FILED
JUN 4 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF KENTON C. SMITH AND ELODIE J. SMITH

Upon the Petition of)

KENTON C. SMITH,)

Petitioner-Appellee,) Filed June 4, 1986

And Concerning)

ELODIE J. SELLERS, formerly known as **ELODIE J. SMITH,**) 6-94
85-1379

Respondent-Appellant.

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Appeal from the Iowa District Court for Jefferson County (No. DM 3-501) - James Jenkins, Judge.

Respondent appeals from trial court's modification of divorce decree. **AFFIRMED.**

Edwin F. Kelly and Ron W. Kelly of Kelly & Morrissey, Fairfield, for respondent-appellant.

Patrick Curran of Vinyard & Curran, Ottumwa, for petitioner-appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

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The husband, Kenton Smith, applied for a modification of the parties' 1980 dissolution decree, asking that one of the parties' two children be transferred from the custody of his wife, Elodie Sellers, to his custody. The trial court modified the dissolution decree as requested, and the wife has appealed. She contends the evidence did not support the transfer of custody. She also contends the trial court should have declined to exercise jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act because the husband had "improperly retained the child after a visit or other temporary relinquishment of physical custody." Finally, she contends the evidence did not support the trial court's adjustment of child support and its denial of her separate modification petition requesting an increase in child support.

The parties' marriage was dissolved in 1980. The 1980 decree placed the parties' two children in the legal custody and physical care of the wife, Elodie; the decree also awarded Elodie child support of $175 per month for each child. The two children are Julie, born in June 1971, and Derek, born in May 1976.

In 1985, Kenton filed an application to modify the dissolution decree. He asked that Julie's custody be transferred to him. He alleged as a change of circumstances that Julie was residing with him because of conflicts with Elodie. In her answer, Elodie responded that Julie's residence with Kenton was only temporary, pursuant to an agreement between the parties, and was for the purpose of obtaining psychiatric evaluation. Elodie also filed a separate application to modify the dissolution decree; she asked that Kenton's child support obligation be increased and be extended to cover post-high school education pursuant to Iowa Code section 598.1(2).

The trial court modified the dissolution decree as requested by Kenton. The trial court placed Julie in joint legal custody and in Kenton's physical care.

The trial court provided that Kenton would have no child support obligation at all while Julie resides with him, and that Kenton's $175-per-month support obligation for Derek would resume when Julie no longer resides with Kenton. In explaining these support provisions, the trial court stated that Elodie's income has substantially increased since 1980, while Kenton's has not.

Elodie has appealed from the modification decree. She contends the evidence did not support the transfer of Julie's physical care to Kenton. She also contends the trial court should have declined to exercise jurisdiction over the custody question pursuant to Iowa Code section 598A.8(2), a part of the Uniform Child Custody Jurisdiction Act. Section 598A.8(2) provides that the court may decline to modify a custody decree if the party seeking modification has "improperly retained the child after a visit or other temporary relinquishment of physical custody"; Elodie alleges that Kenton has improperly retained Julie following a merely temporary agreement to change Julie's residence.

Elodie also contends the evidence did not support the trial court's conclusions regarding child support. She contends the trial court erred by eliminating her support award for Derek during the time Julie is residing with Kenton. Although her brief is not entirely clear on this point, it appears she also contends the trial court erred by rejecting her request that the support obligation established by the 1980 dissolution decree be increased.

Our review is de novo. Iowa R. App. P. 4. While we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

An order granting child custody can be modified upon a showing of a substantial change of circumstances. Iowa Code § 598.21(8). Custody questions are decided based upon the best interests of the child. Iowa R. App. P. 14(f)(15). While we are hesitant to change custody, especially when the siblings will be

separate, we are satisfied that a complete breakdown in the mother-daughter relationship has occurred so as to necessitate the change in custody. In re Marriage of Jones, 309 N.W.2d 457, 461 (Iowa 1981); In re Marriage of Burham, 283 N.W.2d 269, 276 (Iowa 1979). Although the reasons for this fundamental breakdown in the parent-child relationship are disputed, the undeniable fact is that the relationship has broken down. The daughter is a well-adjusted person who is progressing quite satisfactorily in her father's custody. The trial court found that daughter did not need any psychological counseling, but did suggest the mother might seek professional assistance. Given this scenario, we do not disturb the trial court's decision. Thus, we find Kenton has met his burden of proof in this case. See generally In re Marriage of Weidner, 338 N.W.2d 351, 360 (Iowa 1983).

We also find no merit in Elodie's contention that the court should not have exercised jurisdiction because of Kenton's alleged improprieties in retaining their daughter. Elodie cites to an agreement that her daughter was sent to South Carolina for the purpose of psychological testing. Given the magnitude of the problems emotionally distancing the mother and daughter, we cannot find Kenton's retention of his daughter was in any manner offensive to the principles embodied in § 598A.8(2).

Elodie's final claim involves the alleged mishandling of the child support issue by the trial court. Since the decree, Kenton's wages have stayed constant while Elodie's increased from $485 to $821 per month. When Elodie had custody of both children, Kenton paid $175 monthly for each child. Our law provides that while each party is obligated to pay child support, child support is awarded on each parent's ability to pay. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa Ct. App. 1984); In re Marriage of Heineman, 309 N.W.2d 151, 153 (Iowa Ct. App. 1981). The trial court held that because both parties' incomes

were sufficiently equivalent and because each had custody of one of the parties' children, it would not make sense for Kenton to pay support for Derek while he had custody of Julie, nor for Elodie to pay support for Julie while she had custody of Derek. The court held that no child support was necessary for as long as Julie resided with Kenton. We agree that this solution by the trial court was equitable. Therefore, we affirm the trial court.[1]

AFFIRMED.

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[1]We note that appellee did not submit a brief nor request oral argument. The appellee was present at the oral hearing on this matter and was allowed to argue for ten minutes. Despite this irregularity in the proceedings resulting in appellant's surprise that the appellee would be participating in the oral argument, we cannot find that such argument made any difference in our disposition of this case.