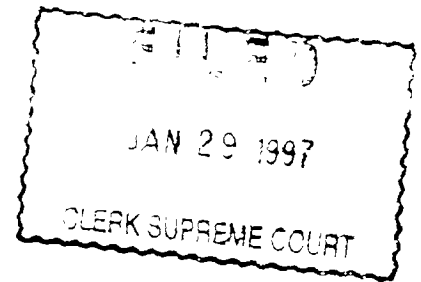


IN THE COURT OF APPEALS OF IOWA

No 6-742 / 96-1136



**IN RE THE MARRIAGE OF RODNEY A. WALKER  
AND MARY J. WALKER**

Upon the Petition of  
**RODNEY A. WALKER,**

000341

Petitioner-Appellee,

**And Concerning  
MARY J. WALKER,**

Respondent-Appellant.

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Appeal from the Iowa District Court for Polk County, D.J. Stovall (discovery hearings) and Robert A. Hutchison (dissolution trial), Judges.

Mary Jo Walker appeals from the entry of the parties' dissolution decree.

**AFFIRMED AS MODIFIED.**

Gregory D. Brandt and Robert H. Laden of Hyland, Laden & Pearson, P.C.,  
Des Moines, for appellant.

Ryan A. Genest of Borseth & Genest, Pleasant Hill, for appellee.

Heard by Habhab, C.J., and Streit and Vogel, JJ. Sackett, J., takes no part.

**VOGEL, J.**

**Background facts.** Rodney and Mary Jo Walker were married on September 3, 1988, in Denver, Colorado. Their daughter, Stacey, was born on October 13, 1992. In March 1994, the family moved to Iowa.

On July 24, 1995, Rodney filed a dissolution petition. On August 16, 1995, Mary Jo was given temporary primary physical care. The court ordered a mutual restraining order prohibiting contact between the parties except in limited circumstances. Following a trial on the issues, the court granted the parties joint custody of their daughter, with primary physical care in Rodney.

Mary Jo appeals. She requests, among other things, the court extend her summer visitation if it does not grant her primary physical care.

**Scope of review.** In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

**I. Exclusion of witnesses.** Mary Jo argues several of her witnesses were improperly excluded from testifying at trial. We review evidentiary matters for an abuse of discretion. *In re Marriage of Bolick*, 539 N.W.2d 357, 359 (Iowa 1995).

Mary Jo was given ample opportunity to comply with the trial court's discovery orders, including an order to compel discovery and an order on motion for sanctions, both allowing Mary Jo additional time to comply with discovery. Excluding the testimony of witnesses, not timely disclosed, was within the trial court's discretion.

**II. Custody and primary physical care.** The trial court stated it was "forced to choose between two unattractive alternatives" in granting primary physical care to Rodney. It found that both parties engaged in verbal and physical abuse and focused too much on the faults of the other party. Mary Jo suffered from alcoholism and obtained treatment in Colorado. The court determined, although Mary Jo was Stacey's primary care taker, Rodney was more stable and would better facilitate Stacey's relationship with Mary Jo. After reviewing the record, and considering the trial court's assessment of credibility of the witnesses, we affirm the trial court's ruling on custody and primary physical care.

**III. Summer visitation.** Mary Jo requests this court extend her summer visitation. We find granting Mary Jo a six-week summer visitation with Stacey would promote maximum contacts between Stacey and her mother. See *In re Marriage of Kerber*, 433 N.W.2d 53, 54 (Iowa App. 1988); Iowa Code § 598.41(1) (1995). We accordingly modify the visitation schedule ordered by the trial court to allow Mary Jo the additional summer visitation.

Costs are assessed one-half to each party.

**AFFIRMED AS MODIFIED.**

Habhab, C.J., concurs; Streit, J., concurs in part and dissents in part.

000344

**STREIT, J. (concur in part; dissent in part)**

I concur in the majority holding with the exception of summer visitation. The trial court adequately addressed the concerns and needs of the parties in specifying three weeks summer visitation. I would affirm the trial court.