

NO. A08-0190

State of Minnesota
In Court of Appeals

KRISTINE ANNE SCHISEL,

Appellant,

vs.

DANIEL TODD SCHISEL,

Respondent.

RESPONDENT'S BRIEF, ADDENDUM AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE CASE

The procedural posture outlined in Appellant's Statement of the Case is unchallenged.

Respondent and Appellant completed a custody evaluation which recommended joint legal and physical custody of the children, with the primary residence of the children with Petitioner. Respondent obtained the services of Dr. Joel Peskay who, as Respondent's expert, opined that allowing Appellant to move the children more than an hour from Respondent would negatively impact the strong parent child relationship established between Respondent and the children.¹

Respondent and Appellant stipulated to Joint Legal and Joint Physical Custody of the minor children.² The remaining issues for trial were determinations of primary residence of the children, division of certain parcels of real property, child support, parenting time, and whether the children would be allowed to move to Lakeville, MN with Appellant.³ Subsequent trial, the court awarded the homestead to Appellant, designated Appellant primary parent, divided parenting time amongst the parties 60/40, ordered Respondent to pay child support in the amount of \$114.86 per month, disposed of the remaining real property, and denied that it was in the best interests of the children to move with Appellant to Lakeville.⁴

¹ Respondent's Appendix. 1. References to Respondent's Appendix will hereinafter be referred to as "RA".

² Appellant's Appendix 76, Paragraph 9. Citations to Appellant's Appendix are hereinafter abbreviated "AA".

³ AA-73.

⁴ AA 73-116.

Appellant moved the court for reconsideration, requesting that both real estate parcels purchased by Respondent prior to the marriage be sold and proceeds distributed considering Respondent's pre-marital claim. Additionally, Appellant requested recalculation of Respondent's child support, and a reconsideration of the court's decision to disallow a move of the children outside of Mankato, MN.⁵

The court denied all of Appellant's requests for consideration except to require that the children of the parties remain in ISD #77, the Mankato Area School District.⁶

This Appeal followed. Respondent filed no Notice of Review pursuant to Minn R. Civ. App. P. 106.

⁵ AA 59-70

⁶ AA 118-119

STATEMENT OF THE FACTS

Daniel Todd Schisel, (Hereinafter "Respondent") married Kristine Anne Schisel (Hereinafter "Appellant") on July 29, 1995.⁷ Together Respondent and Appellant have two children, Jacob Daniel aged 8 at the time of trial, and Natalie Anne aged 6 at the time of trial.⁸ Prior to the marriage, Respondent purchased real estate; the disposition post dissolution was disputed. During the marriage Respondent's pre-marital real estate was subdivided and upon one of the three lots created in the subdivision the parties built a home. The two remaining lots have not had a home built upon them and are adjacent to the homestead.⁹

Appellant is a commercial real estate broker who has commuted from Mankato to an office in the Twin Cities Metro Area for the entirety of the children's lives.¹⁰ Appellant commutes Monday through Thursday and generally works from home on Fridays.¹¹ Appellant's gross wages, prior to deduction of her ordinary and necessary business expenses, have averaged \$80,652.00 over the years of 2004-2006.¹² Appellant testified that she expected her 2007 income to exceed \$100,000.00, and historically has had significantly greater income than Respondent.¹³

Respondent is a Commander with the Mankato Police Department. Respondent earned gross wages of \$5,923.72 per month at the time of trial. His medical insurance

⁷ Trial Transcript, Day 1 Page 9. Citations to the trial Transcripts are abbreviated "T.T.".

⁸ T.T. Day 1 pg 10.

⁹ T.T. Day 1 pg 224.

¹⁰ T.T. Day 1 Page 198-199.

¹¹ T.T. Day 1 Page 199.

¹² A-84.

