

**Case No. A-24-819  
IN THE NEBRASKA COURT OF APPEALS**

**STATE OF NEBRASKA on behalf of PAUL B. OKENG and  
NICKOLAS A. OKENG, Plaintiff/Appellee**

**vs.**

**SAMUEL OKENG, Defendant/Appellee/Cross-Appellant**

**FANNIE B. WOTOE, Third-Party Defendant/Appellant/Cross-  
Appellee**

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**APPEAL FROM THE DISTRICT COURT OF LANCASTER  
COUNTY, NEBRASKA**

**Honorable Matthew O. Mellor, District Court Judge**

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**Brief of Appellee/Brief on Cross-Appeal for Samuel Okeng**

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## TABLE OF CONTENTS

<b>TABLE OF AUTHORITIES.....</b>	<b>3</b>
<b>I. BASIS OF JURISDICTION.....</b>	<b>4</b>
<b>I. NATURE OF CASE.....</b>	<b>4</b>
<b>II. ISSUES TRIED IN THE COURT BELOW.....</b>	<b>4</b>
<b>III. HOW THE ISSUES WERE DECIDED.....</b>	<b>4</b>
<b>IV. SCOPE OF REVIEW.....</b>	<b>5</b>
<b>ASSIGNMENTS OF ERROR ON CROSS APPEAL.....</b>	<b>5</b>
<b>PROPOSITIONS OF LAW.....</b>	<b>5</b>
<b>STATEMENT OF FACTS.....</b>	<b>8</b>
<b>ARGUMENT ON REPLY BRIEF.....</b>	<b>10</b>
<b>I. ARGUMENT ON APPELLANTS FIRST ASSIGNMENT OF ERROR.....</b>	<b>10</b>
<b>II. ARGUMENT ON APPELLANT'S SECOND ASSIGNMENT OF ERROR.....</b>	<b>14</b>
<b>III. ARGUMENT ON APPELANT'S THIRD ASSIGNMENT OF ERROR.....</b>	<b>16</b>
<b>SUMMARY OF ARGUMENT ON CROSS APPEAL.....</b>	<b>17</b>
<b>I. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING ATTORNEY FEES TO WOTOE TO BY PAID BY OKENG.....</b>	<b>17</b>
<b>CONCLUSION.....</b>	<b>18</b>

## TABLE OF AUTHORITIES

### Cases

<i>Albright v. Albright</i> , 2017 (WL 4406981(Ky.App. Oct. 6, 2017).....	16
<i>Burcham v. Burcham</i> , 24 Neb. App. 323, 886 N.W.2d 536 (2016)....	7,17
<i>Coleman v. Kahler</i> , 17 Neb. App. 518, 766 N.W.2d 142 (2009).....	7,17
<i>Cross v. Perreten</i> , 257 Neb. 776, 600 N.W.2d 780 (1999).....	5
<i>Ferguson v. Whible</i> , 865 N.Y.S.2d 156, 158 (N.Y.App. Dev. 3d Dept. 2008).....	15
<i>Hensen v. Carosella</i> , No. A-20-096, 2020 WL 6878566 (Neb. App. Nov. 24, 2020).....	16
<i>Korth v. Luther</i> , 304 Neb. 450, 485, 935 N.W.2d 220, 243 (2019).....	8,18
<i>Limbaugh v. Limbaugh</i> , 749 So. 12, 1244 (Miss. Ct. App. 1999).....	14
<i>Smith v. King</i> , 29 Neb.App. 152, 953 N.W.2d 258 (2020).....	6,11
<i>Schrag v. Spear</i> , 290 Neb. 98, 858 N.W.2d 865 (2015).....	5,6,7,10,11,13
<i>Thompson v. Thompson</i> , 24 Neb. App. 349, 887 N.W.2d 52 (2016).....	14
<i>Wennihan v. Wennihan</i> , 452 S.W.2d 723, 727 (Mo.App.W.Dist. 2015)	15

### Statutes

Neb. Rev. Stat. § 25-824.....	8,18
Neb. Rev. Stat. § 42-1412.....	17
Neb. Rev. Stat. §25-1911 et seq.....	4
Neb. Rev. Stat. §42-364(3) (Cum.Supp. 2014).....	6,11
Neb. Rev. Stat. §43-2923(6)(Reissue 2016).....	6,11,14

## **BASIS OF JURISDICTION**

Jurisdiction is proper in this Court pursuant to Neb. Rev. Stat. [§25-1911](#) et seq. providing for appellate review of a judgment rendered or final order made by the district court.

