

No. 9-584 / 88-1733

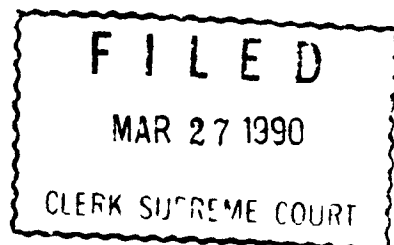
IN RE MARRIAGE OF ANITA MARIE SCHULTZ AND DAVID L. SCHULTZ

Upon the Petition of
ANITA MARIE SCHULTZ n/k/a ANITA MARIE NEMMERS,

Petitioner-Appellee/Cross-Appellant,

And Concerning
DAVID L. SCHULTZ,

Respondent-Appellant/Cross-Appellee.



Appeal from the Iowa District Court for Clayton County,
C.W. Antes, Judge.

Appeal and cross-appeal from a district court decree of
modification concerning child support, visitation, and an
award of attorney fees. **AFFIRMED AS MODIFIED.**

Diane M. Stahle and Lorna A. Gilbert of Davis,
Hockenberg, Wine, Brown, Koehn & Shors, Des Moines, for
appellant.

Leslie Babich of Babich, Bennett, Nickerson & Newlin,
Des Moines, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett,
JJ.

OXBERGER, C.J.

This is an appeal and cross-appeal from a district court decree of modification establishing past due and future child support, modifying visitation, and awarding attorney fees.

Anita and David Schultz were married on September 13, 1981. One child, Blake, was born of the marriage on September 26, 1981.

On May 5, 1985, a decree of dissolution was entered between the parties. Anita was awarded the physical care of Blake and David was granted two weeks of visitation each month until the child entered kindergarten. David was required to pay \$200 per week for child support each week that Blake was in Anita's care. David filed an appeal from this decree.

On appeal, the supreme court affirmed the district court as modified. The supreme court, in discussing the child support award, stated that, "the amount allowed by the trial court is reasonable and should not be disturbed." The supreme court did note that the child support payments were to be made only during the twenty-eight weeks per year that the child lived with Anita.

In May 1987, David filed this modification application seeking physical care of Blake and alternatively seeking modified visitation and child support provisions. In November 1987, after Blake started kindergarten, a temporary visitation order granted David visitation on alternating

weekends. In March 1988 Blake filed an application for summer visitation and Anita filed an application to establish child support arrearages. In May 1988 an order granted David visitation rights in the summer from June 13 to July 20, 1988. Eventually, all outstanding applications proceeded to trial.

At the time of trial, Anita, age twenty-nine, was employed as a paralegal in the Des Moines area. She had remarried and her current husband had custody of two children from his previous marriage. David, age thirty-one, was still a farmer and a director of the local bank. David has also remarried and his current wife has custody of a child from a previous marriage.

Following trial, the district court entered its findings of fact, conclusions of law, and decree concerning modification. Anita retained the physical care of the parties' son. The court awarded visitation on alternating weekends with the location of the weekend visitation alternating between Polk and Clayton counties. The court ordered David to continue to pay \$200 per week child support and adjudged David in arrears in the amount of \$2667. Of Anita's request for nearly \$9000 in attorney fees, the district court ordered David to pay Anita \$7000. David appealed and Anita cross-appealed from this decree.

To resolve the issues presented by the parties we turn to well-established principles. Our scope of review is de novo. Iowa R. App. P. 4. Although not bound by the

trial court's determination of factual findings, we will give considerable weight to them, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). Prior cases, though helpful, have little precedential value since we must base our decision here primarily on the particular circumstance of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

It is well established that both parents have a legal obligation to support their children. Iowa Code § 598.21(4); In re Marriage of Fleener, 247 N.W.2d 219, 221 (Iowa 1976). The obligation to support should be apportioned according to the ability of each parent to contribute. In re Marriage of Bornstein, 359 N.W.2d 500, 504 (Iowa App. 1984). In establishing child support the courts are to consider the financial resources of the child; the financial resources of both parents; the standard of living the child would have enjoyed had there not been a dissolution; the desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having physical care of the child; the cost of day care if it is needed; the physical and emotional health needs of the child; the child's educational needs; the tax consequences to each party; the amount and duration of any spousal support orders; and such other factors that the court may determine to be relevant in an individual case. In re Marriage of Byall, 353 N.W.2d 103 (Iowa App. 1984).

In light of these general legal principles we find no reason to disturb the trial court's child support award nor its finding David was \$2,667.00 in arrears in payment of child support.

David appeals the visitation schedule set by the trial court. We modify the trial court's decision by striking the requirement that one of the alternating weekends shall be exercised in Polk County. We find no reason to interfere with David's judgment as to where the visitation should take place. We assume David will take appropriate consideration of Blake's emotional and physical interest in exercising visitation. We also strike the provision that reads:

The second weekend of visitation respondent exercises each month shall be in Clayton County and the parties shall meet in Cedar Falls to exchange Blake both before and after respondent's weekend visitation.

We find the relative financial status of the parties is such the burden and expense of visitation should be placed on David.

Anita contends the district court erred in awarding her only \$7,000 of her \$9,000 in trial attorney fees. Iowa trial courts have considerable discretion in awarding attorney fees. In re Marriage of Giles, 338 N.W.2d 544, 546 (Iowa App. 1983). To overturn an award the complaining party must show that the trial court abused its discretion. Awards of attorney fees must be for fair and reasonable amounts, In re Marriage of Willcoxson, 250 N.W.2d 425, 427 (Iowa 1977), and based on the parties'

respective abilities to pay. In re Marriage of Lattig, 318 N.W.2d 811, 817 (Iowa App. 1982).

Guided by these general legal principles, we find the trial court's award of attorney fees should be affirmed.

Anita also seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. In re Marriage of Kern, 408 N.W.2d 387, 390 (Iowa App. 1987). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. In re Marriage of Hayne, 334 N.W.2d 347, 353 (Iowa App. 1983); In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981).

Guided by these general legal principles, we find that both parties should pay his or her own attorney fees on appeal.

Court costs are taxed to David.

AFFIRMED AS MODIFIED.