CASE NO. A-25-220

IN THE NEBRASKA COURT OF APPEALS

JEROME BIEGLER and MICHELLE BIEGLER,
Appellees / Plaintiffs,

v.

TOI SONTHANA,
Appellant / Defendant.

APPEAL FROM THE DISTRICT COURT
OF LANCASTER COUNTY, NEBRASKA

HONORABLE RYAN S. POST

District Court Judge

BRIEF OF APPELLEES

PREPARED AND SUBMITTED BY:

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STATEMENT OF THE CASE

1. Nature of the Case

Appellees filed a Complaint for Grandparent Visitation (the "Complaint") on May 16, 2024. (T1–3). Trial was held on Appellees' Complaint January 27, 28, and 29, 2025, after which the District Court entered an Order granting the relief prayed for in the Complaint. (T53-61). Appellant appeals the Order entered by the District Court on February 10, 2025. (T71).

2. Issues Tried by the District Court

The District Court determined whether Appellees met their burden of proof, by clear and convincing evidence, (a) that each of them had a significant beneficial relationship with the minor children, (b) that it was in the best interests of the children that it continue, (c) that granting visitation would not adversely interfere with the parent-child relationship, and (d) what visitation schedule would be in the best interests of the minor children. (T53-61).

3. How the Issues Were Decided

The District Court found that the Appellee Michelle Biegler had proven by clear and convincing evidence that she had a significant beneficial relationship with the minor children, that it was in the best interests of the children that it continue, that granting visitation would not adversely interfere with the parent-child relationship, and Ordered a visitation schedule that it found to be in the best interests of the minor children. (T53-61). The District Court found that the Appellee Jerome Biegler had not proven by clear and convincing evidence that he had a significant beneficial relationship with the minor children, and denied his request for a visitation order. (T53-61).

4. Standard of Review

The standard of review in cases involving visitation by grandparents is the same as the standard of review in other custody and visitation cases. *Dice v. Dice*, 1 Neb. App. 241, 493 N.W.2d 207 (1992). Determinations concerning grandparent visitation are initially entrusted to the discretion of the trial court, whose determinations on appeal will be reviewed de novo on the record and affirmed in the absence of an abuse of discretion. *Lindblad v. Lindblad*, 309 Neb. 776, 787 (2021); *Gatzemeyer v. Knihal*, 25 Neb. App. 897 (2018); *Vrtatko v.*

Gibson, 19 Neb. App. 83, 800 N.W.2d 676 (2011). A judicial abuse of discretion exists when a judge, within the effective limits of authorized judicial power, elects to act or refrain from action, but the selected option results in a decision which is untenable and unfairly deprives a litigant of a substantial right or a just result in matters submitted for disposition through a judicial system. *Gatzemeyer v. Knihal*, 25 Neb. App. 897 (2018); *Vrtatko v. Gibson*, 19 Neb. App. 83, 800 N.W.2d 676 (2011).

5. Jurisdiction

Appellees concur that this Court has jurisdiction pursuant to Neb. Rev. Stat. § 25-1912 (2024 Cum. Supp.) and Appellant's appeal was filed timely. (T71).

PROPOSITIONS OF LAW

1. Under the Nebraska grandparent visitation statutes, a court is without authority to order grandparent visitation unless a petitioning grandparent can prove by clear and convincing evidence that (1) there is, or has been, a significant beneficial relationship between the grandparent and the child; (2) it is in the best interests of the child that such relationship continue; and (3) such visitation will not adversely interfere with the parent-child relationship. Neb. Rev. Stat. § 43-1801 *et. seq.; Gatzemeyer v. Knihal*, 25 Neb. App. 897, 915 N.W.2d 630 (2018); *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006).

2. The overriding and paramount consideration in determining grandparent visitation rights is the best interests of the children. *Beal v. Endsley*, 3 Neb. App. 589, 529 N.W.2d 125 (1995).

3. Although the Nebraska grandparent visitation statutes recognize the interests of the child in the continuation of the grandparent relationship, under Nebraska's grandparent visitation statutes as a whole, the best interests of the child consideration does not deprive the parent of sufficient protection, because visitation will not be awarded where such visitation would adversely interfere with the parent-child relationship. *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006).

4. The Nebraska Supreme Court explained in *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006), that there are three principles which guide a court's analysis of whether a nonparent visitation statute, as applied, unconstitutionally infringes upon a parent's due process rights:

> (1) There is a presumption that fit parents act in the best interests of their children.
> (2) In light of this presumption, a fit parent's decision concerning the denial of grandparent visitation must be accorded at least some special weight.
> (3) Notwithstanding the special weight to be accorded a fit parent's decision, the presumption in favor of fit parents is rebuttable under the appropriate circumstances.