## **STATEMENT OF THE CASE**

### **I. NATURE OF THE CASE**

This is an appeal of the decisions of Judge Matthew O. Mellor of the District Court of Lancaster County, Nebraska entered on September 12, 2024 and October 4, 2024 after a trial requesting a finding of paternity, custody, a parenting plan, child support and expenses, and attorney fees. (T142-162 and T167-175). The State filed a Complaint seeking to establish paternity for the minor children and to establish child support. (T1-3). Samuel Okeng (“Okeng”) moved to add Fannie Wotoe (“Wotoe”) as a party and filed a counterclaim requesting joint legal and physical custody of the minor children and to establish a Parenting Plan. (T83-86). The Appellant filed a motion to alter or amend the Decree on September 18, 2024. (T83). The court entered an amended Decree on April 13, 2022. (T163). The court ruled on the motion to alter or amend on October 4, 2024. (T167) Appellant filed her notice of appeal and paid the appropriate docket fee and bond on November 1, 2024.

### **II. ISSUES TRIED IN THE COURT BELOW**

Okeng accepts Wotoe’s recitation of the Issues Tried Below.

### **III. HOW THE ISSUES WERE DECIDED**

Okeng accepts Wotoe’s recitation of How the Issues were Decided.

#### **IV. SCOPE OF REVIEW**

Child custody determinations are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015). An abuse of discretion occurs when a trial court bases its decision upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason and evidence. I judicial abuse of discretion requires that the reason or rulings of the trial court be clearly untenable insofar as they unfairly deprive a litigant of a substantial right and a just result. *Id.* In child custody cases, where the credible evidence is in conflict on a material issue of fact, the appellant court considers, and may give weight to, the fact that the trial judge heard and observed the witness and accepted on version of the facts rather than another. *Id.*

An award of attorneys' fees in a paternity action is reviewed de novo on the record to determine whether there has been an abuse of discretion by the trial judge. Absent such an abuse, the award will be affirmed. *Cross v. Perreten*, 257 Neb. 776, 600 N.W.2d 780 (1999).

#### **ASSIGNMENT OF ERROR ON CROSS APPEAL**

##### **I. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING ATTORNEY FEES TO WOTOE TO BE PAID BY OKENG.**

#### **PROPOSITIONS OF LAW**

- I. Child custody determinations are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015).
- II. An abuse of discretion occurs when a trial court bases its decision upon reasons that are untenable or unreasonable or

if its action is clearly against justice or conscience, reason and evidence. A judicial abuse of discretion requires that the reason or rulings of the trial court be clearly untenable insofar as they unfairly deprive a litigant of a substantial right and a just result. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015).

- III. In child custody cases, where the credible evidence is in conflict on a material issue of fact, the appellate court considers, and may give weight to, the fact that the trial judge heard and observed the witness and accepted on version of the facts rather than another. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015).
- IV. When deciding custody issues, the court's paramount concern is the child's best interests. *Smith v. King*, 29 Neb.App. 152, 953 N.W.2d 258 (2020).
- V. Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent. Neb. Rev. Stat. §42-364(3) (Cum.Supp. 2014)
- VI. Neb. Rev. Stat. §43-2923(6)(Reissue 2016) sets forth a non-exhaustive list of factors to be considered in determining the best interests of a child in regard to custody, including: (a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing; (b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning, (c) The general health, welfare, and social behavior of the minor

child; (d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903; and 6 (e) Credible evidence of child abuse or neglect or domestic intimate partner abuse. Neb. Rev. Stat. §43-2923(6)(Reissue 2016)

