

**IN THE COURT OF APPEALS OF IOWA**

No. 1-608 / 11-0310  
Filed October 5, 2011

**Upon the Petition of**  
**THOMAS S. KARABATSOS,**  
Petitioner-Appellant,

**And Concerning**  
**STACEY LYNN SCHULTE,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Worth County, Bryan H. McKinley,  
Judge.

A father appeals a district court ruling awarding physical care of his son to  
the child's mother, contending that the parties should have been awarded joint  
physical care. **AFFIRMED.**

Richard S. Piscopo, Jr. of Yunek Law Firm, Mason City, for appellant.

Jeffrey H. Greve of Greve Law Office, Northwood, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

**VAITHESWARAN, J.**

A father appeals a district court ruling awarding physical care of his son to the child's mother.

***I. Background Facts and Proceedings***

Thomas Karabatsos and Stacey Schulte are the unmarried parents of a son, born in 2008. Thomas informally exercised every-other-weekend visitation with his son even though his relationship with Stacey ended before the child's birth.

In 2010, Thomas filed a petition to establish custody. He sought primary physical care of the child and, in the alternative, joint physical care. Following trial, the district court declined to make an award of joint physical care, granted Stacey physical care, and formalized a visitation schedule for Thomas. Thomas appealed.

On appeal, Thomas contends the district court should have granted the parents joint physical care of the child.<sup>1</sup>

***II. Joint Physical Care***

In rejecting the joint physical care option, the district court relied on the fact that the parents lived in different school districts. The court reasoned as follows:

During the course of the proceedings, it was represented by Thomas that shared placement could be considered to be an alternative: however, considering the fact that the parents reside in separate school districts, the Court finds that a shared placement arrangement would not be feasible, practical, or in the best interests of [the child]. Therefore, the Court will proceed in finding

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<sup>1</sup> Thomas does not alternately challenge the district court's failure to grant him primary physical care of the child.

that, in considering [the child's] best interests and the evidence presented, [the child] shall be placed in joint custody with both of his parents, with primary placement with his mother, Stacey, subject to reasonable parenting contact by Thomas.

Thomas argues that this reasoning is flawed, as the parents lived close enough to make joint physical care a viable option. He also notes that the parents respected and communicated civilly with each other.

Thomas is correct that, although the parents lived in different school districts, the towns were minutes away from each other and transport to either one of the school districts would have been feasible. For that reason, this fact alone was not grounds for rejecting Thomas's request for joint physical care. But there is more.

The Iowa Supreme Court has enumerated several non-exclusive factors to consider in a joint physical care analysis, including an ability "to communicate and show mutual respect" and "the degree to which the parents are in general agreement about their approach to daily matters." *In re Marriage of Hansen*, 733 N.W.2d 683, 698–99 (Iowa 2007). We agree with Thomas that the parents made an effort to maintain an open line of communication with each other for the sake of the child. For example, after the birth of their son, Stacey took the child to Thomas's house to allow his family to see the child. She also facilitated visitation. Thomas, in turn, immediately placed the child on his health insurance plan. He also regularly picked up the child for visits or had his family pick him up.

Nonetheless, the parents disagreed on which school district the child should attend. Stacey believed that he would receive more personal attention in the smaller district in which she resided; Thomas believed Stacey could easily

bring the child to school in Mason City, as she worked in that town. While this disagreement did not require immediate resolution in light of the child's age, it highlighted the reality that open lines of communication did not guarantee lines free of static. It is commendable that these parents strived to treat each other civilly and respectfully but, in the end, these factors are not dispositive.

What is dispositive is the "historic pattern[ ] of care giving." *Id.* at 697. Stacey was the child's primary caretaker for the entirety of his young life. Although Thomas interacted with him, he did not exercise visitation more than six days a month. This already limited time was further subject to Thomas's work schedule with the railroad, which sometimes required him to be away on his visitation weekends. While this schedule was slated to change, the fact remained that, for approximately two-and-a-half years, Stacey handled most of the childcare responsibilities.

We recognize that a parent's historic role as the primary caregiver will not carry as much weight if there is evidence that the primary caregiver "has abandoned responsibilities or had not been adequately performing" those responsibilities. *Id.* That is not the case here. Although Thomas expressed concern about Stacey's "financial issues," her relationships with other men, and the "state of disarray in her house," the district court discredited these considerations and, on our *de novo* review, so do we.

When Stacey was asked about her finances, she testified that she received no child support from Thomas for ten months following the birth of their son. As a result, she fell further behind on bill payments and was the subject of debt-collection actions, including wage garnishments. By the time of trial, Stacey

had “made deals” with those creditors who were still owed money and, as manager of a shoe store for “a little over nine years,” had the means to follow through on those deals.

As for Stacey’s relationships with men, she essentially admitted that she made some poor choices. But Thomas made some poor relationship choices as well. As the district court stated “the pot should not be calling the kettle black.”

Finally, we agree with the district court that “the issue as to a clean home [was] not chronic.” There was scant, if any, evidence that the condition of the home threatened the child’s welfare. At worst, the record reflected that Stacey was not vigilant in picking up after her three children.

Stacey’s history of serving as the child’s primary caretaker and Thomas’s more limited role support the district court’s decision to reject the joint physical care option. As Stacey stated,

If you’re going to take a kid at three years old and uproot him and throw him into a whole new household, a whole new routine, whole new rules and everything, I don’t see how that’s going to benefit him and make him happy.

Stacey’s view is echoed in the following excerpt from *Hansen*:

All other things being equal, however, we believe that joint physical care is most likely to be in the best interest of the child where both parents have historically contributed to physical care in roughly the same proportion. Conversely, where one spouse has been the primary caregiver, the likelihood that joint physical care may be disruptive on the emotional development of the child increases.

*Id.* at 697–98 (citations omitted). We affirm the district court’s denial of joint physical care and the court’s grant of physical care to Stacey.

**AFFIRMED.**