Under *Hamit v. Hamit*, a trial court's award of visitation to grandparents will be constitutional so long as the court properly finds that the grandparents have proven each element of the Nebraska grandparent visitation statutes by clear and convincing evidence. 271 Neb. 659, 715 N.W.2d 512 (2006).

5. Determinations concerning grandparent visitation are initially entrusted to the discretion of the trial court, whose determinations on appeal will be reviewed de novo on the record and affirmed in the absence of an abuse of the trial court's discretion. *Lindblad v. Lindblad*, 309 Neb. 776 at 787 (2021); *Heiden v. Norris*, 300 Neb. 171, 912 N.W.2d 758 (2018).

6. When evidence is in conflict, the appellate court considers and may give weight to the fact the trial court heard and observed the witnesses and accepted one version of the facts rather than the other. *Lindblad v. Lindblad*, 309 Neb. 776 at 787 (2021); *Tilson v. Tilson*, 307 Neb. 275, 948 N.W.2d 768 (2020).

STATEMENT OF FACTS

Appellees Jerome Biegler ("Jerome") and Michelle Biegler ("Michelle") are the biological parents of Dustan Biegler ("Dustan"), who is the biological father of the minor children herein, namely Owen V. Biegler, born in July 2014, and Emma M. Biegler, born in March 2016 (T1, T53). This makes the Appellees

(collectively referred to as "the Bieglers") the biological paternal grandparents of the minor children. Appellant Toi Sonthana ("Toi") is the biological mother of the minor children. (T1, T53). Dustan and Toi were never married; however, Dustan was the legal father of both children pursuant to legally executed acknowledgements of paternity filed at the time of each child's birth. (T1). Dustan passed away in January 2023. (T1, T53).

Michelle has always had a strong relationship with the minor children, and while Jerome has had less opportunity to see the children than Michelle, has always had a positive relationship with the children himself. (238:12-25, 239:1-5, 243:25, 244:1-7, 246:17-25, 247:1-4, 494:10-25, 495:1-2). The Bieglers have a large extended family and had several family gatherings throughout the years, including annual trips for "Cousin Camp" at various locations, which almost always included the minor children herein. (68:2-12, 135:22-25, 136:1-25, 137:1-25, 138:1-2). Following Dustan's unexpected death in January 2023, Michelle and Toi continued to communicate regarding the minor children, and the children continued to attend family functions and events, including the "Cousin Camp" held in the summer of 2023. (154:21-25, 155:1-5).

At some point in late 2023, tensions began to rise between Toi and other members of the Biegler extended family regarding Dustan's estate. Despite the Bieglers having no role in the administration of or decisions regarding the estate, Toi unilaterally decided to end all contact between the minor children and the entire extended family, including Jerome and Michelle. (19:14-25, 20:1-12). Toi stopped answering phone calls, text messages, and emails from the Biegler family members; moved residences without notice or providing a new address to the family; changed the children's schools without notice to the family; and left the Bieglers with no other means to contact or see the minor children. (19:14-25, 20:1-12, 155:19-25, 156:1-25, 157:1-14). Due to the complete lack of communication from Toi, the Bieglers felt they had no other option than to file the Complaint initiating this action before too much time passed. (226:3-17).

At trial, several family members testified about the love and connection the minor children had not just with the Bieglers, but with the entire extended family. (68:2-12, 108:24-25, 109:1-25, 110:1-14, 135:22-25, 136:1-25, 137:1-25, 138:1-2, 154:18-25, 155:1-5, 238:12-25, 239:1-5, 243:25, 244:1-7, 246:17-25, 247:1-4, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-25, 393:1-23, 447:3-25, 452:20-25, 453:1). Not a single witness testified that the severance of the grandparent/grandchild relationship was something Dustan would have wanted,

and in fact, the evidence showed that Dustan promoted this relationship while he was alive. (68:2-12, 108:24-25, 109:1-25, 110:1-14, 135:22-25, 136:1-25, 137:1-25, 138:1-2, 149:6-25, 150:1-13, 154:18-25, 155:1-5, 172:5-22, 238:12-25, 239:1-5, 243:25, 244:1-7, 246:17-25, 247:1-4, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-25, 393:1-23, 447:3-25, 452:20-25, 453:1-25, 454:1). Over 100 photographs of the minor children with various family members over the course of several years, most of which included Jerome and Michelle, and even Dustan and Toi, were received into evidence. (E34).

Following a three-day trial, the Court concluded that the evidence presented by Appellees was credible, and that Michelle Biegler specifically had a significant, beneficial relationship with the minor children. (T53-61). The Court further found that it would be in the best interests of the minor children to continue that relationship with Michelle, and the Order crafted by the Court providing for visitation (with specific conditions to be followed by Michelle) would not interfere with Toi's parent-child relationships. (T53-61).