- VII. A court making a child custody determination may consider matters such as the moral fitness of the child's parents, including the parents' sexual conduct; respective environments offered by each parent; the emotional relationship between the child and parents; the age, sex, and health of the child and parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; and the parental capacity to provide physical care and satisfy the educational needs of the child. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015).
- VIII. As a general rule, attorney fees and expenses may be recovered in a civil action only where provided for by statute or when a recognized and accepted uniform course of procedure has been to allow recovery of attorney fees. *Coleman v. Kahler*, 17 Neb. App. 518, 766 N.W.2d 142 (2009).
- IX. Although attorney fees and costs are statutorily allowed in paternity and child support cases, customarily they are awarded only to the prevailing party or assessed against those who file frivolous suits. *Id.*
- X. And, an award of attorney fees depends on multiple factors that include the nature of the case, the services performed and results obtained, the earning capacity of the parties, the length of time required for preparation and presentation of the case, customary charges of the bar, and the general equities of the case. *Burcham v. Burcham*, 24 Neb. App. 323, 886 N.W.2d 536 (2016).

- XI. Frivolous for the purposes of § 25-824 is defined as being a legal position wholly without merit, that is, without rational argument based on law and evidence to support a litigant's position in the lawsuit. It connotes an improper motive or legal position so wholly without merit as to be ridiculous. Any doubt whether a legal position is frivolous or taken in bad faith should be resolved in favor of the one whose legal position is in question. *Korth v. Luther*, 304 Neb. 450, 485, 935 N.W.2d 220, 243 (2019):

### STATEMENT OF FACTS

The parties are the natural parents of Paul Okeng born in July, 2015 and Nickolas Okeng, born in 2019. (T142). The parties were involved in an on again/off again relationship from sometime in 2014-2019. (52:3-54:8). After Paul was born, Okeng joined the military and has had periods of time where he has been away from Nebraska and the children due to his military assignments. (53:1-8). Okeng has worked 2<sup>nd</sup> shift for the entire duration of this relationship. (54-13). During that period of time, Wotoe has always worked overnight shifts. (54:22-25). At the time the parties were in a relationship, they relied on Okeng's mother to provide care for the children. (55:15-17).

The parties ended their relationship around the time Nickolas was born. Since that time, Wotoe has controlled when Okeng has been able to see the children. (56:4-7). In December, 2019, Okeng returned to Nebraska from military trade school. At that time, Wotoe began withholding Paul from Okeng. (57:11-14). In fact, Okeng went at least a month without being able to have access to Paul. (57:13-15). Okeng made attempts to work out a parenting time arrangement for the children, however, Wotoe would not agree to do so. (58:14-23). Based on that, Okeng filed a Complaint to Establish Custody and a Parenting Plan requesting joint legal and physical custody of the minor children. (T32). Wotoe filed a Cross-Complaint asking for sole legal and physical custody of the minor children. (T83).



Trial was held on August 20, 2024 (T111-113). At trial, the Okeng testified regarding the difficulties he was having seeing the children. At the time of trial, Okeng and Wotoe had been sharing the joint legal custody of the children since January, 2024 and the arrangement had gone well. (63:1-5). Regardless, of this Order, Wotoe had continued to attempt to alienate Okeng from the children by taking actions such as changing her phone number. (63:10-15). Even though there was an Order for joint legal custody of the children, Wotoe did not provide Okeng with information about the children's medical appointments. (65:7-15). After the Court issued an Order awarding the parties joint legal custody, Wotoe put the children in therapy without telling Okeng. (67:2-5).

Okeng is in a long-term romantic relationship with Aketch Oloya. (20:11-23:3). They have been in a relationship for 5 years. (21:25-22:2). Okeng and Ms. Oloya reside in a home owned by Okeng. (20:16-17). Okeng has 2 children with Ms. Oloya. (23:4-18).

Okeng currently works at Molex and has had this employment for the last 2 years. (109:15-23). His employment hours are Monday to Friday from 2:30 p.m. to 11:45 p.m. (145:10-13). Furthermore, Samuel joined the Air National Guard in April, 2019. (50:12-21). Through these commitments, he has been deployed from Nebraska from April, 2019 to December 2019 (51:16-52:2) and from May, 2021 to March, 2022 (120:18-121:9). Okeng also has military training 2 weeks each summer and one weekend a month, in Nebraska where he returns home each night. (121:14-19).

Wotoe has one additional child and is married. Her husband lives in Texas. (174:16-19; 176:9-24). Wotoe had recently graduated and obtained her licensed practical nursing degree. (177:5-9). Wotoe's work schedule is from 11:00 p.m. to 7:00 a.m. (159:18-23). Wotoe has left the children in the care of a teen-ager without a car overnight while she was at work. (160:14-22).