¹³ T.T. Day 2 Pg. 28.

cost is \$295.65 per month for individual and family coverage. Petitioner's family dental insurance cost is \$99.55 per month, retirement contribution is \$502 per month, and union dues are \$39.50 per month.¹⁴

Appellant characterized Respondent as an excellent father.¹⁵ Prior to the dissolution proceedings, Appellant and Respondent worked well together as co-parents.¹⁶ Because Appellant was working more than an hour away from the children, Respondent would pick up the children and be responsible for providing care or arranging care for the children if he was working.¹⁷ Respondent's position as a police officer provides him within 14-16 days off per month.¹⁸ Respondent is an exempt employee, meaning that while he is on his shift, he can come and go as necessary so long as there is not an emergency.¹⁹ Because Appellant chose to commute to work, when an issue or emergency arose with the children, Respondent was the contact person who would take care of the children due to his proximity and job flexibility.²⁰

Prior to the dissolution proceedings if Respondent were working shift work, he would stop in for dinner or visit the children in the morning when they got up, which Appellant believed to be very important for the children.²¹ Appellant testified that it is very important for the children to have daily contact with each parent if the parents are

¹⁴ AA-84-85.

¹⁵ T.T. Day 2 Pg 3.

¹⁶ Id.

¹⁷ T.T. Day 2 Pg 4.

¹⁸ T.T. Day 1 Pg 50.

¹⁹ T.T. Day 1 Pg 228.

²⁰ T.T. Day 2 Pg 6.

²¹ T.T. Day 1 Pg. 209.

“happily married” and that “adjustments are necessary” after a divorce.²² Appellant further testified that she intended Respondent to have much more contact with the children than one night per week and every other weekend if she were awarded primary custody and allowed to move the children to Lakeville.²³ Appellant testified that she believed that the contact between the children and Respondent would be “easier” if the children lived more than one hour away from Respondent rather than in the same vicinity.²⁴ Appellant never explained why it would be “easier” for Respondent to spend time with his children considering a more than two hour commute.

Appellant testified that the children did very well while she was commuting and Respondent worked shift work, because the parties were able to work together to show the children that they were safe, secure, and loved.²⁵ While the parties were married, Appellant dropped the children off at school and Respondent would be responsible for after school transportation.²⁶ While the parties were married and Appellant was commuting, they jointly dealt with the children’s issues.²⁷

When Respondent worked the shift that began at 6:00 PM Respondent would transport the children home and have dinner prepared prior to Appellant’s return home and her transition into parenting the children.²⁸ The children of the parties have always

²² Id.

²³ T.T. Day 1 Pg. 210.

²⁴ Id.

²⁵ Id.

²⁶ T.T. Day 1 Pg 200.

²⁷ Id.

²⁸ T.T. Day 1 Pg 202.

had one parent commute to the Twin Cities and one parent work shift work.²⁹ Appellant agreed that the children's lives would be much the same post dissolution if the parties had two separate residences in Mankato.³⁰

When asked why it was appropriate for Appellant to move the children to Lakeville and force Respondent to leave them, Appellant responded, "Why is it appropriate to force me to stay here and drive every day?".³¹ Appellant further agreed that her career has been quite successful with the present commute³² and that she would stay in Mankato and make it work if the court found it was in the best interests of the children to do so.³³

Appellant testified that she anticipated that Respondent will have a home that will have an appropriate bedroom for each of the kids and will be able to provide food, clothing, and shelter for them when they are in his care.³⁴ Appellant testified the parenting time schedule laid out by the custody evaluator was a working base because it provides for much more room for parenting time and that both parties agree that it is important for the children that both parents remain as involved as much as possible.³⁵ Indeed, Appellant testified that one night per week and every other weekend was insufficient parenting time and that Appellant and Respondent were able to work together to provide significantly more parenting time than present in the temporary parenting

²⁹ T.T. Day 1 Pg 220.

³⁰ T.T. Day 1 Pg. 221.

³¹ T.T. Day 1 Pg 223.

³² Id.

³³ T.T. Day 1 Pg. 226.

³⁴ T.T. Day 1 Pg. 233.