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IS GRANTING VISITATION RIGHTS TO MICHELLE BIELGER.

Pursuant to Neb. Rev. Stat. § 43-1801 *et. seq.*, a grandparent may seek visitation with a minor grandchild if the marriage of the child's parents has been dissolved or petition for the dissolution of such marriage has been filed and is still pending, when the child's parents are deceased, or when the parents of the minor child have never been married but paternity has been legally established. A court may order grandparent visitation if the petitioning grandparent proves by clear and convincing evidence that: (1) There is, or has been, a significant beneficial relationship between the grandparent and the child; (2) It is in the best interests of the child that such relationship continue; and (3) Such visitation will not adversely interfere with the parent-child relationship. Neb. Rev. Stat. § 43-1801 *et. seq.*

The District Court correctly found that Michelle Biegler met her burden of proof in establishing the various statutory requirements for grandparent visitation. Despite Appellant's implications otherwise, the burden of proof in this case (clear and convincing evidence) is not the highest burden that courts consider (i.e. beyond a reasonable doubt). Neb. Rev. Stat. § 43-1801 *et. seq.* (Reissue 2016).

The evidence presented by the Appellees was overwhelmingly in favor of continued visitation between the minor children and their grandparents. Hours of testimony by several individuals, including people who were not related to Jerome and Michelle Biegler, confirmed that the extended family was close, spent significant time together, and the minor children herein were often present for family gatherings and celebrations. (68:2-12, 108:24-25, 109:1-25, 110:1-14, 135:22-25, 136:1-25, 137:1-25, 138:1-2, 154:18-25, 155:1-5, 238:12-25, 239:1-5, 243:25, 244:1-7, 246:17-25, 247:1-4, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-25, 393:1-23, 447:3-25, 452:20-25, 453:1). The photographs provided in Exhibit 34 demonstrate on a small scale the involvement the Bieglers have had with their grandchildren throughout their lives, from birthdays and baptisms to weddings and vacations. (E34).

A. The District Court Did Not Abuse its Discretion in Finding a Beneficial Relationship Existed Between Michelle Biegler and the Minor Children and that Said Relationship Should Continue.

The district court correctly found that Michelle Biegler and the minor children had a beneficial relationship prior to this litigation, and the relationship should continue. (T53-61). The Supreme Court held that "determinations concerning grandparent visitation are initially entrusted to the discretion of the trial court, whose determinations on appeal will be reviewed de novo on the record and affirmed in the absence of an abuse of the trial court's discretion." *Lindblad v. Lindblad*, 309 Neb. 776 at 787 (2021); *Heiden v. Norris*, 300 Neb. 171, 912 N.W.2d 758 (2018). It is clear that the evidence strongly favored the Appellees, given not only the number of witnesses who confirmed the history and nature of the relationship, but the photographs of the family over several years and the messages between Toi and various Biegler family members prior to November 2023. (108:24-25, 109:1-25, 110:1-14, 268:22-25, 269:1-17, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-15, 393:1-23, 447:3-25, 452:20-25, 453:1-25, 454:1, E33, E34, E35, E36). Even Toi admitted that she knew the Bieglers loved the children and that she wanted them to have a relationship. (26:20-25; 27:1-25).

Toi's evidence regarding the relationship was inconsistent, not only between her deposition and the first day of trial, but between the first day and last day of trial. (BOE p.15-99, E39, BOE p.584-613, 658-660). Toi did not have any exhibits or documents to verify any of the claims she made about the Biegler

family – no emails, no text messages, no photographs, no video recordings, no audio recordings – nothing. The Supreme Court has held that "when evidence is in conflict, the appellate court considers and may give weight to the fact that the trial court heard and observed the witnesses and accepted one version of the facts rather than the other." *Lindblad v. Lindblad*, 309 Neb. 776 at 787 (2021); *Tilson v. Tilson*, 307 Neb. 275, 948 N.W.2d 768 (2020).

The district court did not appear to accept Toi's testimony that she and Dustan had limited the children's access to the grandparents' intentionally, which was also disputed by every witness called by Appellee, including his business partner, and every exhibit offered into evidence. (108:24-25, 109:1-25, 110:1-14, 268:22-25, 269:1-17, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-15, 393:1-23, 447:3-25, 452:20-25, 453:1-25, 454:1, E33, E34, E35, E36).

It is also without question that this relationship between Michelle and the grandchildren should continue. The Biegler family members are the only ones who can share stories about Dustan prior to him meeting Toi; how he was as a young child, a teenager, and a young adult. (263:7-25, 264:1-12). Additionally, everyone 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. (108:24-25, 109:1-25, 110:1-14, 268:22-25, 269:1-17, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-15, 393:1-23, 447:3-25, 452:20-25, 453:1-25, 454:1). Dustan's lifelong friend and business partner Marcus Kuhlmann, who had no personal interest in the trial or its outcome whatsoever, spoke of his many observations of the close relationship Dustan maintained with the entire extended family throughout his lifetime. (447:3-25, 452:20-25, 453:1-25, 454:1).

