

Fact Pattern In the Matter of Smith v. Smith

The parties, Dawn and Skip Smith, ages 42 and 44, respectively, were college sweethearts and met while working at a local restaurant and pub. They both graduated with BAs from Rutgers University.

They married on October 15, 1996, and both worked full time. Their dream was to someday purchase their own bar and restaurant. While both were working full time, they managed to save enough money to purchase a building and open a bar and restaurant in 2010. They named the business Scandals Bar and Grill. They purchased the building where the bar is located for \$750,000.00 and they have an outstanding mortgage and note on it with a principal balance of \$500,000.00 which calls for monthly payments through December 31, 2020, at which time the entire principal owing is then due. In addition, Dawn and Skip own a limited liability company which houses Scandals, D&S Real Estate, LLC.

During the years leading up to the complaint for divorce, they had twins; one boy, Sam, and one girl, Sally, who are now age 13. Both children have special needs, and have IEP plans with their school. They both worked long and hard to make the business a success. Dawn ran the business end of the Bar and Grill. She took care of the financial records, ordered the food and beverages, managed the staff and was in charge of the hiring and firing. Skip worked in various roles including managing the front end of the restaurant and working wherever he was needed, including the kitchen from time to time. He was in charge of customer goodwill and fended the customer complaints. Skip had primary responsibility for the children's care. He would make sure he was home when they were out of school, drive them to their after school activities and attend their sports or recreational events.

Skip's college roommate, Studley, worked as a bartender for the family. He was always a reliable and loyal employee.

Over time, Skip spent less and less time in the business and the burden and responsibility of the day-to-day operations fell on Dawn's shoulders. To fill in the roles Skip had done, Dawn often worked late into the evening after closing to do the financial record keeping necessary to run the business. She also trained Studley to do some of the end of the day financial closings and began to rely upon him for assistance in running the restaurant. She asked Skip to put more time in but he did not. At some point, Skip totally stopped working in the business.

The marriage was struggling and beginning to unravel. Skip began drinking at home and started bad mouthing Dawn in front of their children. This went on for a couple of years. The children developed a hostile attitude toward their mother. As Dawn's hours away from home increased, Skip became suspicious and had a camera installed at the restaurant. He discovered that Dawn was having an affair with Studley. Unfortunately, Skip left the video open on the home computer and Sally viewed the video, then shared it with her brother.

When Skip confronted her, in front of their children, Dawn slapped him. He called the police and Dawn was charged with domestic violence and removed from the marital home. Skip filed for Divorce on May 6, 2016.

The parties retained counsel and worked out a civil restraining order, giving possession of the house to Skip. There are no terms discussed or put into place regarding parenting or money. As a result, the parties cannot agree about anything. They argue about the children's school, haircuts, activities and medical appointments to name a few. Skip and Dawn have no ability to co-parent. Neither party is fostering a relationship between the children and the other parent. Dawn would like to keep the children overnight but Skip will not allow it, knowing they would be staying with Studley. He alienates the children from Dawn and the children no longer want to speak to her.

Since Dawn is in charge of the money, she decides to withhold it from Skip. Skip threatens to go to the IRS; however, Dawn knew she ran the restaurant well and this is not at all threatening to her.

As part of his complaint, Skip requests relocating with the children to Florida, where his parents reside and will be available to help with the children. Sam would like to move. Sally does not want to leave her friends. Dawn objects to the relocation, specifically because the children have an excellent IEP plan here in NJ, and have the opportunity to attend a special program offered at Rutgers University. Dawn continues to accuse Skip of drinking in the presence of the children and requests he undergo a drug and alcohol evaluation.

Dawn and Skip Smith – Issues For Each Party

Dawn:

You want to get out of the marriage as quickly and smoothly as possible. You won't say you are or aren't sleeping with Studley. You indicate that who you spend time with is none of his business. And you say you do not have a "boyfriend".

You want to get an agreement on a regular parenting schedule, so you can stop being in the house when it's his time with the children. You know he has been caring for the children as much as 60% of the time (sometimes more since he doesn't work), but you think he should have no more than 33% of the time because he has a short temper and drinks too much. At most, you'll settle for 50/50 schedule on paper as you know he'll get called for work (he now has a job in the construction industry) and miss some of it. Now that you've hired a manager to assist in running Scandals, you have a regular work schedule and can be available for the children.

You want to keep the house in the divorce, which has equity of \$250,000. You also have a retirement savings account with \$175,000, that you're willing to give entirely to Skip in exchange for the house. You're willing to provide him with a buy-out of the restaurant, paid out over time, and would even consider retaining the business, D & S Real Estate LLC, with him.

You make more money than he does and don't want to pay child support. You can make progress on issues except the child support. You believe he doesn't deserve it because he's lazy.

Skip:

You are angry about Dawn having an affair, lying to you, and because she doesn't want you to be the primary parent of the children – even though you have been caring for them about 60% of the time. You are willing to settle for 50/50 parenting, if you are unable to remove the children to Florida.

You make frequent comments about her new boyfriend and how you absolutely don't want him around the children.

You don't care if Dawn keeps the house in the divorce, as you're quite handy and can fix up a new house if you have enough money to start with. The equity in the house is \$250,000. The money Dawn has in her retirement is \$175,000, which is just enough for you to make the down payment on a house you've been looking at. You want to stay in the current house as long as possible. To convince her to stay in the marriage, you say you need more money than just her retirement.

You want \$3,000 per month in child support to help you afford a new house. You found out from your attorney that this should be the child support amount in your case. If Dawn doesn't want to give you child support, you believe that she can't afford to get divorced and should try staying in the marriage. You're willing to compromise, but don't agree to anything less than \$2,000 per month in child support.

You are extremely agitated and can't stop yourself from interrupting during her testimony.