³⁵ T.T. Day 1 Pg 235.

plan.³⁶ Appellant further testified that if the option were to have an afterschool program or time with their father, Appellant indicated that the time is better spent with their father.³⁷ Appellant acknowledged that it is more important for the children to be with their parents but because Appellant and Respondent both work and have complex schedules, the children sometimes needed programs to attend. Appellant testified that she and Respondent had worked out what worked best considering the schedules and the needs of the children.³⁸

Prior to the dissolution, Respondent was able to pick up the children at 2:30 (Jake) and 4:00 (Natalie) in the afternoon after school and spend from 2:30 to 6:00 P.M. with the children.³⁹ When Respondent worked the shift which began at 3:00 P.M. Respondent arranged for the children to be picked up by their grandmother.⁴⁰ Because Respondent works only 14-16 days per month, he often has availability to provide all care Monday-Thursday, and Appellant testified the parties have been doing so since the separation.⁴¹ Finally, Appellant testified that she believed the custody evaluator had a difficult time understanding Respondent's schedule and that it was Appellant's intention to have parenting time whenever he was not working and she was working.⁴²

Respondent testified that he has always been involved with feeding, changing diapers, school, daycare, and events, and that the parties worked well together as a

³⁶ T.T. Day 2 Pg. 13.

³⁷ T.T. Day 2 Pg. 18.

³⁸ Id.

³⁹ T.T. Day 2 Pg. 20.

⁴⁰ Id.

⁴¹ T.T. Day 2 Pg. 25.

⁴² T.T. Day 2 Pg. 26.

parenting team until the dissolution.⁴³ Respondent testified that he felt it was always important to stop by for whatever length of time was possible to the children's recital or ballet, soccer or t-ball, which was available even while he was working.⁴⁴ Respondent testified that the contact that he has historically had with the children would not be possible if the children were to live in Lakeville. Nor is it possible for the time Respondent to have time with the children after school and on his days off if the children were to live in Lakeville.⁴⁵

Respondent testified that he believed a move to Lakeville was not in the best interest of the children because their family, friends, community, church, and school, their 'foundation', was in Mankato.⁴⁶ Finally, Respondent testified that he had significant concerns about the children's safety if they lived in Lakeville. Appellant would still be more than thirty minutes away in her commute, and Respondent would be more than sixty miles away. Respondent was significantly concerned that if something happened neither of the parents could get there fast enough, and a move to Lakeville takes parenting time away from both parents.⁴⁷

Evidence was clear that both parties were parenting the children quite well during the marriage and that the parties have historically both been involved with the children, and that although Respondent works shift work, they have always made it work for the

⁴³ T.T. Day 2 Pg. 42.

⁴⁴ T.T. Day 2 Pgs. 43-44.

⁴⁵ T.T. Day 2 Pg. 45.

⁴⁶ T.T. Day 2 Pg. 65.

⁴⁷ Id.

children.⁴⁸ Finally, evidence was presented that Respondent may have more of an opportunity to establish an excellent relationship with his children because he has been able to parent the children without the presence of Appellant.⁴⁹

The court found that allowing the Petitioner to move the children's residence provides benefit only to the Petitioner and detriment to the Respondent and children, and is not in the children's best interest.⁵⁰ The court found that Respondent's work schedule makes a set schedule for parenting time impractical and that the parties have admirably worked around Respondent's schedule to ensure he has quality parenting time with the children.⁵¹ Although the Court understood that a parenting time schedule was necessary, it held the schedule should not be considered "set in stone". The court indicated and expected the parties to continue to work out any additional times when Respondent is available.⁵²

The district court found that the parties have been awarded joint physical custody. Based upon the evidence of each party indicating Respondent will have significantly more time with the children than is in the "minimum parenting schedule", and the evidence that both parties agree each parent is loving and caring and should be involved as much as possible in the children's lives, the court determined for purposes of child support that the parenting time schedule was approximately 60/40 on an annualized basis.

⁴⁸ T.T. Day 2 Pg. 87, 89, 95.

⁴⁹ T.T. Day 2 Pg. 107.

⁵⁰ AA-83.

⁵¹ Id.

⁵² AA-83-84.

