
Case No. A-25-0220

IN THE NEBRASKA COURT OF APPEALS

Jerome Biegler and Michelle Biegler, Appellees
vs.
Toi Sonthana, Appellant

ON APPEAL FROM THE DISTRICT COURT
FOR LANCASTER COUNTY, NEBRASKA

The Honorable Ryan S. Post, District Court Judge

REPLY BRIEF OF APPELLANT, TOI SONTHANA

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STATEMENT OF JURISDICTION

Appellant reasserts her statement of jurisdiction set forth in appellant's original brief.

STATEMENT OF THE CASE

Appellant reasserts her statement of the case.

PROPOSITIONS OF LAW

1. The grandparents' burden of proof is not met where the evidence shows "an unremarkable, typical, healthy relationship." *Eberspacher v. Hulme*, 248 Neb. 202 (1995).
2. An appellate court will give great weight to the trial court's judgment of credibility. *Gatzemeyer v. Knihal*, 25 Neb. App. 897 (2018).

STATEMENT OF FACTS

Appellant reasserts her statement of facts.

SUMMARY OF THE ARGUMENT

This case involves a fundamental disagreement over whether Michelle Biegler's (Michelle's) evidence at trial demonstrated a "significant" and "beneficial" relationship between Michelle and the two children or whether her evidence showed "an unremarkable, typical, healthy relationship." The parties each point to the same testimony, Toi Sonthana (Toi) to show the relationship was not significant or beneficial, and Michelle to show it was. Based upon prior decisional law, Michelle's evidence fails as a matter of law.

Because the trial court specifically found every witness to be credible, Michelle's assertions that the trial court accepted, rejected, or gave greater weight to the testimony of certain witnesses must be disregarded. The court's credibility determination places all witnesses on equal footing, leaving this court, following a de novo review, with the task of determining whether the court abused its discretion in interpreting the law and applying it to the facts of this case.

ARGUMENT

I. *Michelle's Evidence Fails as a Matter of Law.*

This court must determine whether Michelle's evidence is legally sufficient to meet her burden of proof. Although the parties characterize the evidence differently, they both point primarily to the same evidence in support of their respective positions. The court is urged to scrutinize the facts in the record carefully in its de novo review to determine whether the facts support the sweeping descriptions made by Michelle in her brief. Some examples are helpful.

Michelle stated in her brief: "Michelle has always had a *strong* relationship with the minor children . . ." (Appellee's Brief at 7) In fact, Michelle described her relationship with the two children as: "So, just regular grandparent relationships." (239:5)

Michelle asserted that annual cousin camps "*almost always* included the minor children herein." (Appellee's Brief at 7) Michelle's citations to the record show the children attended three camps (68:2-12) (McCook), (180:5-9) (South Dakota), (E39, p. 20) (Minnesota). The many references to "cousin camp," and all related photographs, actually refer to three events in 10 years.

Michelle stated: "[S]everal family members testified about the love and connection the minor children had not just with the Bieglers, but with the entire extended family." (Appellee's Brief at 7). Michelle's citations to the record show testimony about *contact* between the children and the grandparents but not about "love and connection." The citations reveal: Michelle's relationship with another grandchild (Keely) (108:3-25; 109:1-13), the cousin camps (cited above), Michael Biegler's characterization of the relationship as the same as "with any of her grandkids . . . nothing to note," (278:9-14) and Marcus Kuhlmann's admissions that he "didn't probably spend much time" with the grandparents when Owen and Emma were around, and that he "didn't personally attend very many" Biegler events. (447:3-11; 449:12-15)

Michelle stated: "*Not a single witness* testified that the severance of the grandparent/grandchild relationship was something

Dustan would have wanted.” (Appellees’ Brief at 7). Not a single witness was asked this question.

Michelle stated: “Even Toi admitted . . . that she wanted them to have a relationship.” (Appellee’s Brief at 9) Toi testified that she felt it would be important for the children to have a relationship with the grandparents “at some point in time.” (27:3)

Michelle stated: “Toi’s evidence regarding the relationship was inconsistent . . .” (Appellee’s Brief at 9) Michelle cites the court to 115 pages of testimony and a 61-page deposition but fails to point the court to any inconsistencies.

Michelle stated: “Toi did not have any exhibits or documents to verify any of the claims she made about the Biegler family.” (Appellees’ Brief at 9-10) Michelle does not identify what “claims” she is referring to but seems to argue that the testimony of Toi and her witnesses should be disregarded. The Bieglers *admitted* to many of the concerns Toi testified about. Representative examples include: Michelle and Jerome’s disdain for Toi and Dustan’s lifestyle (40:5-17) (147:11-22) (396:20-21; 397:1-13) (587:9-25; 588:1-10) (E39, p. 27); Michael Biegler’s admission that Toi’s characterization of Michelle as “overbearing” about things like “religion,” was accurate, and that Michelle’s discussion of estate matters in front of one of the children was improper. (416:4-14) (429:1-25; 430:1-25; 431:1-4) Michelle admitted her vindictive behavior surrounding the headstone. (256:21-25; 257:1-14) (640:11-24) (654:2-17)

Michelle stated: “[E]veryone who knew Dustan well – except Toi – testified that he wanted his family to have contact with his children and knew it was in their best interests.” (Appellee’s Brief at 10) Michelle’s citations to the record do not show this testimony.

