

**IN THE COURT OF APPEALS OF IOWA**

No. 1-310 / 10-1779  
Filed May 25, 2011

**MICHAEL WAYNE BETCHEL,**  
Petitioner-Appellee,

**vs.**

**JODIE MARIE MONDAY n/k/a**  
**JODIE MARIE ARSIAGA,**  
Respondent-Appellant.

---

Appeal from the Iowa District Court for Pottawattamie County, James Heckerman, Judge.

Mother appeals the district court's denial of her request for modification of physical care. **AFFIRMED.**

Chad Douglas Primmer of Primmer Law, Council Bluffs, for appellant.

Michael W. Betchel, Council Bluffs, pro se.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

**EISENHAUER, P.J.**

Jodie Monday, n/k/a/ Jodie Arsiaga, and Michael Betchel are the parents of fifteen-year-old L.B. In December 1996, the court ordered joint legal custody with physical care to Jodie and visitation to Michael. In November 2005, when L.B. was ten, Jodie requested Michael immediately take over L.B.'s physical care. Michael agreed and also agreed to Jodie's request that she not pay child support. The court modified the custody order by adopting the parties' stipulated modification. Until recently, Jodie has not regularly exercised visitation.

In June 2010, Jodie filed a petition to modify the custody order seeking physical care of L.B. and emergency temporary care. After hearing, the court denied Jodie's request for a temporary change.

In July 2010, Jodie and Michael attended mediation. The mediator noted: "The parties admit that they have absolutely no communication between one another." During mediation the parties agreed L.B. would benefit from counseling and Michael subsequently arranged for counseling. No other agreement was reached.

In September 2010, L.B., Jodie, and Michael testified at the modification hearing. At the conclusion of the evidence, the court stated:

But we're talking over a period of five years and we're coming up with four instances of—of somewhat questionable conduct on the part of Michael. Otherwise, it seems that he's provided for the essentials . . . in terms of what a parent's required to do.

The court ordered counseling to continue and ordered an evaluation to be conducted with all subsequent recommendations followed by the parties. The court ruled:

It is well settled under Iowa law that a change in physical custody requires a substantial change in circumstances. . . . [S]uch incidents as claimed by [Jodie] do not rise to the level necessary to change the custodial arrangement given the rest of the circumstances in this case. [Michael] has continued to care for his daughter and provide for her financially without any help from [Jodie].

Our review in this equitable action is de novo. Iowa R. App. P. 6.907. We give weight to the trial court's fact findings, especially regarding witness credibility, but they are not binding. *In re Marriage of McKenzie*, 709 N.W.2d 528, 531 (Iowa 2006).

In seeking to modify the physical care arrangement, Jodie has a heavy burden. See *In re Marriage of Frederici*, 338 N.W.2d 156, 158 (Iowa 1983). Jodie must establish "by a preponderance of the evidence, a substantial change in circumstances justifying [her] requested modification." See *In re Marriage of Thielges*, 623 N.W.2d 232, 235 (Iowa Ct. App. 2000). The burden upon the parent seeking a change is heavy "because children deserve the security of knowing where they will grow up, and we recognize the trauma and uncertainty these proceedings cause all children." *In re Marriage of Rosenfeld*, 524 N.W.2d 212, 213-14 (Iowa Ct. App. 1994). Consequently, we follow the principle that once custody has been fixed, it "should be disturbed only for the most cogent reasons." *Id.* at 214.

After considering all of the evidence, we agree with the district court's conclusion that Jodie has not shown a substantial change in circumstances. We affirm the district court. Costs of this appeal are assessed to Jodie.

**AFFIRMED.**