

**IN THE COURT OF APPEALS OF IOWA**

No. 16-1363  
Filed November 22, 2017

**IN RE THE MARRIAGE OF MARY KAY WALKER  
AND BRETT ALAN WALKER**

**Upon the Petition of  
MARY KAY WALKER,**  
Petitioner-Appellee,

**And Concerning  
BRETT ALAN WALKER,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

Brett Walker appeals the district court's denial of his petition to modify the  
visitation provision of a dissolution decree. **AFFIRMED.**

Scott D. Fisher of Fisher Law Firm, P.L.C., Urbandale, for appellant.

Timothy M. Duffy of Timothy M. Duffy, P.C., Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Bower, JJ.

**VAITHESWARAN, Presiding Judge.**

Brett Walker appeals the district court's denial of his petition to modify the visitation provision of a dissolution decree.

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

Brett has three convictions for domestic abuse assault. He and his wife Mary divorced in 2009. Under a stipulated decree, Mary obtained sole legal custody of the couple's four-year-old child as well as physical care of the child, subject to visitation with Brett every other weekend and one midweek overnight every week.

Six years later, Brett filed a petition to modify the decree. He alleged a substantial change in circumstances since the entry of the decree, as follows:

(a) Brett has resided in a home in Johnston, Iowa, for five years consecutive.

(b) Brett has established a stable career.

(c) Mary has moved residences upwards of 12 times since 2009, and now currently resides with her adult son in his residence.

(d) Brett has not been convicted of a crime since 2009.

(e) Brett has addressed his previous domestic abuse and assaultive behaviors, which complicated his life prior to 2009.

Brett sought joint legal custody and physical care of the child or alternatively, increased visitation.

Following trial, the district court denied the petition on the ground Brett failed to prove a material and substantial change of circumstances. The court later denied motions for enlarged findings or conclusions except Mary's request for trial attorney fees. On appeal, Brett only challenges the district court's denial of his request for expanded visitation.

## **II. Modification of Visitation**

The district court did not expressly address Brett's request for expanded visitation. However, this issue is subsumed within the court's blanket denial of the modification petition.

"[T]o justify a modification of visitation rights, [Brett] must show there has been a change of circumstances since the filing of the decree." *Nicolou v. Clements*, 516 N.W.2d 905, 906 (Iowa Ct. App. 1994). "The degree of change required in a modification of visitation rights is much less than the change required in a modification for custody." *Id.*; *In re Marriage of Salmon*, 519 N.W.2d 94, 96 (Iowa Ct. App. 1994) (same). The requested change must also be in the best interests of the child. *Salmon*, 519 N.W.2d at 95-96.

Brett seeks visitation "every other weekend from Friday after school until the following Monday morning" and "every other Tuesday overnight . . . in conjunction with his existing Wednesday overnight visitation." In support of his request, he cites Mary's multiple moves, evincing "a lack of stability," the child's academic struggles, Mary's alleged failure to adequately attend to the child's dental needs, and his crime-free record since the dissolution.

Assuming without deciding one or more of these circumstances reflect a "change" since the entry of the decree, formal expansion of the visitation schedule does not serve the child's best interests. Brett testified he and Mary "usually . . . worked together on" adjusting the schedule to accommodate the child's extracurricular activities and Mary's work schedule and, in the two years preceding the modification hearing, they had "worked pretty well together." He also admitted that, "for the last number of years," he had the child through Monday morning on

his visitation weekends and exercised his weekly midweek visitation on Mondays through Tuesday morning, effectively giving him four nights with the child every other weekend. In short, he was already receiving visitation beyond what was set forth in the dissolution decree.

We recognize the visitation time may not have risen to the “6/8” schedule Brett is now requesting. But we are not persuaded a rigid extraordinary visitation provision would work any better than the flexible arrangement Mary facilitated. Brett conceded as much. When asked if it was true that he already had “pretty wide open visitation,” he responded, “I would say that’s true.” Mary allowed this expanded visitation notwithstanding Brett’s criminal past and notwithstanding the fact that she was awarded sole legal custody of the child.

We also are not convinced Mary’s multiple moves adversely affected the child. Brett acknowledged the child was always in the same school district. He was in fifth grade and Mary “kept him in the same school for [all] six years,” even when she lived some distance away.

As for the child’s academic performance, Brett conceded Mary was “trying to help” the child with schoolwork, although he believed he was better equipped than her to address the child’s deficits in math. Mary, in turn, testified she could not afford a one-on-one math tutor as Brett requested. But she did homework with the child “[e]very morning” because he “does better in the morning than he does at night.” In her words, she helped the child “earn his way out” of Individualized Education Plans in multiple subjects. When the child did not make sufficient progress in math, Mary worked with the school as it reinstated an Individualized Education Plan in that subject. She contradicted Brett’s assertion that her work

schedule made her unavailable to assist the child in the evenings, noting her employment ended at 6:15 p.m.

Mary also contradicted Brett's version of events concerning the child's dental health. While acknowledging she may have missed some dental appointments, she stated Brett unilaterally took the child to a different dentist and transferred his records without her knowledge.

On our de novo review, we conclude the child's best interests were served by the existing visitation schedule and the informal adjustments made by the parents. Accordingly, we affirm the district court's denial of Brett's modification petition.

**AFFIRMED.**