The *Nelson* case heavily is relied on by Appellant to somehow make a claim that the Bieglers' relationship with their grandchildren was just "ordinary." However, *Nelson* is clearly not on point given the facts of that case. There, the paternal grandparents had not had any relationship with the minor children for three years prior to requesting a court order for visitation. The paternal grandmother had made horrible statements about the children's mother in open court during the divorce proceedings. The maternal grandmother had not requested any visitation prior to joining in the action and refused visitation that was offered to her while the case was pending. *Nelson v. Nelson*, 267 Neb. 362, 363-368 (2004). Additionally, there was no mention in *Nelson* of photographs with visual depictions of the grandparents and grandchild, or testimony of extended family members and friends speaking about their personal observations

of the relationship between the grandchildren and grandparents. Here, there were pages and pages of photos showing the Bieglers cuddling, holding and playing with Owen and Emma over a significant portion of their lives. (E34: 1, 5, 11, 12, 13, 15, 16, 17, 23, 25, 27, 28, 29, 30, 31). Several witnesses, including Dustan's business partner Marcus, testified about the close relationship they observed between the Bieglers and the children. (108:24-25, 109:1-25, 110:1-14, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-15, 393:1-23, 447:3-25, 452:20-25, 453:1-25, 454:1). The Court clearly found these witnesses to be more credible, and gave more weight to their testimony, than it did Toi's regarding the beneficial and significant nature of the relationship. Additionally, the Bieglers have never once said anything negative or bad about Toi to her or any other person. (147:5-16, 148:8-17, 641:25, 642:1-5). Any claims by Toi that they have remain unproven due to a complete lack of credible evidence.

Another case where visitation was denied, and which Appellant inaccurately relies on, is *Vrtatko v. Gibson*. In the *Vrtatko* case, grandparent visitation was denied based upon a lack of evidence regarding the significance of the grandparent relationship (i.e. the child had only eight visits total in her life with the grandparents and did not have any special names for them). *Vrtatko v. Gibson*, 19 Neb. App. 83, 87, 92 (2011). However, a major fact difference is the age of that child both during the time the Appellants claimed the relationship existed and at the time of trial. That child was only three years old at the time of trial; Emma and Owen are much older, have a demonstrable bond with their grandparents, have special names for them, and are visibly unmistakably happy to be with them in the photographs provided. (68:2-12, 108:24-25, 109:1-25, 110:1-14, 135:22-25, 136:1-25, 137:1-25, 138:1-2, 154:18-25, 155:1-5, 238:12-25, 239:1-5, 243:25, 244:1-7, 246:17-25, 247:1-4, 277:5-25, 278:1-25, 279:1-12, 391:25, 392:1-25, 393:1-23, 447:3-25, 452:20-25, 453:1, E34).

In this case, the trial court correctly found that a "plethora of individuals testified as to the close relationship they observed between the grandparents and the children. There was also ample evidence that continuing the children's relationship with their extended family is in their best interests." (T54-55). The court is also well within its discretion to note the positive impact that extended family exposure has on the minor children, as the *Gatzemeyer* case demonstrates. *Gatzemeyer v. Knihal*, 25 Neb. App. 897 at 907 (2018). Every single witness testified that the children had positive, meaningful relationships with members of the extended Biegler family, including Toi, who also admittedly cut the children

off from those individuals as well. (17:7-25, 18:1-25, 19:1-13, 108:24-25, 109:1-25, 110:1-14, 277:5-25, 278:1-25, 279:1-12, 386:7-25, 391:25, 392:1-15, 393:1-23, 447:3-25, 452:20-25, 453:1-25, 454:1, 626:6-15).

Perhaps just as compelling as the evidence regarding the children's longtime relationship with the Biegler family was the evidence depicting Toi's relationship with the family. Many of the photographs contained in Exhibit 34 showed Toi herself, at times when she does not appear to realize she is being photographed. (E34:1, 2, 15, 16, 17, 19, 20, 22, 23). Toi is clearly comfortable with her surroundings and the other family members in the photos; she does not appear concerned or uncomfortable for herself or her children; and in the vast majority of these photos, she is smiling and appears happy and content – again, even when she does not appear to realize her photo is being taken. Toi admitted at trial that she continued to attend church with the family and made efforts to see the family after Dustan died, and she wanted the children to "be Bieglers." (26:20-25, 27:1-25, 28:1-3, 75:7-10, 75:23-25, 76:1-25, 77:1-11).

