ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEP - 8 2017

No. [REDACTED]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[REDACTED]
Plaintiff/Appellee

vs.

[REDACTED]
Defendant/Appellant.

Received 9/8/17
Docketed: TS
Marshal:
COA/OKC:
COA/TUL:

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF OSAGE COUNTY, OKLAHOMA
Honorable John M. Kane, District Judge
Case No. [REDACTED]

Appeal from Trial Court's Decision filed March 3, 2016 and Journal Entry filed February 9, 2017

Todd Alexander, OBA No. 200
The Alexander Law Firm, PLLC
2121 S. Columbia, Suite 500
Tulsa, Oklahoma 74114
Telephone: (918) 744-0201
Facsimile: (918) 747-8820
todd@toddalexanderlaw.com

No. [redacted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[redacted]
Plaintiff/Appellee

vs.

[redacted]
Defendant/Appellant.

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF OSAGE COUNTY, OKLAHOMA
Honorable John M. Kane, District Judge
Case No. [redacted]

Appeal from Trial Court's Decision filed March 3, 2016 and Journal Entry filed February 9, 2017

Todd Alexander, OBA No. 200
The Alexander Law Firm, PLLC
2121 S. Columbia, Suite 500
Tulsa, Oklahoma 74114
Telephone: (918) 744-0201
Facsimile: (918) 747-8820
todd@toddalexanderlaw.com

TABLE OF CONTENTS AND AUTHORITIES

SUMMARY OF THE RECORD 1

Title 43 O.S. § 112.3 1

STANDARD OF REVIEW 7

43 OS. 2001 § 109 7

Daniel v. Daniel, 2001 OK 117, ¶ 21, 42 P.3d 863, 871 7

REPLY TO SUMMARY OF THE RECORD 7

REPLY TO APPELLEE'S ARGUMENT AND AUTHORITY 10

I. THE COURT ERRED IN ABROGATING JOINT CUSTODY AND AWARDING "SPLIT" CUSTODY TO THE PARTIES 10

Title 43 O.S. § 109 .... 10, 11

Conrad v. Conrad, 443 P.2d 110 (Okl.1968) 12

Daniel v. Daniel, 2001 OK 117, 42 P.3d 863 11

Gilbert v. Gilbert, 460 P.2d 929 (Okl.1969) 12

Kilpatrick v. Kilpatrick, 2008 OK CIV APP 94, 198 P.3d 406 11

Rice v. Rice, 1979 OK 161, 603 P.2d 1125(Okl. 1979) 12

II. IT WAS AN ABUSE OF DISCRETION AND AGAINST THE CLEAR WEIGHT OF THE EVIDENCE FOR THE COURT TO AWARD FATHER PRIMARY PHYSICAL CUSTODY OF THE CHILD DURING THE SCHOOL YEAR, WHEN HE IS GONE 240 HOURS PER MONTH 12

In Re BTW, 2008 OK 80 ¶ 20, 195 P.3d, 896, 908 13

III. IT WAS AN ABUSE OF DISCRETION AND AGAINST THE CLEAR WEIGHT OF THE EVIDENCE FOR THE COURT TO JUSTIFY ITS AWARD OF CUSTODY TO THE FATHER BASED ON "STABILITY" 13

Boatsman v. Boatsman, 1984 OK 74, 697 P.2d 516 13

CONCLUSION 14

Daniel v. Daniel, 2001 OK 117 ¶ 21, 42 P.3d 863, 871 14

APPELLANT'S REPLY BRIEF

Defendant/Appellant, [redacted], ("Mother"), for her Reply Brief to Plaintiff/Appellee, [redacted] ("Father"), Answer Brief filed August 21, 2017 with citations to the official transcript of the trial on the merits listed by date and Page number, e.g. "Tr. 10/27/2015, Vol. I, Page 1, Lines 1-3", states as follows:

SUMMARY OF THE RECORD

Appellant/Mother is 21 years of age, and gave birth to the subject minor child when she was 16 years old. See, Tr. 10/27/2015, Vol. I, Page 47, Lines 18-23. At the time of trial, Mother was married, living in Georgia with her spouse, and their son Noah Lewis. See, Tr. 10/27/2015, Vol. I, Page 15, Lines 14-18. Mother's son with her new spouse was one year's old in March 2017. See, Tr. 02/17/2016, Vol. II, Page 216, Lines 15-16.

