

**IN THE COURT OF APPEALS OF IOWA**

No. 6-188 / 05-0636

Filed May 10, 2006

**IN RE THE MARRIAGE OF JAMES THOMAS BEAL AND KATIA ING BEAL**

**Upon the Petition of  
JAMES THOMAS BEAL,**  
Petitioner-Appellant,

**And Concerning  
KATIA ING BEAL, n/k/a  
KATIA FELLER,**  
Respondent-Appellee.

---

Appeal from the Iowa District Court for Dallas County, Paul Huscher,  
Judge.

James Thomas Beal appeals from the district court order dismissing his  
petition to modify the child custody provisions of the decree dissolving his  
marriage to Katia Beal. **AFFIRMED.**

Tiffany Koenig of Kragnes, Tingle & Koenig, Des Moines, for appellant.

Katia Feller, Indianola, pro se.

Misheal Waller-Little, Bouton, guardian ad litem for minor child.

Considered by Huitink, P.J., and Vaitheswaran and Eisenhauer, JJ.

**EISENHAUER, J.**

James Thomas Beal (J.T.) appeals from the district court order dismissing his petition to modify the child custody provisions of the decree dissolving his marriage to Katia Beal. He contends the court erred in finding there was not a substantial change in circumstances warranting modification. He further contends he is a superior parent. We review his claims de novo. *In re Marriage of Pendergast*, 565 N.W.2d 354, 356 (Iowa Ct. App. 1997).

J.T. and Katia were married on December 4, 1997. They have one child, Zander, who was born June 11, 1998. Katia has a daughter, Soleil, from a previous relationship. The parties' marriage was dissolved by decree on April 26, 2001. The parties were granted shared physical care of Zander.

J.T. filed for modification of child custody on May 1, 2003, seeking physical care of Zander. Katia counterclaimed, seeking to have Zander's physical care granted to her. In its June 2004 ruling, the court found a substantial change in circumstances warranting modification and granted Katia physical care of Zander. J.T. was awarded liberal visitation.

On December 10, 2004, J.T. filed a second petition seeking to modify child custody. On March 18, 2005, the district court found there had not been a substantial change in circumstance warranting modification of the custody and visitation provisions of the previous modification order.

A modification of child custody is appropriate only when there has been a substantial change in circumstances since the time of the last modification that was not contemplated when the order was entered. *Mears v. Mears*, 213 N.W.2d 511, 514 (Iowa 1973). The change must be more or less permanent and relate

to the welfare of the child. *In re Marriage of Walton*, 577 N.W.2d 869, 870 (Iowa Ct. App. 1998).

The parties' dissolution has been a contentious one. Since the entry of the decree in April 2001, a number of actions have been filed, including an application for contempt, an application to determine summer visitation, an application for determination of kindergarten, a request for emergency hearing regarding the safety of the child, and two petitions for modification. The court's ruling in the first modification action details the hostilities between the parties and their difficulties over the rather short period between dissolution and the modification action. Again, six months after the ruling in the first modification, a second modification action was filed.

Following the filing of that second modification, Katia's live-in boyfriend was involved in an incident in which he resisted arrest. Zander was not present at this incident and there is no evidence he is aware of it or has been adversely affected by it. Other issues alleged by J.T. were considered by the district court in the first modification action and have not substantially changed. As stated by the district court in its ruling:

The issues of the stability of Katia's home and home life, the hours that she works or the hours that she spends in school, the relationship and the living situation between James Beal and his grandmother, and her providing a home for him, and having in fact two homes available to Zander, that of his grandmother's and that of his mother's and their efforts in caring for Zander and providing day care or baby-sitting services as necessary, have also been addressed by the court in its prior order, and those matters have not substantially changed.

We conclude J.T. has failed to prove a substantial change in circumstances following the entry of the first modification order. Accordingly, we affirm the district court's order dismissing J.T.'s petition for modification.

**AFFIRMED.**