The court awarded Appellant possession of the marital home. Finally, the court ordered that for purposes of separation of the parties, Respondent would be awarded the furthest lot from Appellant's homestead and that the lot between them be sold.⁵³ Respondent was further ordered to not improve the lot he was awarded until such time as Appellant sold the marital home or their youngest child reached age 18, whichever happened first.⁵⁴

⁵³ AA-89.

⁵⁴ Id.

ARGUMENT

Standard of Review

District courts have broad discretion in determining custody matters.⁵⁵ Courts of review view evidence in the light most favorable to the district court's findings.⁵⁶ Appellate review of a custody determination is limited to whether the district court abused its discretion by making findings unsupported by the evidence or improperly applying the law.⁵⁷ Appellate Courts will reverse a district court's finding of fact only when it is clearly erroneous,⁵⁸ determined by a "definite and firm conviction that a mistake has been made."⁵⁹ The law "leaves scant if any room for an appellate court to question" the district court's custody determination.⁶⁰

The district court has broad discretion in determining child support.⁶¹

Only upon a clear abuse of discretion will a trial court's determination regarding property distribution be reversed.⁶² That the record may support a finding other than those made by the trial court does not show that the court's findings are defective.⁶³ "To challenge the trial court's findings of fact successfully, the party challenging the findings must show that despite viewing the evidence in the light most favorable to the trial

⁵⁵ *Durkin v. Hinich*, 442 N.W. 2d 148, 151 (Minn. 1989).

⁵⁶ *Ayers v. Ayers*, 508 N.W. 2d 515, 521 (Minn. 1993).

⁵⁷ *Pikula v. Pikula*, 374 N.W. 2d 705, 710 (Minn. 1985).

⁵⁸ *Sefkow v. Sefkow*, 427 N.W. 2d 203, 210 (Minn. 1988).

⁵⁹ *Vangsness v. Vangsness* 607 N.W. 2d 468, 474 (Minn. App. 2000).

⁶⁰ *Id.* at 477.

⁶¹ *Putz v. Putz*, 645 N.W. 2d 343, 347 (Minn. 2002).

⁶² *Bateman v. Bateman*, 382 N.W. 2d 240, 246 (Minn. Ct. App. 1986), *rev. denied* (Apr 24, 1986).

⁶³ *Vangsness v. Vangsness* 607 N.W.2d 468, 474 (Minn. Ct. App. 2000) (Internal citations omitted).

court's findings (and accounting for an appellate court's deference to a trial court's credibility determinations and its inability to resolve conflicts in the evidence), the record still requires the definite and firm conviction that a mistake was made."⁶⁴ Only if the findings are "clearly erroneous" does it become relevant that the record might support findings other than those that the trial court made.⁶⁵

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION NOR IMPOSE A LEGALLY IMPERMISSIBLE RESTRICTION WHEN IT DETERMINED THAT IT IS IN THE BEST INTERESTS OF THE CHILDREN TO REMAIN IN ISD # 77.

A. The Presence of the Parties' Stipulation to Joint Physical and Joint Legal Custody Authorizes the Court to Place Reasonable Restrictions upon Location to Effectuate the Joint Physical Custody Arrangement.

The Appellant and Respondent stipulated to joint physical and joint legal custody of the children prior to proceeding to trial. "Joint physical custody" means that the routine daily care and control and the residence of the child is structured between the parties.⁶⁶ Accordingly, the District Court made specific findings regarding the best interest standard as to where the children should reside within a joint physical custody arrangement. There is no published precedent specifically on point regarding residency restrictions in joint physical custody arrangements. A review of the law regarding residency restrictions and conditional grants of custody is necessary to understand the

⁶⁴ 607 N.W.2d 468, 474-475.

⁶⁵ *Id.*

⁶⁶ Minn. Stat. Sec. 518.003 Subd. 3(d).

district court's rationale that the best interest of the children standard applies to such a determination.