Unrebutted testimony of Mother was that Father showed no interest in the child until the child was born. See, Tr. 02/17/2016, Vol. II, Page 195, Lines 1-25.

Father was 18 when Mother gave birth to the child, and was 23 at the time of trial. See, Tr. 10/27/2015, Vol. I, Page 47, Lines 18-25.

The issue of compliance with the relocation statute, (Title 43 O.S. §112.3), was not an issue that was raised at trial. No objections based on the relocation statute were filed by Father in any pleadings.

Mother testified that from the time of the child's birth (when Mother was 16), she lived in Skiatook, Oklahoma, until May 2011, when she moved to Georgia and lived with her parents. In April 2012, Mother moved back to Skiatook, Oklahoma and resided at the Tomco Apartments. In May 2013, Mother stayed briefly with a family in Sperry,

Oklahoma. In July 2013, Mother returned to Savannah, Georgia, and resided with her parents until February 2015 when she married and took up residence with her spouse in Savannah, Georgia. See, Tr. 10/27/2015, Vol. I, Page 16, Lines 11-25, Page 17, Lines 1-25, Page 18, Lines 1-25.

Father never objected to Mother's moves, either to her or to the Court. See, Tr. 10/27/2015, Vol. I, Page 51, Lines 8-15. Father admitted that he was notified of each of Mother's moves, with the exception of her move from Skiatook to Sperry. See, Tr. 10/27/2015, Vol. I, Page 53, Lines 12-21.

Father filed for a determination of paternity, joint custody of the minor child, reasonable visitation and to pay child support to Mother on or about April 19, 2011, in Osage County District Court, in FD-2011-60.

On March 2, 2012 an Agreed Decree of Paternity was filed and entered in the District Court, determining that both parents were fit and proper persons to have the care, custody and control of their minor child, and a Joint Child Custody Plan was filed of even date therewith, providing for an equal split of the child's time between the parents, on a month on/month off format. The parties' Joint Child Custody Plan states that both parents are fit and proper persons to have the care, custody and control of the subject minor child. See, Joint Child Custody Plan, filed March 2, 2012, Page 2, paragraph 4.

On January 8, 2015, Father/Plaintiff filed a motion to modify alleging that Mother had moved back and forth between Oklahoma and Georgia ("subjecting the child to at least three residential moves in two years"), and because the child was soon reaching preschool,

and because the child needed instruction on its Indian heritage, that Father should be awarded sole custody, with the child primarily residing here in Oklahoma.

On February 11, 2015, Mother filed her response and counterclaim. Mother requested that she be awarded sole custody, based on allegations that Father was negligent in providing health care for the child, that Father abrogated his custodial obligations and authority to his family from August 2011 to May 2014, while he was attending college and living in a dormitory.

The parties' respective motions to modify were tried to the Honorable Judge M. John Kane IV, over two days, October 27, 2015 and February 17, 2016. The Court issued its decision on the record on March 3, 2016, and the order memorializing that decision and modifying the parties' decree of dissolution and joint custody plan was filed and entered on the 9th day of February 2017.

Counsel for Appellant/Mother, prior to the commencement of trial, orally moved the court to allow the pleadings to conform to the evidence, and specifically asked the Court, despite their pleading request for sole custody, to leave open the possibility of continuing joint custody. The Court and counsel all agreed that the Court had the authority to take that issue under advisement, and the discretion to maintain or abrogate joint custody. See, Tr. 10/27/2015, Vol. I, Page 10, Lines 7-13.

