ruling on February 24, 1981. By order filed June 17, 1981, the supreme court denied respondent's motion to dismiss the appeal, which was based on the argument that the notice of appeal was filed before entry of final judgment, and granted permission for an interlocutory appeal pursuant to Iowa R. App. P. 1(c) and 2.

Based on our *de novo* review of the record, we find a basis appears for believing judicial proceedings should be initiated to determine whether these two children are in need of assistance. We find serious questions are raised and remain unresolved as to either party's fitness to be a custodial parent. We thus vacate trial court's ruling of February 24, 1981, and, pursuant to the authority of In re Marriage of Snyder, 276 N.W.2d 402, 406 (Iowa 1979), remand this case to trial court with directions to enter an order referring this matter to the Polk County Juvenile Probation office for further proceedings as permitted under section 232.87, The Code 1981. However, the parties shall have five (5) days following issuance of procedendo in this case for a hearing before trial court to present evidence of any matters occurring since January 30, 1981, which would render moot or inadvisable the referral of this case to the Polk County Juvenile Probation Office. We further order that procedendo in this case shall issue immediately upon the filing of this order.

REMANDED TO TRIAL COURT WITH DIRECTIONS.