Appellant's brief inherently misstates the testimony and at times even suggests new theories that were not received into evidence. Specifically, the attempt to categorize the photographs received in Exhibit 34 severely manipulates the testimony to make it appear that it only involves a handful of events, when Michelle actually testified that the pictures covered several different Christmases, Thanksgivings, Cousin Camps, weddings, baptisms, weekends in McCook, weekends in Lincoln, etc. (every line of every page from 178:10 through 224:3). It is also clear from the text messages between Michelle and Toi over the years prior to Dustan's death that Michelle was a consistent part of the family who often provided overnight care for the minor children at Toi's request. (E35). Toi's deposition was also very inconsistent with her testimony at trial as far as what "rules" she and Dustan had for the Bieglers, how often the children saw them, and more. (BOE p.15-99, E39, BOE p.584-613, 658-660).

Appellant further attempts to describe Michelle's testimony as vague, general, and that she was "struggling." However, Appellant creatively mentions some of the testimony that was specific and leaves out the vast majority of the rest. For example, Appellant references the "tickle monster" game and "box fort" as the only fun things she has ever done with them, but conveniently leaves out the other games or activities referenced (tag, playing outside, running through the house, reading) and the many, many photos of other activities that include playing Legos, discussing family history, cooking, swimming, lake activities, family

events, outings to amusement parks, holiday celebrations, etc. (212:14-17, 238:12-25, 264:7-25, 265:1-11, E34:1-31). Fortunately, it is for these exact reasons that Nebraska courts have held that the trier of fact, with the benefit of hearing and seeing the witnesses first-hand, is able to determine the credibility of each witness. *Lindblad v. Lindblad*, 309 Neb. 776 at 787 (2021); *Tilson v. Tilson*, 307 Neb. 275, 948 N.W.2d 768 (2020).

While this poor attempt to mislead the Court of Appeals is very transparent, it is still extremely unsettling and further underscores the need for the grandparent visitation order to stand. It is clear that Toi will stop at nothing to prevent all contact between the Bieglers and her children, and it further undermines her credibility that she would have allowed contact between them had she not been served with this lawsuit.

B. The District Court Did Not Err in Finding that Michelle Biegler's Grandparent Relationship Would Not Interfere with the Parent Relationship and Correctly Afforded Sufficient Weight to Parental Fitness Presumption.

The district court correctly found that Michelle's grandparent relationship would not interfere with Toi's parent relationship, even when affording weight to Toi's presumption of parental fitness. The court specifically included provisions in its order to mitigate any concerns that Toi had raised, and having heard the witnesses first-hand, accepted the testimony of the Biegler family that they would not cross the boundaries set by Toi. (T53-61).

Michelle clearly testified that she did not intend to force her religion on Toi or the children, or that she ever intended to push her personal views on their family. (165:5-25, 166:1-25, 167:1-25, 168:1-25, 169:1-9, 172:5-22, 230:20-25, 231:1-3). Jerome was clear about the same, despite admittedly feeling stronger about his faith than Michelle. (460:8-11, 465:16-23, 466:23-25, 467:1-23). It is clear that Toi assumed or "felt" that she was perceived a certain way by the Bieglers, but it was never because of anything that they said or did with direction at her, and it was never anything she had attempted to discuss with them so that they knew she felt targeted or uncomfortable (254:15-25, 255:1-22, 256:7-20). Other members of the Biegler family confirmed that they never witnessed Jerome or Michelle do this to Dustan, Toi, or any of the other Biegler adult children. (104:15-25, 105:1-12, 284:3-25, 285:1-3, 439:12-25, 440:1).

It was clear from the questions posed by Toi's counsel and her corresponding testimony, both at trial and in her deposition, that their primary concern was Dustan's estate and how it was handled, and not the grandparents (which, unsurprisingly, is also the prominent theme of Appellant's brief). (29:2-25, 30:1, 69:2-25, 70:1-25, 305:7-12, 333:14-25, 334:1-5, 335:21-25, 336:1-21, 361:9-25, 362:1-5, 363:13-25, 364:1-25, 365:1-25, 366:1-3, E8). How the estate was held, and how it was handled after Dustan's death, was (and still is) completely irrelevant to whether or not an award of grandparent visitation was proper in this matter. In fact, this suggests that Toi's testimony regarding her concerns with the Bieglers are not credible and are instead fueled by her resentment toward the estate and the greater Biegler family. It was also clear from Toi's testimony that her issues with the Bieglers were her issues – not the children's – and the district court ultimately agreed that a strained relationship between Michelle and Toi would not in itself interfere with Toi's parental role. (361:9-25, 362:1-5, 363:13-25, 364:1-25, 365:1-25, 366:1-3, 460:8-11, 465:16-23, T53-61).