The child lived with Mother/Appellant from birth to May 2011 in Skiatook, Oklahoma. From and after that point, the parents shared custody of the child, with the child residing at times with Mother and with Father in Oklahoma, and at times with Mother in Georgia. See, Tr. 10/27/2015, Vol. I, Pages 15 to 20.

Mother, at the time of the first day of trial, was living in Georgia, married, with an 8 month old baby, and she was working 10 a.m. to 2 p.m., five days a week. See, Tr. 10/27/2015, Vol. I, Page 24, Lines 1-12.

All of Mother's family, parents, brothers and sisters, and their spouses live in Savannah, Georgia. See, Tr. 10/27/2015, Vol. I, Page 25, Lines 12-24.

Both parents put the child on speaker phone to talk to the other parent. See, Tr. 10/27/2015, Vol. I, Page 27, Lines 18-25, Page 28, Lines 1-12 and Page 152, Lines 9-20.

Mother testified that the parties were able to cooperate with regard to shared parenting. See, Tr. 10/27/2015, Vol. I, Page 42, Lines 4-7.

Father testified that his only reason for filing the motion to modify was because the child was getting to school age and should go to school in one area. See, Tr. 10/27/2015, Vol. I, Page 53, Lines 24-25, and Page 54, Lines 1-3. Father's request of the Court was that he have the child for the school year. See, Tr. 10/27/2015, Vol. I, Page 65, Lines 18 -25.

Father works a 24-hour shift every third day. He works Sundays, Wednesdays, and Saturdays. See, Tr. 10/27/2015, Vol. I, Page 55, Lines 1-4. Father works 240 hours per month and 120 hours every two weeks. See, Tr. 10/27/2015, Vol. I, Page 92, Lines 17-25, and Page 93, Lines 1-2. See, also, Tr. 10/27/2015, Vol. I, Page 96, Lines 10-17.

Father admits that during his 24-hour shifts he is not in a position to care for the subject minor child. See, Tr. 10/27/2015, Vol. I, Page 102, Lines 10-15. Father admitted that there are at least eleven 24-hour periods that he is not responsible directly for the care of his daughter during his periods of physical custody each month. See, Tr. 10/27/2015, Vol. I, Page 103, Lines 21-25. Father admits that for a third of the time in every month,

this child is not with Father. See, Tr. 10/27/2015, Vol. I, Page 105, Lines 13-15. Father admits that while he is at work, he would be delegating his custodial responsibilities to his present wife. See, Tr. 10/27/2015, Vol. I, Page 104, Lines 3-8.

Father admits that Mother has the opportunity to be with the child three times more than he can be during each month. See, Tr. 10/27/2015, Vol. I, Page 107, Lines 19-22.

Father was a full time student from March 2012 until May 2013, living in a school dormitory. See, Tr. 10/27/2015, Vol. I, Page 80, Lines 4-9. For that time period, Father's family watched the subject child during his periods of physical custody. See, Tr. 10/27/2015, Vol. I, Page 82, Lines 14-25 and Page 83, Lines 1-7.

Father does not really oppose joint custody. See, Tr. 10/27/2015, Vol. I, Page 108, Lines 18-25 and Page 109, Lines 1-21. See, also Tr. 10/27/2015, Vol. I, Page 124, Lines 10-25, Page 125, Lines 1-25, Page 126, Lines 1-17. See, also, Tr. 10/27/2015, Vol. I, Page 187, Lines 1-25, Page 188, Lines 1-25, Page 189, Lines 1-13. Father admits that he and Mother work well together. See, Tr. 10/27/2015, Vol. I, Page 243, Lines 15-23.

Even Father's spouse admits that it is better for a parent to have the care, custody and control of a minor than a step-parent. See, Tr. 10/27/2015, Vol. I, Page 150, Lines 12-18.

