

IN THE COURT OF APPEALS OF IOWA

No. 6-388 / 05-1719

Filed May 24, 2006

DERRICK HORVATH,
Petitioner-Appellee,

vs.

JESSICA RYAN DESOTEL,
Respondent-Appellant.

Appeal from the Iowa District Court for Linn County, David L. Baker,
Judge.

Jessica Desotel appeals from the district court order denying her motion to
modify the child custody provisions of a previous decree. **AFFIRMED.**

Sheree L. Smith, Cedar Rapids, for appellant.

Karla M. Wolff, Cedar Rapids, for appellee.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

EISENHAUER, J.

Jessica Desotel appeals from the district court order denying her motion to modify the child custody provisions of a previous decree. She contends a substantial change of circumstances warranting modification has occurred and that she should be granted physical care of the parties' minor child. We review her claim de novo. *Dale v. Pearson*, 555 N.W.2d 243, 245 (Iowa Ct. App. 1996).

Jessica and Derrick Horvath were teenagers and unmarried when Brittney was born on June 21, 1995. On October 19, 2000, a default decree was entered, granting the parties shared physical care of Brittney. The decree states:

The parties shall each have the minor child with him or her fifty percent (50%) of the time, as the parties agree. If the parties cannot agree, they will alternate weeks, exchanging the child on Sunday evenings at 5:00 p.m.

However, Jessica continued to be Brittney's primary caretaker and Derrick had Brittney two to three weekends per month and one or two nights per week. Neither party apparently understood the provisions of the decree.

Following difficulties in obtaining visitation with Brittney in early 2004, Derrick learned of and insisted the parties follow the provisions of the decree requiring alternate care of Brittney on a weekly basis. Jessica filed a petition to modify the child custody provisions of the decree. The district court concluded there was not a substantial change in circumstances warranting modification of the decree and denied the petition.

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).

We agree Jessica has failed to show a substantial change in circumstance not contemplated at the time the decree was entered. Although the district court found that since February 2004, “the parties’ relationship has deteriorated with a subsequent loss of communication,” it concluded any lack of communication between the parties was within the contemplation of the court at the time the decree was entered as the parties “have always had a rather volatile relationship.” The court also found each parent to be extensively involved in the child’s life and “this appears to be what was contemplated in the original decree.” We concur in the trial court’s assessment of the evidence. Accordingly, we affirm the court’s denial of Jessica’s petition to modify.

AFFIRMED.