In a further attempt to distract from the legitimate facts in this case, Appellant, and moreso her counsel, have gleefully latched onto the use of the term "whore" by Jerome Biegler in his deposition referring to a third party. They have also insinuated that this somehow means that Jerome believes that Toi is a whore, and that somehow means that Michelle also believes that both Toi and the third party are whores. This is nonsensical and clearly designed to attempt to shock the Court, especially in light of Jerome's testimony about the subject. (470:8-25, 471:1-25, 472:1-4). Even the woman who was the subject of the term at the deposition, Heather Schade ("Heather"), came to testify on behalf of Appellees. Heather was aware of Jerome's use of the word and testified that she still felt respected and loved by Jerome. Heather stated that she had no ill feelings toward Jerome or anyone else in the Biegler family. (112:5-25, 113:1-11). Heather spoke of the loving relationship the Bieglers had with all of their grandchildren, including her daughter Keely, Owen and Emma, and even with Heather herself. (107:19-25, 108:1-25, 109:1-25, 110:1-14). This testimony directly contradicted everything Toi had testified to just moments before her.

Additionally, the intense questioning about Jerome and his beliefs at trial was clearly meant to paint him as a zealot who would undoubtedly poison the minds of these minor children. However, a full read of the record makes it clear that Jerome has never said any of these things to any of his grandchildren and

never would. (467:17-19, 501:7-12, 530:19-25, 531:1-15). Counsel's attempt to pull Jerome into a deep, philosophical discussion during trial was transparent then, and is again now, for what it really was – an effort to get good sound bites in the transcript for an appeal focused on religious differences of the parties. There is zero evidence that Jerome has said or would ever say any of those things to any children, let alone these children. It is absurd to suggest that the questions asked of Jerome at trial would be asked of him by young children – and even then, Jerome was clear on how he would handle such questions if they did come up in front of the children. (467:17-19, 501:7-12, 530:19-25, 531:1-15).

In *Troxel v. Granville*, the U.S. Supreme Court concluded that a Washington nonparent visitation statute, as applied, violated a mother's Fourteenth Amendment substantive due process rights in the care, custody, and control of her children. 530 U.S. 57 (2000). The Nebraska Supreme Court has previously held that, under *Troxel v. Granville*, the Nebraska grandparent visitation statutes are not facially unconstitutional under either the Fourteenth Amendment of the U.S. Constitution or Article I, § 3 of the Nebraska Constitution. *Hamit v. Hamit*, 271 Neb. 659, 715 N.W.2d 512 (2006). *Troxel* did not define a specific test by which to evaluate the constitutionality of nonparent visitation statutes; however, in *Hamit*, the Nebraska Supreme Court explained that there are three principles which guide a court's analysis of whether a nonparent visitation statute, as applied, unconstitutionally infringes upon a parent's due process rights:

> (1) There is a presumption that fit parents act in the best interests of their children.
> (2) In light of this presumption, a fit parent's decision concerning the denial of grandparent visitation must be accorded at least some special weight.
> (3) Notwithstanding the special weight to be accorded a fit parent's decision, the presumption in favor of fit parents is rebuttable under the appropriate circumstances.

271 Neb. 659, 715 N.W.2d 512 (2006).

In *Hamit*, the fact pattern is nearly identical to the one in this case. In that case, the paternal grandparents of the minor children sought grandparent visitation after the children's father (the grandparents' son) died and the children's mother refused the grandparents' requests for visitation. *Id.* The Nebraska Supreme Court explained that the Nebraska grandparent visitation statutes passed strict scrutiny

under *Troxel v. Granville* because they honored the presumption that fit parents act in the best interests of their children, provided special weight to the parent's decision concerning the denial of grandparent visitation, and properly allowed challenging grandparents to rebut the presumption that the parent's denial of visitation is in the children's best interests. *Id.*

In *Hamit*, the trial court found by clear and convincing evidence that there was a significant beneficial relationship between the grandparents and children, and that it was in the children's best interests for the relationship to continue, because a variety of witnesses testified as to the close, loving relationship between the grandparents and the minor children. *Id.* Although a mental health therapist testified that one of the children was afraid of the grandparents, the district court rejected this testimony as "'not believable.'" *Id.* The trial court found by clear and convincing evidence that visitation with the grandparents would not adversely interfere with the parent-child relationship. *Id.* Even though the relationship between the mother and grandparents was strained, and although the mother did not encourage a relationship between the children and the grandparents, numerous witnesses testified that the grandparents did not display animosity toward the mother, were focused on spending time with the children, and complied with the mother's directions concerning the children's care. *Id.* The trial court granted the grandparents visitation on the first Saturday of each month and for seven consecutive days in the summer. *Id.*

The Nebraska Supreme Court in *Hamit* held that the district court's decision was constitutional under a strict scrutiny analysis because the district court did not abuse its discretion in finding that the grandparents proved the requirements of the grandparent visitation statutes by clear and convincing evidence. *Id.* The court also found that the district court's specific visitation award was constitutional, because the court did not abuse its discretion in awarding the specific visitation it granted to the grandparents. *Id.* Under *Hamit*, a trial court's award of visitation to grandparents will be constitutional so long as the court properly finds that the grandparents have proven each element of the Nebraska grandparent visitation statutes by clear and convincing evidence.

