

IN THE COURT OF APPEALS OF IOWA

No. 1-368 / 11-0116
Filed June 29, 2011

LEE ROBERT JACOBS,
Petitioner-Appellee,

vs.

AMANDA LYNN HOUCK,
Respondent-Appellant.

Appeal from the Iowa District Court for Floyd County, James M. Drew,
Judge.

A mother contends that the district court erred in granting the child's father
physical care of the child. **AFFIRMED.**

Linda A. Hall of Gallagher, Langlas & Gallagher, P.C., Waterloo, for
appellant.

DeDra Schroeder of Schroeder & Larson Law Office, Osage, for appellee.

Heard by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VAITHESWARAN, J.

Amanda Houck and Lee Jacobs had a child in 2009 and lived together for approximately the first six months of the child's life before separating. After the separation, the child remained with her mother.

Lee filed a custody petition and reached a temporary agreement with Amanda under which she would retain physical care subject to "liberal and reasonable visitation" with Lee. When Lee did not obtain the contact he had hoped for, he filed a contempt application which was resolved with an agreement to expand visitation.

Following trial, the district court granted Lee physical care of the child. Amanda appealed.

I. Physical Care

Amanda contends the district court should not have granted Lee physical care, as she was the child's primary caretaker. The fact of her primary caretaking role is undisputed. This fact, however, does not mandate the disposition she requests. See *In re Marriage of Wilson*, 532 N.W.2d 493, 495 (Iowa Ct. App. 1995) ("The parent who has been the primary caretaker of the children during the marriage will not necessarily be designated the primary caretaker at the time of a divorce."). The district court addressed this issue as follows:

Ordinarily a custody decision would be relatively simple when, as is the case here, one parent has provided the lion's share of caring for the child. This court fully appreciates the significance of the bonding that has occurred between [the child] and Amanda. At the same time, it is impossible to ignore the fact that Lee would have a more significant history of caregiving but for Amanda's unreasonableness. Either Lee or Amanda are fully capable of

providing for [the child's] physical needs. Although Amanda's history as the primary caregiver weighs in her favor, there are significant countervailing factors that favor Lee as the primary custodian.

The court proceeded to discuss the countervailing considerations to Amanda's primary caretaking role. First, the court noted Amanda's "inability to control her temper and language," specifically commenting that she "became more agitated and animated than typical litigants while listening to testimony." The court also expressed concern that Amanda seemed "neither interested in, nor capable of, co-parenting." Finally, the court questioned Amanda's "ability to make appropriate parenting decisions."

On our de novo review, we are persuaded that the district court's decision was in the best interests of the child. See *In re Marriage of Purscell*, 544 N.W.2d 466, 468 (Iowa Ct. App. 1995). We place primary emphasis on Amanda's interference with Lee's right to co-parent the child. In particular, the record reflects that Amanda denied Lee visitation following the couple's separation, forcing Lee to seek court intervention. Even after the temporary order was entered, Amanda made visitation exchanges difficult, denied a weekend visit because she was angry at Lee, and failed to list Lee as the father on a daycare application. In short, Amanda minimized Lee's importance as a parent. Even without the other factors cited by the district court, this behavior supports the district court's decision to grant Lee physical care. See *In re Marriage of Will*, 489 N.W.2d 394, 399 (Iowa 1992) ("In custody and physical care determinations, we are also mindful that the court must consider the denial of one parent of the child's opportunity to have meaningful contact with the other parent is a

significant factor in determining the custody or physical care arrangement.”); *In re Marriage of Shanklin*, 484 N.W.2d 618, 619 (Iowa Ct. App. 1992) (noting mother was “unable to effectively deal with her anger towards” the father and had “restricted [the father’s] visitation and interfered with his relationship with the child in the past”).

In reaching this conclusion, we do not discount Amanda’s ability to attend to the child’s physical needs. But, as a custody evaluator stated, the child’s best interests also requires “regular contact and a close relationship with a non-custodial parent.” Because Amanda did not show a willingness to facilitate this aspect of the child’s development, we affirm the district court’s physical care determination. See *In re Marriage of Kunkel*, 555 N.W.2d 250, 254 (Iowa Ct. App. 1996) (finding mother’s “contentious disposition and hostile temperament incompatible with the considerable rights and responsibilities attending an award of physical care”).

II. Joint Physical Care

Amanda next contends the district court should have considered joint physical care. Amanda did not request joint physical care and the record is clear that when Amanda moved to another town, Lee back-tracked from a willingness to accept joint physical care. Joint physical care was simply not an issue in the case. As the court noted, the distance between the parents made even mid-week visitation problematic, suggesting that joint physical care was not a feasible option if it was on the table. For that reason, the district court acted equitably in declining to consider this option.

AFFIRMED.