Appellant cites *Auge v. Auge* for the proposition that the parent opposing the move of a child has the burden of showing that the move would either endanger the child's physical or emotional health and is not in the child's best interests, or that the purpose of the move is to interfere with the visitation rights of the custodial parent.⁶⁷ However, Appellant's reliance upon the rationale of *Auge* is unpersuasive. Not only has the rationale expressed in *Auge* been specifically overruled by the legislature, but the Minnesota Supreme Court specifically declined to apply *Auge* as the rule for cases involving joint custody, such as the present matter.⁶⁸

Where the parties have agreed to a stipulated decree of joint legal and joint physical custody of their children, and the court has agreed to it, the parties will be bound by it.⁶⁹ Once the parties have implemented a parenting plan according to a joint physical custody agreement, an attempted substantial change in parenting time may amount to a motion to modify joint physical custody.⁷⁰

Moreover, "there is no absolute prohibition under Minnesota law against awarding child custody on the condition of maintaining a specific geographic residence for the child, as long as that residence is shown clearly and genuinely to serve the child's best

⁶⁷ 334 N.W. 2d 393 (Minn. 1983)

⁶⁸ *Ayers v. Ayers* 508 N.W. 2d at 520 (declining to adopt the argument that removal presumption in *Auge* should be expanded to joint physical custody cases).

⁶⁹ *Id.*

⁷⁰ *Id.*

interests.”⁷¹ A locale restriction may be interpreted appropriately as a conditional award of physical custody in custodial disputes.⁷² In initial custody determinations, the best-interests analysis continues to apply, even when one party is contemplating a move.⁷³ A proposed change of residence bears directly on several of the best-interests factors in Minn. Stat. 518.17 when reviewed upon determination of an initial custody proceeding.⁷⁴

The Court of Appeals has addressed the issue of conditional primary residential designation within a joint physical custody arrangement in an unpublished opinion nearly on point. In *In re the Custody of: S.S.E. and M.M.E* 2004 Minn. App. LEXIS 699 (Minn. Ct. App. June 15, 2004), the court determined that subsequent an award of joint physical custody, a geographical limitation upon the primary residential parent served the best interests of the children and was not an abuse of discretion.

The facts of *S.S.E.* are substantially similar to the present matter. In *S.S.E.*, the parties were never married and the mother moved the children a significant distance from their father and extended family and community in which they resided. The court found that a joint physical and legal designation was appropriate because the parties had co-parented the children and had provided a stable and satisfactory residence for them prior to separation. The court of appeals further determined that mother and father shared

⁷¹*Goldman v. Greenwood* ____ N.W. 2d ____, 2008 Minn. LEXIS 131 (Minn. 2008), citing *Daily v. Chermak*, 709 N.W.2d 626, 630 (Minn. App. 2006), *rev. denied* (Minn. May 16, 2006).

⁷² See e.g. *Goldman, Id.*

⁷³ *Stangel v. Stangel* 335 N.W.2d 489, 490 (Minn. App. 1984), *review denied* (Minn. Feb. 6, 1985).

⁷⁴ *LaChapelle v. Mitten*, 607 N.W 2d 151, 162 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

parenting duties and that remaining in the community where they have always lived, close to extended family with the parents continuing to co-parent, is in the best interests of the children.⁷⁵ The court in *S.S.E.* conditioned mother's primary residential designation upon return of the children to the community in which father resided.

Finally, the court further determined that although a 20-mile restriction in distance between homes is somewhat arbitrary, common sense supports some reasonable limit on the driving distance between the parents' residences to facilitate the co-parenting that the district court found to be in the children's best interests.⁷⁶

Here, the district court clearly determined that the parties co-parented the children prior to separation of the parties. Both parties have been involved in the lives of the children and have acted as caretakers.⁷⁷ Both children have lived in Mankato their entire lives. They have family friends and friends in their neighborhoods and are involved in church and sporting activities in Mankato. In short, the children have been ingrained into the Mankato community.⁷⁸

The district court further found that if the children were to reside in Mankato, both parents' homes would be permanent family units.⁷⁹ Finally, the district court specifically found that allowing Appellant to move the children to Lakeville provides benefit only to the Petitioner and detriment to the Respondent and children and is not in the children's

⁷⁵ *In re the Custody of: S.S.E. and M.M.E* 2004 Minn. App. LEXIS 699 (Minn. Ct. App. June 15, 2004).