Mother says that she can work together with Father and co-parent the subject child and maintain joint custody. See, Tr. 10/27/2015, Vol. I, Page 200, Lines 1-25.

As of the last day of trial, Mother was no longer employed, and was able to stay at home and raise her children as a result of her spouse's employment. See, Tr. 02/17/2016,

Vol. II, Page 203, Lines 1-24. Mother's present residence is a home owned by her and her spouse in Georgia. See, Tr. 10/27/2015, Vol. I, Page 46, Lines 20-21.

Mother's trial request was that she have the child every school year, that Father have the majority of the summer, and the larger holidays. See, Tr. 02/17/2016, Vol. II, Page 220, Lines 7-20. Mother's reasoning for Father having summers with the child is that he will have more time to spend with the child because the child will be home all day, every day. See, Tr. 02/17/2016, Vol. II, Page 232, Lines 9-25.

The Court, in its decision, makes the following findings: 1) from birth in December 2010 until May 2011, the child was with either Mother or Father, both in Skiatook; 2) from May 9, 2011 until January 2012 the parties went to a three days on/three days off visitation plan; 3) in March 2012, the order now being sought to be modified was entered with a one month on / one month off plan, with dad in Oklahoma and mom in Georgia. See, Tr. 03/03/2016, Page 4, Lines 9-23. "School brought this to a head. Because of the geographic disparity of the parents, it is impossible to reasonably continue forward with month on and month off. And based upon that finding, I do find that a material change in circumstances requires that the Court modify the existing order." See, Tr. 03/03/2016, Page 5, Lines 5-16.

The Court found that there "was certainly testimony and argument at trial that the Court would be entitled under the facts here to continue with joint custody and perhaps simply modify the joint custody plan, but I'm going to do something that I have rarely done, if ever; and that is, I am going to order split custody in this case." See, Tr. 03/03/2016, Page 7, Lines 14-20. The Court found that "both parents are fit and proper persons to have custody of this child." See, Tr. 03/03/2016, Page 6, Lines 21-25.

The Court ordered "split custody", which the court said "means that whichever parent has the child during their time of custody is the custodial parent." See, Tr. 03/03/2016, Page 7, Lines 18-24. Without specifying the "reasons", the Court says testimony of the parties gave him concern about the parties' ability to cooperate in the raising of this child. See, Tr. 03/03/2016, Page 7, Lines 1-11.

The Court ordered that Mother have summers and Father have school years based custody, despite Mother's ability to spend more time with the child, and in part based on the Father could, without evidence cited, provide more residential stability for the child. See, Tr. 03/03/2016, Page 8, Lines 9-20.

STANDARD OF REVIEW

Joint Custody proceedings are governed by 43 O.S. 2001 § 109, which provides that the Court may modify or terminate joint custody upon the request of one or both parents or whenever it determines that joint custody is not in the best interest of the child. An Appellate Court will not disturb the Trial Court's judgment regarding custody absent an abuse of discretion or a finding that the decision is clearly contrary to the weight of the evidence. *Daniel v. Daniel,* 2001 OK 117, ¶ 21, 42 P.3d 863, 871.

REPLY TO SUMMARY OF THE RECORD

Contrary to the Appellee's Answer Brief, Appellant/Mother details four (4) moves during the minor child's life, not eight (8) new residences. See, Tr. 10/27/2015, Pages 17-18. Appellant/Mother further states that her relocations were meant to assure the minor child had frequent and continuing contact with both parents in this case. See, Tr. 10/27/2015, Page 34, Lines 12-16. Often times Appellee/Father's mother or sister would

care for the minor child while the Appellee/Father was in school for approximately one and a half (1 ½) years. See, Tr. 10/27/2015, Page 82, Lines 14-20.

Appellee's Answer Brief indicates that Appellee/Father had safety concerns as to Appellant/Mother not properly seat-belting the minor child and that was part of his desire to file the modification. However, the photographs of the incident in question related to the minor child's safety in the vehicle with Appellant/Mother do not know that the minor child was in a moving vehicle or that the minor child was not belted or secured properly.

