

**IN THE COURT OF APPEALS OF IOWA**

No. 0-602 / 10-0682  
Filed November 24, 2010

**IN RE THE MARRIAGE OF LISA PETERSON MAYO  
AND PHILIP G. MAYO JR.**

**Upon the Petition of  
LISA PETERSON MAYO,**  
Petitioner-Appellee,

**And Concerning  
PHILIP G. MAYO JR.,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Wright County, John Mackey,  
Judge.

Respondent appeals the district court decision placing the parties' child in  
the petitioner's physical care, rather than ordering joint physical care.

**AFFIRMED.**

Megan R. Rosenberg of Hobson, Cady & Cady, Hampton, for appellant.

Dani L. Eisentrager of Eisentrager Law Office, Eagle Grove, for appellee.

Considered by Vogel, P.J., Mansfield, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**HUITINK, S.J.**

Philip (Jody) Mayo appeals from the custodial provisions of the decree dissolving his marriage to Lisa Mayo. Jody contends the record does not support the trial court's decision to deny his request for shared physical care of their child, Corbin, or to award physical care of Corbin to Lisa. Because we find the record supports the trial court's decision, we affirm.

**I. Background Facts & Proceedings**

Jody and Lisa are the parents of Corbin, born in 2001. Corbin has been diagnosed with attention deficit hyperactivity disorder (ADHD) and a mood disorder. He takes medication for his condition. He has exhibited behavioral problems at school. He is in a special education classroom and has an Individualized Education Program (IEP).

Lisa filed a petition for dissolution of marriage on June 15, 2009. The parties continued to live in the same house until about October 14, 2009. Jody and Lisa got into an argument, and Jody either threw a mattress at Lisa or tried to trap her with a mattress, and Lisa hit her head on a wall cabinet. Jody pled guilty to simple assault as a result of this incident, and a no-contact order was entered. Lisa had temporary physical care of Corbin, and Jody exercised visitation.

Jody was forty-six years old at the time of the dissolution hearing. He suffered a brain injury in a motorcycle accident twelve years ago that he believes causes him anger control problems. Jody has also been diagnosed with ADHD and diabetes. Additionally, he has problems with alcohol use, and when he drinks this exacerbates his temper problems. Jody has been hospitalized at least

twice in the past for suicide attempts. He takes medication for his problems, but testified he did not have enough money for his diabetes medication. He is employed as a truck driver and part-time farmer.

Lisa was forty-three years old at the time of the hearing. She was employed as a sales representative. Lisa had no significant health problems. Lisa testified she planned to move to Georgia to be nearer to her parents. She indicated she might return to school, but did not have concrete plans in that area.

The district court issued a dissolution decree for the parties on March 5, 2010. The court granted the parties joint legal custody of Corbin, with Lisa having physical care. The court denied Jody's request for joint physical care, stating, "Given the parties prior history of domestic abuse as well as Lisa's stated intention to move to the state of Georgia, the court concludes that a joint physical placement scenario would not be feasible." The court found Lisa had been Corbin's primary caretaker throughout his life, and she was much more stable than Jody. Jody was granted visitation on alternate years during Thanksgiving, Christmas, and spring break, as well as six weeks during the summer. Jody appeals the physical care provision of the decree.<sup>1</sup>

## **II. Standard of Review**

In this equity action our review is de novo. Iowa R. App. P. 6.907 (2009). In equity cases, we give weight to the fact findings of the district court, especially on credibility issues, but we are not bound by the court's findings. Iowa R. App.

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<sup>1</sup> The Iowa Supreme Court denied Jody's motion for a stay of the district court's decision.

P. 6.904(3)(g). “In child custody cases, the first and governing consideration of the courts is the best interests of the child.” Iowa R. App. P. 6.904(3)(o).

### **III. Physical Care**

Jody claims the district court should have granted the parties joint physical care of Corbin. As part of his argument he asserts Lisa should not move down to Georgia with Corbin. He points out Corbin is getting the help he needs with his present physicians and school setting, and it is unknown what the situation will be for Corbin in Georgia. Jody also asserts that his extended family lives in the area, and Corbin will not have the continual contact with them that he has presently.

When physical care of minor children is an issue in dissolution proceedings, the district court may grant the parents joint physical care, or choose one parent to be the caretaker of the children. *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). Joint physical care is a viable option when it is in the children’s best interests. *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). The court considers the following factors in determining whether to grant joint physical care: (1) the historical care giving arrangement for the children between the parents; (2) the ability of the spouses to communicate and show mutual respect; (3) the degree of conflict between the spouses, and (4) the degree to which the parents are in general agreement about their approach to parenting. *In re Marriage of Hansen*, 733 N.W.2d 683, 697-99 (Iowa 2007); *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007).

Even if Lisa was not planning to move to Georgia, we determine joint physical care would not be in Corbin’s best interests. Jody has a history of

exhibiting extremely unstable behavior. The parties were subject to a no-contact order, which inhibited their ability to communicate. They did not appear able to respect each other, and had a highly contentious relationship.

We agree with the district court's conclusion that Lisa was the more stable parent. Lisa has continually provided for Corbin's needs since his birth. A school administrator testified Corbin's IEP would follow him to Georgia, and by law the child would continue to receive the help he needs. Lisa had also taken steps to seek medical treatment for Corbin after she moves. We determine Lisa is more able to provide an environment likely to promote healthy physical, mental, and social maturity. *See Hanson*, 733 N.W.2d 683, 695 (Iowa 2007). We affirm the district court decision placing Corbin in Lisa's physical care.

#### **IV. Attorney Fees**

Lisa seeks attorney fees for this appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 767 (Iowa 1997). On a request for appellate attorney fees, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of Wood*, 567 N.W.2d 680, 684 (Iowa Ct. App. 1997). We determine Jody should pay \$1500 toward Lisa's appellate attorney fees.

We affirm the decision of the district court. Costs on appeal are assessed to Jody.

**AFFIRMED.**