⁷⁶ *In re the Custody of: S.S.E. and M.M.E* 2004 Minn. App. LEXIS 699 (Minn. Ct. App. June 15, 2004) at *17.

⁷⁷ AA-76.

⁷⁸ AA-80.

⁷⁹ *Id.*

best interest.⁸⁰ It is clear that Appellant is arguing for what is best for Appellant and not what is in the best interest of the children.

Implicit within the court's reasoning is the determination that a move to Lakeville would substantially decrease the historic contact and parenting ability Respondent has had with the children, and would effectively remove the designation of joint physical custody. Evidence presented was that it was neither practical nor possible for Respondent to have daily interaction with the children if they reside in Lakeville. The evidence clearly supported the court's decision and it should not be reversed.

B. The Significant Distinction between Joint Physical Custody and Sole Physical Custody Distinguish the Present Matter from *Sefkow* and Its Progeny.

Each case relied upon by Appellant in support of her contention that a geographical restriction is invalid is completely distinguishable from the present matter. Indeed, *Sefkow v. Sefkow* involved a matter in which the geographic restriction upon a sole physical custodian was deemed invalid.⁸¹ Additionally, Appellant's reliance upon *Ryan v. Ryan*,⁸² and *Imdieke v. Imdieke*,⁸³ to further support her contention that geographic restrictions are invalid is equally misplaced because each is a case in which one party was awarded sole physical custody.

Here, there was no question of a custody award before the district court. The parties stipulated, prior to trial, that there should be joint physical and joint legal custody.

⁸⁰ AA-83.

⁸¹ 372 N.W.2d 37 (Minn. Ct. App. 1985).

⁸² 383 N.W. 2d 371 (Minn. Ct. App. 1986).

⁸³ 411 N.W. 2d 241 (Minn. Ct. App. 1987).

The rationale expressed within the case law authorizing the award of conditional sole physical custody upon the party's return or remainder within the state supports the determination that geographic restrictions, without regard state lines, may be in the best interests of the children. Specifically, any geographical restriction must "demonstrably serve the child's best interests."⁸⁴

Here, the parties have agreed to Joint Physical Custody, and solely went to trial to determine which party's home would be designated primary and to determine a particular schedule the children would have between the respective homes. Appellant appears to confuse the designation of primary residential parent with a determination that the primary parent is the sole physical custodian of the children.

The Minnesota legislature has not defined "primary parent". It has, however, defined "Joint physical custody" to mean that the routine daily care and control and the residence of the child is structured between the parties.⁸⁵ There is no practical manner in which to effectively implement the parties' stipulation to Joint Physical Custody without some restriction on the distance between the parties. For each parent to have substantial contact with the children, there must be reasonable parameters on the geographic location between the parties.

Implicit within the court's determination that the move to Lakeville serves only the best interests of Appellant is the recognition that a 70-mile distance between homes effectively severs the ability of both parents to have routine daily care and control and a

⁸⁴ *Daily v. Chermak* 709 N.W. 2d 626, 630 (Minn. Ct. App. 2006), *rev. denied*, (May 16, 2006).

⁸⁵ Minn. Stat. Sec. 518.003 Subd. 3(d).

structured residence of the child between the two parents. Because the trial court clearly determined it was in the best interests of the children to remain in ISD #77, a geographical restriction preventing the parties from moving outside of ISD # 77 is not an abuse of discretion and should not be reversed.

C. The Court's Lack of A Specific Conditional Primary Residential Designation Does Not Invalidate Its Refusal to Allow the Appellant to Remove the Children from ISD # 77.

Read as a whole, the Court's decision may be interpreted either as a refusal to modify the parties' stipulation to joint physical custody, or as an implicit rendering of a condition of Appellant's designation of primary residential parent. In either event, nothing regarding the failure to place a condition of Appellant's status of primary residential parent invalidates the court's determination that a move to Lakeville was not in the best interests of the children and would negatively impact the relationship between the children and Respondent.