Appellee/Father testified that he is only two percent (2%) Osage Indian and part of his request for modification was that the minor child needed to be instructed on her Indian heritage. However, the majority of cultural Osage Indian experiences take place in June of each year which is when the minor child is already out of school and could have easily been with Appellee/Father to participate in these experiences and learn the culture. See, Tr. 10/27/2015, Page 84, Lines 7-25. Appellee/Father further testified that he knows very little about his Indian heritage and has not even been given an Indian name, however he filed his modification partially based upon his belief that the minor child should have the experience and teaching of the Indian heritage. See, Tr. 10/27/2015, Page 85, Lines 1-6 and Tr. 10/27/2015, Pages 89-92. Appellee/Father testified that it was a bonus to have a child near his home for her Osage culture because he was not as involved as he wished to be during his childhood. See, Tr. 10/27/2015, Page 115, Lines 21-25. Appellee/Father never discussed his Indian heritage with Appellant/Mother and never requested that Appellant/Mother and the minor child participate in a naming ceremony. See, Tr. 03/03/2016, Page 208, Lines 1-12.

Appellee/Father's current spouse testified that she and the child see Appellee/Father every time he is on shift, however the transcript clearly establishes that the stepmother is the primary care provider for the minor child in every way regardless of whether they visit with Appellee/Father when he is on shift. See, Tr. 10/27/2015, Page 102, Lines 18-25, Page 103, Lines 1-25, and Page 104, Lines 1-9. Appellee/Father delegate all caretaking duties to either his mother or current spouse while he is working. See, Tr. 03/03/2016, Page 189, Lines 1-3.

Appellee/Father goes on to admit that children in general should be with their natural parents more time than with a stepparent and he does not have the ability to be with the minor child in this case for one-third (1/3) of the time allotted to him. See, Page 105, Lines 7-15. Additionally, stepmother also admits that it is better for a parent, other than a stepparent, to be spending time with the child. See, Tr. 10/27/2015, Page 150, Lines 12-18. Appellant/Father cannot properly raise the minor child during one-third (1/3) of the time of his custodial period with the child each month. See, Tr. 10/27/2015, Page 127, Lines 6-15. Appellee/Father cannot spend meaningful time with the parties' minor child during the school year simply because of the minor child's school age and the Appellee/Father's current work schedule. Appellant/Mother has more dedicated time to care for and parent the parties' minor child than the Appellee/Father. See, Tr. 03/03/2016, Page 232, Lines 8-25.

Appellee/Father complain about the difficulties in speaking with the parties' minor child on the telephone due to the phone call being held on speaker phone, however Appellee/Father and stepmother testified that they use speaker phone to allow the minor

child to speak to Appellant/Mother during their custodial period. See, Tr. 10/27/2015, Lines 9-20 and Page 161, Lines 1-22.

Appellee/Father testified during trial that he wanted joint custody of the parties' minor child, however the questions posed by counsel for the parties and the responses from the Appellee/Father show this Court that he did not fully understand the difference between sole and joint custody and clearly indicate he would prefer joint custody of the parties' minor child with Appellant/Mother. See, Tr. 10/27/2015, Page 125, Lines 19-25 and Page 126, Lines 1-17. Appellee/Father testified that he and Appellant/Mother almost always worked together for a good conclusion for the minor child. See, Tr. 03/03/2016, Page 243, Lines 17-23. There was no evidence that the parties cannot work together and/or make joint parenting decisions for the best interest of the minor child.