Michelle stated: “[T]here were pages and pages of photos showing the Bieglers cuddling, holding and playing with Owen and Emma over a significant portion of their lives. (Appellees’ Brief at 11) Michelle’s citations to the record show that of the “pages and pages” of photos spanning 10 years, only seven photos depict Michelle with Owen or Emma and they are primarily from when the children were

infants or toddlers. (E34, pp. 5, 11,12, 13, 17, 25, 31) The balance of the photos received into evidence depict either the children with other people (including Toi and Dustan), or “group” photos with no one-on-one contact between Michelle and Owen or Emma. This was Michelle’s opportunity to show her “substantial” and “beneficial” relationship with the two children. Seven instances over 10 years, and a handful of impersonal group events, do not demonstrate such a relationship. The photos demonstrate the opposite – a cordial, but distant relationship.

Michelle stated: “Additionally, the Bieglers have never once said anything negative or bad about Toi . . .” (Appellees’ Brief at 11) Again, Michelle and other witnesses admitted much of Michelle’s bad behavior. Taeko Harris testified that in a public setting in front of another grandchild Michelle stated she believed Toi was having a mental breakdown. (551:10-15) The word “whore” came out of Jerome’s mouth, and by his own classification, it includes Toi. (470:8-21) There were also all the comments about Toi and Dustan “living in sin.”

Michelle stated: “Toi admitted at trial that she continued to attend church with the family . . .” (Appellees’ Brief at 12) Toi testified she asked to attend church *one time* with one of the Biegler family members after Dustan’s death because “I wanted to see if I would feel anything in a Catholic church, and I didn't.” (75:7-13)

Michelle stated: “Heather spoke of the loving relationship the Bieglers had with all of their grandchildren, including her daughter Keely, Owen and Emma . . .” (Appellees’ Brief at 14) The citations to the record show that Heather testified only to the Bieglers’ relationship with Keely. (108:3-25; 109:1-20)

Michelle stated: “The evidence couldn’t be clearer that the Bieglers’ religion was being weaponized against them in these proceedings . . . This is even more evident when Appellant had to rely on case law from Tennessee, Texas, Wisconsin and Missouri to support such a claim. To suggest that the trial court was so blind and daft to what would in reality be such an obvious issue is nonsensical.” (Appellees’ Brief at 17) It is not clear what “claim” or “issue” Michelle is referring to in this paragraph. The extra-jurisdictional case law was

cited for the proposition that it would be difficult to analogize the constitutional arguments made in this case to other cases when grandparent visitation statutes across the country vary in significant ways. (Appellant's Brief at 33) Counsel has searched appellant's original brief and finds no suggestions that the trial court was either blind or daft.

Michelle stated: "Appellant neglected to ask Michelle the same thought-provoking questions about religion that he asked of Jerome, likely because he knew she would not have the same answers." (Appellees' Brief at 20) Both Jerome and Michelle were asked if Michelle shared Jerome's beliefs and both testified she did. (501:24-25; 502:1) (655:2-4)

Although Michelle argues that the *Hamit* fact pattern is "nearly identical to the one in this case," (Appellees' Brief at 15), the Supreme Court noted in *Hamit* that the mother *did not challenge* the grandparents' assertion that there had been a significant beneficial relationship with the grandchildren. This is a significant factual distinction as that concession relieved the grandparents of their burden of proof on the first statutory factor: proving a significant, beneficial relationship. *Hamit v. Hamit*, 271 Neb. 659, 679 (2006). In the case at bar, this issue is strongly contested.

Our supreme court has ruled that a grandparents' burden of proof is not met where the evidence shows "an unremarkable, typical, healthy relationship." *Eberspacher v. Hulme*, 248 Neb. 202 (1995). Michelle has not met her burden of proof.

II. The Trial Court Found all Witnesses to be Credible.

The trial judge made a very specific ruling on credibility, finding "each witness to be credible." (T54)

Throughout her brief, Michelle urges this court to make contrary assumptions regarding credibility. See, e.g. Appellees' Brief at 10 ("district court did not appear to accept Toi's testimony that she and Dustan had limited the children's access to the grandparents' intentionally"); and Appellees' Brief at 11 ("court clearly found these witnesses to be more credible, and gave more weight to their

testimony, than it did Toi's").

An appellate court must give great weight to a trial court's judgment as to credibility. *Gatzemeyer v. Knihal*, 25 Neb. App. 897 (2018). Thus, this court must give weight to the trial court's finding that all witnesses were credible. Michelle's assertions that the trial court accepted or rejected, or gave greater weight to, certain testimony must be disregarded. Rather, the focus on appeal, following a de novo review, is to determine whether the trial court abused its discretion in interpreting the law and applying it to the facts of this case.

CONCLUSION

Appellant reasserts her conclusion.

Respectfully Submitted,
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Certificate of Compliance

The undersigned attorney hereby certifies that this brief complies with the word count as required by NEB. CT. R. APP. P. Article 1, § 2-103(C)(4). The name and version of the word processing software used to prepare the brief is: Microsoft Word for Microsoft 365 MSO (Version 2505 Build 16.0.18827.20102) 64-bit. This brief complies with the typeface requirements of § 2-103. The total number of words in this brief (excluding the words in this Certificate) is: 1,852.

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Certificate of Service

I hereby certify that on Friday, August 29, 2025 I provided a true and correct copy of this *Reply Brief* to the following:

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