The record as a whole reflects that significant evidence was presented regarding the amount of contact Respondent has historically had with the children. The court reviewed the evidence presented and determined that a move at the present time was not in the best interests of the children, and no significant benefit to the children could be expected by a move. No abuse of discretion occurred and the decision of the trial court should stand.

II. EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT TO SUPPORT EACH OF THE COURT'S FINDINGS OF FACT REGARDING PROPERTY DISTRIBUTION AND CHILD SUPPORT CALCULATION.

A. The Court's Child Support Determinations Are Supported by the Record.

The district court has broad discretion in determining child support.⁸⁶ The Court of Appeals will reverse a district court's order regarding child support only if convinced that the district court abused its broad discretion by reaching a clearly erroneous conclusion that is against logic and the facts on record.⁸⁷

The facts before the court were that Appellant's income in 2007 was on track to be in excess of \$100,000.00. Because of the varying nature of Appellant's income which was significantly greater than her previous three year average, the court, in its discretion, determined reasonable expenses and calculation of appropriate deductions. Nothing regarding the imposition of child support with regard to FICA and reasonable expenses was clearly erroneous or an abuse of discretion.

With regard to the appropriate designation of parenting time at 60/40, the court was clear in its decision that a specific designation of an exact parenting schedule was impractical due to Respondent's varying work schedule. However, the court further indicated that the parties have admirably worked around Respondent's schedule to ensure he has quality parenting time with the children. Recognizing that the law required a set schedule, the court incorporated a minimum schedule but specifically indicated that it

⁸⁶ *Putz. v. Putz*, 645 N.W. 2d 343, 347 (Minn. 2002).

⁸⁷ *Putz. v. Putz*, 645 N.W. 2d 343, 347 (Minn. 2002).

should in no way be considered “set in stone”.⁸⁸ The court further advised the parties to continue providing additional times when Respondent was available.⁸⁹

Based upon the preliminary parenting time schedule and the evidence before the court that Respondent will have significant time beyond that outlined in the minimum order, the court determined the annualized parenting percentage was 60/40. Evidence before the court was sufficient to support the court’s findings. Such a determination was neither clearly erroneous or an abuse of discretion and should be affirmed.

B. Evidence Before the Court Supported the Court’s Distribution of Property

Only upon a clear abuse of discretion will a trial court’s determination regarding property distribution be reversed.⁹⁰ Evidence before the Court supported the decision to award one lot to Respondent and another sold. Absolutely no credible evidence existed that Respondent somehow posed a threat to Appellant or the children sufficient to support Appellant’s demand that Respondent’s pre-marital real estate asset be sold.

Rather, the evidence supported the determination that the lots contained a marital interest, and that it was not in the best interests of the children to distribute the lots in a manner which would allow Respondent to build a home adjacent to Appellant’s residence. Thus the court ordered the immediately adjacent lot of the parties sold, and awarded the distant lot to Respondent with a specific restriction that he was unable to

⁸⁸ AA-83.

⁸⁹ AA-84.

⁹⁰ *Bateman v. Bateman*, 382 N.W. 2d 240, 246 (Minn. Ct. App. 1986), *rev. denied* (Apr 24, 1986).

build a home upon it until such time as Appellant and the children moved or the youngest child reached age 18.

Nothing regarding the court's distribution of the real property was a clear abuse of discretion, and should therefore be affirmed.

CONCLUSION

Because the District Court neither misapplied the law nor abused its discretion, the Court of Appeals should affirm its findings and not allow Appellant's move of the children to Lakeville.

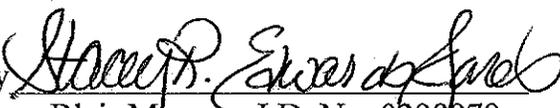
Because the District Court had sufficient evidence before it to determine the child support obligations of the parties, the Court of Appeals should affirm its findings regarding child support.

Because the District Court had sufficient evidence before it to determine the distribution of property amongst the parties, the Court of Appeals should affirm its findings regarding property distribution.

Respectfully Submitted,

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