



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

AUG - 5 2022

JOHN D. HADDEN
CLERK

WRANGLER COLE RICKMAN,)

Plaintiff/Appellant,

vs.

VERONICA CLAIRE BUTLER,

Defendant/Appellee.

Rec'd (date)	8-5-22
Posted	
Mailed	
Dist'd	
Publish	yes ☒ no

Case No. 119,621

APPEAL FROM THE DISTRICT COURT OF
CIMARRON COUNTY, OKLAHOMA

HONORABLE CHRISTINE MARIE LARSON, TRIAL JUDGE

REVERSED AND REMANDED

Craig L. Box,
Julia C. Rieman,
GUNGOLL, JACKSON, BOX & DEVOLL, P.C.,
Enid, Oklahoma,

For Plaintiff/Appellant,

Nathan A. McCaffrey,
McCAFFREY LAW OFFICE, PLLC,
Guymon, Oklahoma,

For Defendant/Appellee.

OPINION BY ROBERT D. BELL, PRESIDING JUDGE:

¶1 In this paternity proceeding, Plaintiff/Appellant, Wrangler Cole Rickman (Father), appeals from the trial court's order awarding sole custody of the parties' minor children to Defendant/Appellee, Veronica Claire Butler (Mother). Mother did not file a response brief in this appeal; therefore, this appeal proceeds on Father's brief only. After reviewing the evidence in the record and Father's brief, we find both parties are fit, capable and loving parents who were successfully co-parenting under a shared custody arrangement during the course of the custody proceeding. We further find the children were well-cared for and benefiting from the shared custody arrangement. When the weight of the evidence demonstrates that the parents are able to act in the children's best interests, Oklahoma law favors shared parenting custodial arrangements. 43 O.S. 2021 § 110.1. We therefore find the trial court's order awarding sole custody to Mother is contrary to the weight of the evidence and Oklahoma's shared parenting policy and is therefore an abuse of discretion. The trial court's order is reversed and this matter is remanded to the trial court to enter a shared custody arrangement.

¶2 The parties were never married. The parties' son was born December 18, 2015, and their daughter was born April 2, 2018. The parties' relationship terminated December 2018. On February 27, 2019, Father instituted an action to determine his paternity and to share custody of the children. The trial court entered

a temporary order granting custody to Mother and visitation to Father. In the summer of 2019, the parties agreed to share physical custody of the children every other week. The court later memorialized this shared custody arrangement. The trial on the custody matter was held over two days, January 29, 2021, and February 26, 2021. Both parties testified and presented multiple witnesses on their behalf.

¶3 The witnesses generally emphasized both parties became parents at a very young age, but over time the parties have matured and become more stable. Father's evidence showed Mother moved numerous times, with the children, between Oklahoma, Kansas and Colorado, without prior notification to Father, and that Mother held several jobs. Mother's evidence reflected that after the initial disruptive transitional period, she settled upon a permanent residence and employment as a nurse. Mother's witnesses testified that Mother is a loving and attentive parent. Father's evidence disclosed that he maintains a flexible job working as a farm hand, he provides the children with a clean and well-kept home, and he is an available and doting father.

¶4 The parties' primary disagreement pertained to the school the children should attend, Mother's choice of caregivers, and Mother's decision not to notify Father or seek medical attention when the oldest child was bitten by a family dog. Father's evidence also focused upon Mother's numerous unsubstantiated referrals to DHS and Kansas authorities involving accusations of Father's neglect, abuse or harm to the parties' son. Mother also requested civil standbys during custodial exchanges

which were terminated by the Sheriff due to uncorroborated claims. Father testified under oath that he has never harmed his children and that Mother never contacted him directly to question him about any of the allegations.

¶5 Father testified he would be agreeable to shared parenting with the children 50/50, "Because I believe that both kids should have both parents in their lives." Mother testified she agreed to shared custody prior to the trial, and never sought any emergency orders based on her referrals to DHS and Kansas authorities.

¶6 At the end of the second day, the court announced on the record that it relied on notes taken at a hearing on the temporary order in May 2019, and awarded sole legal custody to Mother and standard visitation to Father. The trial court's notes are not a part of the appellate file. Father now appeals from this order.

¶7 This is an initial custody proceeding. As such, the trial court is authorized to award custody to either parent or both parents jointly, according to the best interests of the children. 43 O.S. § 112.5 (A)(1). In reviewing a trial court's initial custody determination, this Court will not reverse the trial court's order unless it is contrary to the clear weight of the evidence concerning the children's best interest, or affected by an abuse of discretion. *Daniel v. Daniel*, 2001 OK 117, ¶21, 42 P.3d 863. "An abuse of discretion occurs when a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *Marriage of Bilyeu v. Bilyeu*, 2015 OK CIV APP 58, ¶4, 352 P.3d 56. The paramount consideration in an initial custody determination is the children's best interests. *Daniel* at ¶21.

