

IN THE COURT OF APPEALS OF IOWA

No. 8-506 / 98-0163

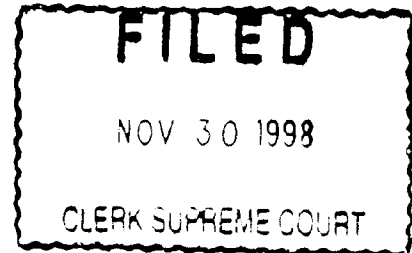
**IN RE THE MARRIAGE OF JODI L. PETERMAN
AND MICHAEL D. PETERMAN**

**Upon the Petition of
JODI L. PETERMAN, n/k/a JODI L. DAYWITT,**

Petitioner-Appellant,

**And Concerning
MICHAEL D. PETERMAN,**

Respondent-Appellee.



Appeal from the Iowa District Court for Linn County, Harold J. Swailes,
Senior Judge.

Petitioner appeals the district court's ruling in her modification action
awarding respondent physical care of their minor child. **AFFIRMED.**

Michael L. Mollman of Mollman Law Office, Cedar Rapids, for appellant.

Janice R. McCool of McCool & McCool, P.C., Cedar Rapids, and Patricia
Kamath, Iowa City, for appellee.

Heard by Sackett, C.J., Huitink, J., and Perkins, S.J.,* but considered by
Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

* Senior Judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

SACKETT, C.J.

Petitioner-appellant Jodi L. Peterman appeals from a district court decision modifying the custodial provision of the 1993 dissolution decree dissolving her marriage to respondent-appellee Michael D. Peterman. Jodi contends she, not Michael, should have been granted physical care of the parties' daughter J'nae, born in October of 1990. We affirm.

In dissolving the parties' marriage, the district court incorporated and approved a stipulation the parties entered into as to the custody of J'nae. The stipulation provided Jodi and Michael have joint custody of J'nae, and the primary residence and the primary responsibility of the child be shared equally by Jodi and Michael. At the time, Michael and Jodi both lived in Cedar Rapids, Iowa. The stipulation further provided when J'nae attended school, she should attend in the school district where Michael resided.

The stipulation further specifically provided:

If the parties cannot agree at any time to equitably share the physical access to the child, then the Court specifically retains jurisdiction to enter all appropriate orders relating to the child and her welfare and the best interests of the child without either party being required to show a substantial change in circumstances.

In 1996, Michael moved from Cedar Rapids to Strawberry Point where J'nae was enrolled in school. Jodi subsequently petitioned the court to grant her primary custodial care contending the arrangement was not working and such a transfer would be in J'nae's interests. At the same time, Jodi sought to have Michael found in contempt of court for failing to abide by several provisions in the decree. Ultimately,

Jodi dismissed this application. A hearing was held on the petition for modification and the district court modified the decree to award primary physical care of J'nae to Michael.

We review de novo. Iowa R. App. P. 4. In child custody cases, the interests of the child is the first and governing consideration. The critical issue in determining the interests of the child is which parent will do better in raising the child; gender is irrelevant, and neither parent should have a greater burden than the other. *In re Marriage of Ullerich*, 367 N.W.2d 297, 299 (Iowa App. 1985). In determining which parent serves the child's interests, the objective is to place the child in an environment most likely to bring the child to healthy physical, mental, and social maturity. *In re Marriage of Harris*, 499 N.W.2d 329, 332 (Iowa App. 1993).

Although this is a modification action, neither parent had been named the primary physical custodial. Consequently, the question is which parent is the better custodian.

The district court found both Jodi and Michael love their daughter and either was capable of assuming her care. We agree with these conclusions. The district court then went on to indicate while the issue was close, the balance swung in favor of Michael because of alcohol use in Jodi's family. The district court recognized J'nae has a half-brother and a half-sister in Jodi's home and she loves them, but the court found there would still be considerable contact between the children even though J'nae was placed in Michael's physical care. The district court ordered Jodi to pay

Michael child support of \$438.30 monthly. The district court also set forth an extensive visitation schedule.

Jodi established a relationship with Brian shortly after her marriage to Michael began falling apart. Brian has abused alcohol and was convicted and imprisoned on a burglary charge. Though Jodi and Brian have never married, they have two children together.

Following the marriage dissolution, Michael established several relationships. He currently is living with a woman who is not divorced, though she has been separated from her husband for a substantial period. She has a ten-year-old daughter who lives with her and Michael. Jodi is critical of her because she has represented herself as J'nae's stepmother at school. While we recognize she is not the stepmother, the relationship may be complicated enough that we do not find her alleged misrepresentation critical to our custodial care determination.

While Michael and Jodi have been good parents to J'nae, they seem to be intent on overplaying incidents that concern her care. Each would try to put the other parent in a less favorable light.

The parties both recognize this court does not approve of attempts to thwart contact or visitation by either parent. *See In re Marriage of Smiley*, 518 N.W.2d 376, 380 (Iowa 1994); *In re Marriage of Kunkel*, 555 N.W.2d 250, 253 (Iowa App. 1996).

As did the district court, we find the issue close. Finding no compelling reason to disagree with the district court, we affirm. We award no attorney fees on appeal.

AFFIRMED.