Appellant tries to create two issues of first impression that do not exist, surely in an effort to catch the attention of the Nebraska Supreme Court and once again distract from the fact that the statutory requirements in this case were easily met. Notably, there does not appear to be a single published Nebraska case where the grandparent visitation statutes have been found to be unconstitutional as

applied. It is undisputed that the Nebraska Supreme Court has held that the Nebraska grandparent visitation statutes are facially constitutional, and courts in all published Nebraska cases subsequent to *Troxel* have found the grandparent visitation statutes constitutional as applied. (See *Kane v. Kane*, 311 Neb. 657 (2022)).

The first "first impression" argument regarding Toi's constitutional right to teach her children religion is a red herring. The evidence couldn't be clearer that the Bieglers' religion was being weaponized against them in these proceedings by Toi, quite possibly with the intent to make this very argument on appeal, based on comments made by counsel at a post-trial hearing. (689:13-18). 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. Toi admitted that she had allowed the children to have overnight visitation with the Bieglers, without her, both before and after Dustan died. (25:1-25, 26:1-10, 149:6-25, 150:1-13, 154:18-25, 155:1-5). There was no evidence whatsoever that Toi's constitutionally protected rights regarding religion and morality were in jeopardy; if such a thing were true, a reasonable mind would recognize that Toi would not have allowed the children to be around the Bieglers while Dustan was alive – or even since his death – without her present. It is only after the estate became an issue for Toi that she decided the Bieglers were too inappropriate to be around her children. (364:9-25, 365:1-21, 607:5-20). Toi's argument here is wholly without merit.

It is a further frivolous argument for Appellant to claim that the trial court was required to make some sort of finding that Toi was not "fit" to make a decision regarding grandparent visitation. Zero of the cases cited in either party's brief made such a finding. In fact, *Hamit* is explicit that orders for grandparent visitation are awarded "in the absence of parental unfitness" so long as the grandparents are able to meet the statutory requirements. *Hamit v. Hamit*, 271 Neb. 659, 675 (2006). It stands to reason that even fit parents do not always make decisions in the best interests of their children; otherwise, there would be no need for custody or visitation orders between two appropriate parents.

The second "first impression" argument is another red herring, and once again made frivolously in light of Appellant's desire to have the grandparent visitation statutes strictly construed. Nothing within the grandparent visitation statutes states that a grandparent who is married must also secure the visitation

rights of the other grandparent through a court order for his or her own visitation to occur. This would be a clear violation of the Fourteenth Amendment by creating a class – married persons – who are treated differently under the statute than non-married persons. To borrow a citation from Appellant, "a trial court's authority in grandparent visitation cases is derived solely from the grandparent visitation statutes." *Krejci v. Krejci*, 304 Neb. 302, 310 (2019); *Lindblad v. Lindblad*, 309 Neb. 776, 793 (2021).

Additionally, the grandparent visitation statutes do not dictate that the grandparents must adhere to specific requests of the parents during visitation. This is entirely up to the district court's discretion, and the district court did just that in this matter. Michelle was ordered to not discuss financial/estate issues or religious beliefs with the minor children. (T53-61). However, the district court did not expressly bar Jerome from visitation. The court made no finding that he was unsafe, inappropriate, or unable to be around the minor children. Instead, the burden is on Michelle as the party with court-ordered visitation to ensure that no one violates the rules that she herself is bound by. Michelle would be unwise to allow third parties to behave in ways on her visitation that she herself is not allowed to do by the court, and the district court clearly trusted that Michelle would follow the rules and put the children first. Jerome also testified that he would be respectful of Toi's requests and the court's orders, so there is simply no evidence that his mere presence at visitations is against the best interests of the minor children. (460:8-11, 465:16-23).

C. **The District Court Did Not Err in Finding that Appellee Michelle Biegler Met Her Burden of Proof.**

It is clear from the arguments made above that Michelle met her burden of proof of clear and convincing evidence. Appellant insinuates that the burden of proof is much higher than it is, and relies on cases where visitation was not awarded to the grandparents to allege that the Bieglers similarly did not meet the burden of proof here.