¶8 Mother failed to file a response brief and this appeal proceeds on Father's brief only. "Where there is an unexcused failure to file an answer brief, this Court is under no duty to search the record for some theory to sustain the trial court judgment; and where the brief in chief is reasonably supportive of the allegations of error, this Court will ordinarily reverse the appealed judgment with appropriate directions." *Cooper v. Cooper*, 1980 OK 128, ¶6, 616 P.2d 1154; *Oklahoma Supreme Court Rule* I.10, 12 O.S. 2021 Ch. 15, App. 1. However, "[r]eversal is never automatic on a party's failure to file an answer brief." *Enochs v. Martin Props., Inc.*, 1997 OK 132, ¶6, 954 P.2d 124. If "the record presented fails to support the error alleged in the brief of the party who lost below, the decision to be reviewed cannot be disturbed. It is presumed correct until the contrary is shown by the record." *Id.*

¶9 After reviewing the record, we find the allegations of error in Father's brief in chief are reasonably supported by the weight of the evidence and that the children's best interests would be served by ordering the parties to share legal custody of the children. We acknowledge both of these very young and immature parents presented conflicting testimony about the other party's inappropriate behavior and choices.¹ Nevertheless, the evidence reflects both parties are attentive, loving and fit parents. The evidence demonstrates the children are nurtured and comforted by Mother, they

¹ While this court acknowledges the parties' youth and inexperience, this Court does not condone the parties' immature behavior and condemnation of each other. It is imperative that these young parents grow up and make mature and responsible decisions for the sake of their children.

are well cared for by both parties and the children appear to be happy and excited to be with Father. Father has also taken significant steps throughout this proceeding to establish and maintain his relationship with the children. When the evidence reflects two fit, attentive and devoted parents, and when the circumstances allow, the Oklahoma Legislature has deemed it in the children's best interest for the parents to share the rights and responsibilities of rearing their children. See 43 O.S. 2021 §110.1. See also 43 O.S. 2021 §112(C)(3) which provides that when it is in the children's best interests, the court shall assure frequent and continuing contact with both parents and the court shall encourage parents to share the rights and responsibilities of child rearing.

¶10 We concede the trial court declined to order joint custody because it found these parties do not cooperate. However, the record shows Mother continued the weekly custody arrangement notwithstanding her frequent relocations and referrals to DHS and other authorities. The record also shows the parties successfully co-parented since 2019. We therefore conclude the trial court's finding was contrary to the weight of the evidence.

¶11 When the trial court's judgment is clearly against the weight of the evidence, this Court may reverse the judgment, or render, or cause to be rendered, such judgment which in this Court's opinion the trial court should have rendered. *Carpenter v. Carpenter*, 1982 OK 38, ¶10, 645 P.2d 476. Based on the record before

us and because we decide this matter on Appellant's brief only, we hold the children's best interests would be served by continuing the joint custody arrangement that was working prior to the trial. Accordingly, the trial court's custody decision is reversed and this matter is remanded to the trial court to enter a shared custody arrangement.

¶12 REVERSED AND REMANDED.

GOREE, J., and DOWNING, J., concur.

IN DISTRICT COURT IN AND FOR CIMARRON COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 PLAINTIFF)
)
 VS.)
)
)
)
 WRANGLER COLE RICKMAN,)
)
 DEFENDANT)

CASE NO. CM-2023-24

CIMARRON COUNTY
FILED

MAR 25 2024

PERSONAL RECOGNIZANCE APPEARANCE BOND METZI BROWN
(Release with Conditions for Treatment) COURT CLERK
By J Deputy

I hereby request the Court to Order my Release on this Personal Recognizance. I have been advised that anyone so released who willfully fails to surrender himself within five (5) days following the date of appearance set forth herein, shall upon conviction, be guilty of a misdemeanor and may be fined up to \$1,000.00, or imprisoned for not more than one (1) year, or both. Further, that such criminal prosecution shall in no way interfere with or prevent the exercise by the Court of its power of contempt.

I have been further advised that anyone so released who willfully fails to surrender himself/herself within thirty (30) days following the date of appearance set forth herein, or who willfully fails to comply with these terms, shall, upon conviction, be guilty of a felony and may be fined up to \$5,000.00, or imprisoned for not more than two (2) years, or both.

In consideration of such Release, I hereby agree to appear in person in said Court within 72 hours of release or departure for any reason from inpatient treatment at Salvation Army, Oklahoma City, phone _____, hereafter referred to as treatment center. Treatment shall start on the 22nd day of March, 2024, at 8:00 o'clock a m. Upon leaving the facility I shall appear at such time as directed by the Court and there to abide the Order of the Court, until finally discharged.

In further consideration of such Release I hereby agree and understand that special conditions apply to the issuance of this personal recognizance bond as follows:

The Defendant shall not have in his possession or use alcoholic beverages or intoxicants or drugs of any kind except those prescribed exclusively for the Defendant by a licensed physician.

The Defendant shall report to the treatment facility, for successful completion of a not less than 6 month's inpatient alcohol/substance abuse treatment program.

The Defendant shall require a representative of the treatment facility to immediately notify this Court of the Defendant's release and/or departure from said treatment facility under any circumstances and shall direct the facility to provide reports to this court each thirty (30) days concerning defendant's treatment and recovery process, there by waving my privacy rights.

The Defendant shall report to this court within 72 hours of release or departure for any reason from the treatment facility, but not later than 5:00 p .m. on the 25th day of September, 2024.

The Defendant shall not violate any city, state or federal laws.

Failure to comply with these conditions shall result in the immediate revocation of this bond.

I further understand it to be my duty to keep the Court advised of any change of address, and that my failure to do so will constitute no excuse for my absence and the resulting consequences.

Wrangler Cole Rickman
Defendant

Subscribed and sworn before me this 21st day of March, 2024.

APPROVAL:



Hennifer Palmer
Court Clerk/Deputy or Notary Public

Christine Larson
Associate District Judge