REPLY TO APPELLEE'S ARGUMENT AND AUTHORITY

I. THE COURT ERRED IN ABROGATING JOINT CUSTODY AND AWARDING "SPLIT" CUSTODY TO THE PARTIES.

While both parties pled to joint custody should end and they should be awarded sole custody, the parties testified that they had minimal issues in co-parenting and Appellee/Father clearly indicated that he would agree to, and perhaps prefer, joint custody of the parties' minor child as indicated hereinabove. Pursuant to Title 43 O.S. § 109, "the Court may terminate a joint custody decree upon the request of one or both parents or whenever the Court determines said decree is not in the best interests of the child." The Trial Court simply setting out that both parties requested that joint custody end in their pleadings, it did not determine that joint custody was not in the best interests of this child,

and found that both parents are fit and proper persons to have the care, custody and control of this child.

In *Daniel v. Daniel, 2001 OK 117, 42 P.3d 863*, the parents were awarded joint custody, with the child residing with Mother during the school year, and with Father during the summers after both parents filed for sole custody, arguing a lack of cooperation and antagonism, and a failure to abide by the joint custody plan. However, it should be noted that while *Daniel* allows the court to terminate the joint custody plan if the parents cannot cooperate in making decisions on raising the child, it does not require the trial court to do so. If the parent's disagreements have no effect on the child, the court may continue the joint custody arrangement. *See, Kilpatrick v. Kilpatrick*, 2008 OK CIV APP 94, 198 P.3d 406.

There was no evidence supporting an award of sole legal custody to either party or that the parties' disagreements had any effect on the minor child. Title 43 O.S. § 109 B. authorizes the Court to "grant the care, custody and control of a child to either parent or to the parents jointly." The Trial Court ordered "split" custody in this case which is not authorized by Title 43 O.S. § 109 B. Therefore, the Trial Court erred in its determination of "split" custody contrary to statutory authority in Oklahoma. Joint custody has been commonly employed in Oklahoma and other jurisdictions, to permit a child to be placed under the care and control of one parent during the school year and with the other parent during summer vacation based on the best interest of the minor child or children in each case. The Trial Court did not determine that neither party was unfit or improper to have care, custody, and control over the minor child and should not have terminated the joint

custody previously awarded to the parties. *See, Rice v. Rice,* 1979 OK 161, 603 P.2d 1125(Okl. 1979)*; Gilbert v. Gilbert,* 460 P.2d 929 (Okl.1969) and *Conrad v. Conrad,* 443 P.2d 110 (Okl.1968).

The transcript of the trial in this matter clearly indicates that Appellee/Father had little to do with his Indian heritage and/or culture despite Appellee/Father's assertion that the Indian heritage was also a main issue with regard to filing his request to modify the parties' custody and visitation schedule.

II. IT WAS AN ABUSE OF DISCRETION AND AGAINST THE CLEAR WEIGHT OF THE EVIDENCE FOR THE COURT TO AWARD FATHER PRIMARY PHYSICAL CUSTODY OF THE CHILD DURING THE SCHOOL YEAR, WHEN HE IS GONE 240 HOURS PER MONTH.

While Appellee/Father claims that he has the flexibility to have the minor child and his current spouse at the fire station during his 24-hour shift, he admits that during his shifts that he is not in a position to care for the subject minor child. See, Tr. 10/27/2015, Vol. I, Page 102, Lines 10-15. Father admitted that there are at least eleven 24-hour periods that he is not responsible directly for the care of his daughter during his periods of physical custody. See, Tr. 10/27/2015, Vol. I, Page 103, Lines 21-25. Father admits that for a third of the time in every month, this child is not with Father. See, Tr. 10/27/2015, Vol. I, Page 105, Lines 13-15. Father admits that Mother has the opportunity to be with the child three times more than he can be present with the child. See, Tr. 10/27/2015, Vol. I, Page 107, Lines 19-22.

Again Appellee/Father's counsel discusses the issue of the Indian heritage and education, however up until the request to modify was filed by the Appellee/Father, there

was no mention of the heritage to Appellant/Mother and no request to have the minor child participate in learning this heritage until that time.

