

**IN THE COURT OF APPEALS OF IOWA**

No. 9-496 / 08-1892  
Filed August 19, 2009

**MARIA BENITES DE LA LUZ,**  
Plaintiff-Appellee,

**vs.**

**RICHARD RENDON,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,  
Judge.

A father appeals a district court order granting physical care of his  
daughter to the child's mother. **AFFIRMED.**

Jennifer Zupp of Norelius & Nelson, P.C., Denison, for appellant.

Teresa O'Brien, Sioux City, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**VAITHESWARAN, P.J.**

Richard Rendon appeals a district court order granting physical care of his daughter to her mother, Maria Benites de la Luz.

**I. Background Facts and Proceedings**

Richard and Maria had a child when Maria was seventeen years old and Richard was nineteen. The parents had an on-again-off-again relationship for several years. At the time of trial, they were no longer together; Richard was married with two children from that marriage and Maria was also married.

When the child was seven years old, Maria filed a “Petition for Determination of Permanent Care, Custody, Control, Child Support, and Visitation.” The district court temporarily granted the parents joint physical care of the child. Following trial, the district court granted Maria physical care.

Richard takes issue with this aspect of the court’s ruling.

**II. Analysis**

In cases involving the determination of physical care of a child, the primary concern is the best interests of the child. *In re Marriage of Rodgers*, 470 N.W.2d 43, 44 (Iowa Ct. App. 1991). Our review is de novo. Iowa R. App. P. 6.4.

The record is replete with attacks and counterattacks on each parent’s character, but, after sifting through the chaff, it is clear that both parents were loving and appropriate caregivers.<sup>1</sup> It is also clear that each parent viewed the other as important in the child’s life. See Iowa Code § 598.41(3)(e) (2007). Maria testified that the child needed to have a relationship with her father.

---

<sup>1</sup> The child was also under the watchful eye of two doting grandmothers.

Richard, in turn, stated that he “would never” tell his child that her mother was “bad or anything” and he would “encourage her to call her mom.”

The problems were not in the parents’ relationships with the child but in their relationship with each other. Specifically, their animosity and distrust of each other resulted in poor communication on certain key issues affecting the child. For example, Maria enrolled the child in a new school, apparently without Richard’s knowledge or consent, did not tell him where the child was enrolled, and failed to list Richard as the father on the new school records. Richard similarly picked the child up from her old school or had his mother do so without informing Maria.

This lack of communication is relevant to a custody determination. *See id.* § 598.41(3)(c). Both parents certified to the court that they completed a children-in-the-middle course, but the record reflects that neither took the instruction to heart. Because both parents can be faulted for letting their feelings toward each other interfere with effective communication about the child, we conclude this factor does not favor either of them.

Two other factors, however, support the district court’s decision to grant Maria physical care of the child. First, Maria was the primary caretaker until the district court filed the temporary custody order. *See id.* § 598.41(3)(d). She took on most of the child care duties for most of the child’s seven years and by all accounts, raised a happy and well-adjusted child. Related to that factor, Maria’s employment hours afforded her more time with the child than did Richard’s hours. She went to work at 5:45 a.m. and returned at 2:10 p.m., allowing her to

spend the entire afternoon and evening with the child. Richard, in contrast worked from 7:00 p.m. to 4:30 a.m. on weekdays.

Second, the district court unequivocally gave more credence to Maria's testimony than to Richard's testimony, a factor we give weight to because we are unable to assess the demeanor of the parties. See *In re Marriage of Roberts*, 545 N.W.2d 340, 343 (Iowa Ct. App. 1996) ("However, in the end we determine this to be a close case, for both parents love their children very much and each is capable of providing for their long-range best interests. In situations such as this, we note the district court had the parties before it and was able to observe and evaluate the parties as custodians.").

For these reasons, we conclude the district court acted equitably in granting Maria physical care of the child.

**AFFIRMED.**