At the conclusion of trial, Okeng requested that the Court award him week on/week off parenting time with the children. (Exhibit 32). Fannie requested that she be granted the primary physical custody of

the children. (Ex 1). The District Court entered a Decree of Paternity on September 12, 2024, finding that Okeng was the natural father of the minor children, awarding the parties the joint legal and physical custody of the children, and awarding parenting time on a week on/week off basis, ordering Wotoe to pay \$163 per month in child support and ordering Okeng to pay \$2,000 in Wotoe's attorney fees. (T142-162). On September 18, 2024, Wotoe filed a motion to alter or amend, requesting that the Court alter its custody, parenting time, and child support orders. (T163-166). After hearing on the Motion, the District Court entered an Order denying Wotoe's motion as it pertained to child custody and parenting time but modified its child support order so that Wotoe paid \$150 per month in child support for two children and \$94 per month when there was only one minor child. (T167-168). Wotoe timely filed this present appeal on November 1, 2024.

## **ARGUMENT**

### **I. ARGUMENT ON APPELLANTS FIRST ASSIGNMENT OF ERROR**

Child custody determinations are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015).

Wotoe argues that the District Court abused its discretion by awarding the parties joint physical custody of the minor children. An abuse of discretion occurs when a trial court bases its decision upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. A judicial abuse of discretion requires that the reason or rulings of the trial court be clearly untenable insofar as they unfairly deprive a litigant of a substantial right and a just result. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015). In child custody cases, where the credible evidence

is in conflict on a material issue of fact, the appellant court considers, and may give weight to, the fact that the trial judge heard and observed the witness and accepted one version of the facts rather than another. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015). . When deciding custody issues, the court's paramount concern is the child's best interests. *Smith v. King*, 29 Neb.App. 152, 953 N.W.2d 258 (2020).

Neb. Rev. Stat. §43-2923(6)(Reissue 2016) sets forth a non-exhaustive list of factors to be considered in determining the best interests of a child in regard to custody, including: (a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing; (b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning, (c) The general health, welfare, and social behavior of the minor child; (d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903; and 6 (e) Credible evidence of child abuse or neglect or domestic intimate partner abuse. Neb. Rev. Stat. §43-2923(6)(Reissue 2016).

Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent. Neb. Rev. Stat. §42-364(3) (Cum.Supp. 2014). It is clear from the case at hand there was a hearing in open court regarding for the trial court to determine if it was in the child's best interests for her physical custody to be placed jointly with the parties. (T20). The circumstances of this case make it clear that for the parties

to both have a beneficial relationship with the minor child, that joint physical custody is in the child's best interests.

When looking to the best interests of the child, a parenting plan must provide for a child's safety, emotional growth, health, stability, and physical care and regular and continuous school attendance and progress for school-age children, and that the child's parents remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families.

The children's safety, health and physical needs are not adequately met with Wotoe alone. The children's emotional growth will be best served by having both of their parents in their life equally, this factor weighs in favor of the parties being awarded the joint physical custody of the child. Even with the limitations provided by Wotoe and Okeng's military service, Okeng has remained an active and involved parent of the children. At trial, the Okeng testified that regardless of the temporary order granting the parties the joint legal and physical custody of the minor children, Wotoe had continued to attempt to alienate Okeng from the children by taking actions such as changing her phone number. (63:10-15). Even though there was an Order for joint legal custody of the children, Wotoe did not provide Okeng with information about the children's medical appointments. (65:7-15). After the Court issued an Order awarding the parties joint legal custody, Wotoe put the children in therapy without telling Okeng. (67:2-5). In her brief, Wotoe attempts to use the fact that she has taken active steps to alienate Okeng from the children a reason he should not have equal access to his children. She states he has not attended doctors' appointments, but also acknowledges that she did not tell him of the appointments. She states he did not attend educational meetings, but acknowledges that she has kept the meetings from him. It is clearly not in the best interests of the children for one parent to be kept out of the decision making for the children, yet she is advocating this Court to reward her for doing just that. She is arguing that since she has been the primary caretaker of the children, that she should automatically get physical custody of the

children. She is even asking the Court to enter a ruling that since Okeng has been away for periods of time due to military service that the Court should grant her primary custody of the children. Okeng submits to the Court that if a mother had joined the military and had been away from the children for an equal amount of time, this argument would never be made, and it is ludicrous to believe that a parent serving their country should be punished by not being awarded custody of their children on their return.