Appellant/Mother states that she believes a stable home is important for the minor child, however up until the time of the trial, she had been the stable home for the minor child and stayed with the child day in and day out due to her ability to stay home and care for the minor child directly rather than a stepparent caring for the minor child.

Due to the Appellee/Father's current work schedule and delegation of the care and custody of the minor child to his mother and/or current spouse instead of himself directly, the Trial Court erred in awarding him with the majority of the custodial period. There is no rational basis for an absent Father to be awarded custody of a minor child. "An abuse of discretion occurs where a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *See, In Re BTW,* 2008 OK 80 ¶ 20, 195 P.3d, 896, 908.

III. IT WAS AN ABUSE OF DISCRETION AND AGAINST THE CLEAR WEIGHT OF THE EVIDENCE FOR THE COURT TO JUSTIFY ITS AWARD OF CUSTODY TO THE FATHER BASED ON "STABILITY".

There was no evidence on the record that the Mother's moves between the ages of 16 to 20 were shown to harmfully affect the child or support the finding that Appellant/Mother's home was not a stable environment for the minor child. Further, the moves were not objected to by Father or raised prior to trial. Father did not allege that Mother's moves harmfully affected the child.

In *Boatsman v. Boatsman,* 1984 OK 74, 697 P.2d 516, the Mother moved three times in six years. The trial court found that the moves were for legitimate reasons and did

not reveal some "newly developed character defect." The trial court refused to change custody and the Supreme Court affirmed. Appellant/Mother's moves during the time period when she was 16-20 were for legitimate reasons and not a constant change in the minor child's stable environment.

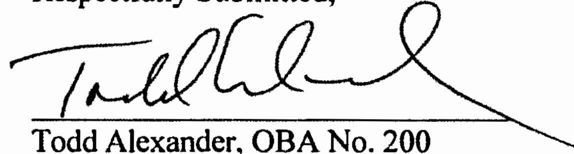
The Trial Court in its decision broadly mentioned incidents between the parties, however the record does not support this conclusion by the Trial Court as the testimony indicates that the parties, for the most part, could compromise and come to a reasonable conclusion related to the minor child.

CONCLUSION

It is clear from the evidence above and the transcript of the testimony at trial that the Trial Court erred in awarding split custody of the parties' minor child and against the authority governing this case. It is likewise clear that the Trial Court erred in awarding primary physical custody of the subject minor child to Father when he is not available to provide care during one-third (1/3) of his time with the child due to his work schedule and testimony that he delegated this task to either his mother or his current spouse.

It is finally an abuse of discretion for the Court to award Father's spouse primary physical custody when Mother is a fit and proper person to have the care, custody, and control of the child. The Trial Court's decision was erroneous and contrary to the child's best interests. *See, Daniel v. Daniel,* 2001 OK 117 ¶ 21, 42 P.3d 863, 871.

Respectfully Submitted,

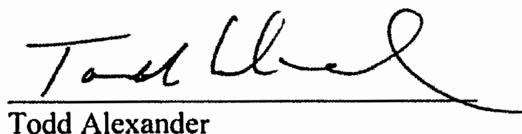


Todd Alexander, OBA No. 200
The Alexander Law Firm, PLLC
2121 S. Columbia, Suite 500
Tulsa, Oklahoma 74114
Telephone: (918) 744-0201
Facsimile: (918) 747-8820
todd@toddalexanderlaw.com
ATTORNEY FOR APPELLANT

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Appellant's Reply Brief was mailed this 8th day of September 2017 by depositing it in the U.S. Mail, postage prepaid or by electronic mail to Ramona A. Jones, Esq., 1437 South Boulder, Suite 160, Tulsa, Oklahoma 74119-3638.

I further certify that a copy of the Appellant's Reply Brief was mailed to, or filed in, the Office of the Osage County Courthouse, 600 Grandview Avenue, Pawhuska, Oklahoma 74056 on the 8th day of September 2017.



Todd Alexander