

**IN THE COURT OF APPEALS OF IOWA**

No. 7-919 / 07-1032  
Filed December 28, 2007

**JASON M. POJAR,**  
Petitioner-Appellant,

**vs.**

**LINDA D. NORBERG,**  
Respondent-Appellee.

---

Appeal from the Iowa District Court for Scott County, Mary E. Howes,  
Judge.

Jason M. Pojar appeals seeking joint physical care of his daughter Grace.

**AFFIRMED.**

Dennis D. Jasper of Stafne, Lewis, Jasper & Preacher, Bettendorf, for  
appellant.

Linda D. Norberg, Bettendorf, pro se.

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

**EISENHAUER, J.**

Jason Pojar appeals a district court ruling placing physical care of the parties' minor child with Linda Norberg. We affirm.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

Jason and Linda are the parents of Grace A. Pojar, born in April 2003. The parties were never married and have not been able to sustain a stable relationship. Grace was born after one year of dating. Jason was present at Grace's birth and, although he has never shared physical care of Grace, he has been actively involved in her life. Jason is a Davenport police officer and Linda works at the Handicap Development Center. Linda has never been married and is also the mother of Hailey, age seven. Hailey and Grace are very close.

When Grace was two, the parties tried to live together, but that ended after seven months, in November 2005. Early in 2006, they again tried living together, but separated in May 2006 after a night of drinking led to an incident in a bar with female dancers and the eventual arrest of Linda.

In July 2006, a property dispute led to police involvement and to Jason filing a complaint, which eventually was dismissed, charging Linda with assault. Linda obtained a temporary protective order against Jason which was also eventually dismissed. A no contact order between Jason and Linda was modified to allow telephone contact on February 21, 2007, and was cancelled as a part of the district court's ruling on physical custody.

Jason filed a petition in August 2006 seeking joint legal custody and physical care or, in the alternative, shared care of Grace and the case was heard in February 2007. The parties agreed on joint legal custody of Grace, but did not

agree on the issue of physical care. In April 2007, the court ruled the best interests of Grace required physical care to be placed with Linda and granted Jason extraordinary visitation. Jason filed a motion to amend or enlarge which was denied in May 2007. On appeal, Jason admits the parties' relationship was tumultuous, but argues joint physical care is still appropriate because they have never had any arguments about raising Grace.

## **II. SCOPE AND STANDARDS OF REVIEW.**

Our review in this equity matter is de novo. Iowa R. App. P. 6.4. Although not bound by the district court's fact findings, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g).

## **III. PHYSICAL CARE.**

“When considering the issue of physical care, the child's best interest is the overriding consideration.” *In re Marriage of Fennelly*, 737 N.W.2d 97, 101 (Iowa 2007). The court is guided by the factors set forth in Iowa Code section 598.41(3) (Supp. 2005); see *Yarolem v. Ledford*, 529 N.W.2d 297, 298 (Iowa Ct. App. 1994) (noting criteria apply regardless of parents' marital status). Our supreme court recently devised a nonexclusive list of factors to be considered when determining whether a joint physical care arrangement is in the best interests of the child. *In re Marriage of Hansen*, 733 N.W.2d 683, 697 (Iowa 2007). The factors are (1) “approximation”—what has been the historical caregiving arrangement for the child between the two parties; (2) the ability of the spouses to communicate and show mutual respect; (3) the degree of conflict between the parents; and (4) “the degree to which the parents are in general agreement about their approach to daily matters.” *Id.* at 697-99. The ultimate

objective is to place Grace in the environment most likely to bring her to healthy physical, mental, and social maturity. See *id.* at 695. With these principles in mind and after considering Jason's arguments on appeal and reviewing the evidence anew, we conclude the district court correctly denied Jason's request for joint physical care.

As the district court recognized, Linda and Jason are both competent and loving parents who are sincere in their desire to care for Grace. Where the child would flourish in the care of either parent, the choice of physical care necessarily turns on narrow and limited grounds. In such cases "stability and continuity of caregiving are important factors." *Id.* at 696. These factors tend to favor a parent who was primarily responsible for the physical care of the minor child. *Id.* Here, Linda has been Grace's dominant primary care provider and her successful history of caregiving is a reliable indication of the quality of primary care Grace will receive in the future. Since the child's birth in 2003, there have only been approximately eleven months where the parties lived together and had an opportunity to jointly care for the child. At all other times the child has lived with and been cared for by Linda. This dominance in time spent with the child also mitigates against shared care.

Additionally, in close cases, we give careful consideration to the district court's findings. *In re Marriage of Wilson*, 532 N.W.2d 493, 495-96 (Iowa Ct. App. 1995). In finding Grace's best interests would not be served by joint physical care, the district court determined the parties do not communicate well enough for a 50/50 shared care arrangement and lack mutual respect for each other as evidenced by their history of harassing each other. In denying Jason's

motion to enlarge, the court stated: “The parties’ relationship history, including no contact orders and the filing of criminal charges against each other, is not conducive to joint physical care as they do not support each other’s lifestyle choices or communicate well.”

Additionally, the court found Linda’s home environment, a house close to Grace’s school in Bettendorf, to be more appropriate than Jason’s residence in Davenport which he shares with a thirty-year-old, single, male roommate. Although Jason is hoping to eventually move to the day shift, the court determined his night shift work schedule makes a 50/50 physical care arrangement not in Grace’s best interests. Finally, the court found Linda has been the primary care giver to Grace up to this point in her life.

Based on our de novo review of the record, we find many factors weigh against shared care and in favor of awarding Linda physical care of Grace. See *Hansen*, 733 N.W.2d at 697-99. The district court’s findings concerning the parties’ inability to communicate and lack of mutual respect for each other are amply supported by the evidence and we adopt them as are own. Jason suggests the parties’ disagreements have never included disputes about the child’s care. While this may be true, under the circumstances of this case, it is impossible to find the level of communication or mutual respect necessary to warrant joint physical care. We also defer to the district court’s impressions of the parties gleaned from observing their testimony at trial. For the same reasons cited by the district court, we deny Jason’s request for joint physical care and affirm the district court’s award of physical care to Linda.

**AFFIRMED.**