The *Eberspacher* case is notably different for two important reasons. One, the Supreme Court relied on the trial court's assessment of the witnesses in reaching a decision that a visitation order in that case was *not* in the best interests of the minor children. *Eberspacher v. Hulme*, 248 Neb. 202, 208-209 (1995). It is clear that the weight afforded to the trier of fact is substantial, and in the Bieglers'

case, the trial court judge did agree that it would be in the best interests of the minor children for this order to be entered. Two, the grandparents in Eberspacher were already afforded contact and a relationship with the minor children through their son's visitation. *Id*. at 208-209. It would make sense for the trial court to deem that sufficient contact for the grandparents, because the ability to continue the relationship was there, and the mother's parenting time with the children would be even more limited by two separate orders for visitation. It appears in *Eberspacher* that the father was attempting a run-around to get additional visitation with his children and away from their mother. In this case, that is obviously not the situation, given that Dustan is deceased. The Biegler family have zero contact with the minor children if Toi says as much, which is exactly what happened leading up to trial, by Toi's own admission, and then continued throughout the trial as punishment for bringing the litigation. (17:7-25, 18:1-25, 19:1-13, 386:7-25, 626:6-15, E8).

D. The District Court Did Not Err in the Entry of, nor the Contents of, its Order or Visitation Schedule.

The district court was correct to enter an order for visitation between Michelle and the minor children, as the evidence in this matter was overwhelmingly supportive of a such an order as being in the best interests of the minor children. Nebraska courts have held time and again that the "overriding and paramount consideration in determining grandparent visitation rights is the best interests of the children." *Beal v. Endsley*, 3 Neb. App. 589, 529 N.W.2d 125 (1995). It is therefore crucial that the Court enter an order mandating that the relationship with Michelle Biegler continue, as she is the only family member with legal standing to bring such an action and is thus responsible for facilitating the contact with the rest of Dustan's family. The ability for the extended family to have visitation with the minor children through the grandparents was also part of the basis for the court's finding in *Gatzemeyer* that a visitation order would be in the minor children's best interests. *Gatzemeyer v. Knihal*, 25 Neb. App. 897 at 907 (2018) ("As previously discussed, the Gatzemeyers have always been involved in the children's lives and they have spent time together, with and without other family members, on a regular, consistent basis. The evidence shows that the Gatzemeyers and the children have an established, loving relationship that is beneficial to the children. The relationship also allows Michael and Maya to

stay connected with other paternal family members, which may not happen without visits with the Gatzemeyers.").

The very purpose of a court order is to enforce action where none would otherwise occur. Here, it is extremely clear that Toi had no intentions of allowing anyone in Dustan's family to have contact with the minor children after she became upset about the estate. (17:7-25, 18:1-25, 19:1-13, 386:7-25, 626:6-15, E39). The claim that somehow the district court did not consider how the visitation itself would impact Toi's parent-child relationship, and only the schedule, is just trivial. For any schedule to be in the best interests of the minor children, it would have to include what the schedule is *for – which is the visitation itself*. The same is true for Appellant's assertion that somehow an order limiting Michelle from saying certain things to the children is not the same as limiting her from saying certain things in the presence of the children. Michelle Biegler has a lot to lose in the way of her very right to grandparent visitation should she believe such a fine line would protect her in a contempt action. The court, having found that she would not interfere with the parent-child relationship, clearly believed that Michelle was capable of understanding what the court does not want to occur during visitation, and that she would abide by those rules. And, once again, it seems necessary to point out that Michelle and Jerome both testified multiple times that they have no intentions of pushing their beliefs onto the children. Counsel for 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. The district court was correct to not assume that Michelle Biegler thinks and acts exactly the same way as her husband, or that she was untruthful in her testimony that she would not expose the children to anything that was objected to by Toi.

CONCLUSION

For the above stated reasons, the District Court did not abuse its discretion in entering an order for grandparent visitation for Michelle Biegler. What Appellant seems to have insensitively forgotten is that she is not the only one who lost someone she loved when Dustan Biegler died. Jerome and Michelle Biegler lost their son, and Owen and Emma Biegler lost their father. Now, for inexplicable reasons, Appellant is asking this Court to allow her to unilaterally

take not just their grandparents, but Dustan's entire extended family away from the children too.

Appellees respectfully request that this Court affirm the decision of the district court, as it is clearly in the best interests of Dustan's minor children, Owen and Emma Biegler.

Respectfully submitted,

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Certificate of Compliance

Comes now Linsey A. Camplin, the undersigned attorney of record, and hereby certifies the following in compliance with Neb. Ct. R. § 2-103(C)(4): Name/version of word processing software: Microsoft® Word for Microsoft 365 MSO (Version 2502 Build 16.0.18526.20168) 64-bit; Typeface requirements compliant with Neb. Ct. R. § 2-103(A); Total number of words excluding certificate: 7,203.

By: _/s/ Linsey A. Camplin_____
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Certificate of Service

I hereby certify that on Tuesday, August 26, 2025 I provided a true and correct copy of this *Brief of Appellees Bieglers* to the following:

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