A court making a child custody determination may consider matters such as the moral fitness of the child's parents, including the parents' sexual conduct; respective environments offered by each parent; the emotional relationship between child and parents; the age, sex, and health of the child and parents; the effect on the child as the result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; and the parental capacity to provide physical care and satisfy the educational needs of the child. *Schrag v. Spear*, 290 Neb. 98, 858 N.W.2d 865 (2015). It is clear that when looking at all of these factors, it would be in the children's best interests for both parties to be equally involved in the children's lives.

Regardless of the fact that the parties were awarded the joint custody on a temporary basis, Wotoe continued to refuse to give the Okeng information regarding the legal decisions for the minor children as outlined above.

It was clear through the testimony that the parents struggled communicating with each other. This was not healthy for the children and would cause issues with the child since they love both parents. Based on this, it is clear from the evidence that it would be in the best interests of the minor children if both parties were equally responsible for the care and custody of the child so that neither parent had the upper hand. It is clear that is the only way for the children to maintain a healthy relationship with both parents.

The District Court was correct when it awarded the parties joint physical custody of the children. Okeng is at least equally equipped to provide a stable and loving home in which the children's health, safety,

and educational needs can be adequately met. This parenting plan provides for ample opportunity of parenting time for both parties. Overall, it is in the child's best interest that parties be awarded the joint physical custody of the minor children.

## **II. ARGUMENT ON APPELLANT'S SECOND ASSIGNMENT OF ERROR**

A trial court has discretion to set a reasonable parenting time schedule. The determination of reasonableness is made on a case-by-case basis. *Thompson v. Thompson*, 24 Neb. App. 349, 887 N.W.2d 52 (2016). Neb. Rev. Stat. §43-2923 provides that a parenting arrangement and parenting plan should provide for a child's safety, emotional growth, health, stability, and physical care.

In the case at hand, the District Court awarded equal week on/week off parenting time with the children. There was no credible evidence that this arrangement was not in the best interests of the children. Wotoe alleges that due to Okeng's work schedule, it is not best for the children to be in his care equally. This is a ludicrous statement. Okeng has always worked the same shift and has made arrangements to care for the children while they are in his care. Furthermore, Wotoe also works a shift that leaves the children in the care of another.

Wotoe alleges that Courts have "repeated found" that parents who have to wake their children up at odd hours should not be granted custody. It is important to note that the majority of the cases cited by Wotoe are from other jurisdictions than Nebraska. Furthermore, everyone can be distinguished from the case at hand. First, in *Limbaugh v. Limbaugh*, 749 So. 12, 1244 (Miss. Ct. App. 1999), the Court awarded the father custody after considering several factors. In this case, the question was not one of sole or joint custody, but which parent would provide for the best interests of the children. The Court considered the extent both parents participated in the lives of the children and which are able to care for the children. It is true that one of the factors that was considered was the Mother's inflexible work

scheduled. That said, that was not the only consideration, and not even noted to be the most important consideration. In fact, the conclusion of the trial court made it clear that the Court considered the lifestyle and the morals of each parent in raising two small children. Likewise, in *Ferguson v. Whible*, 865 N.Y.S.2d 156, 158 (N.Y.App. Dev. 3d Dept. 2008), is distinguishable. In this case, the parties had been awarded the joint custody of the children at the they had divorced, but the mother had filed for a modification to sole custody alleging that the parties' relationship and communication had deteriorated to the point that joint custody was no longer appropriate. Again, the court was determining which parent should be granted sole custody. The reason that joint custody was no longer appropriate had nothing to do with the Father's work schedule, but instead it was due to the fact that the father did not provide mother with a telephone number which frustrated communication between the parties and other incidents such as this. In this case, in determining which parent should be granted the sole custody, the court again considered several factors, one of which was the father's work schedule. Again, this was not the only consideration of the court, and again not even the most important one. Next, *Wennihan v. Wennihan*, 452 S.W.2d 723, 727 (Mo.App.W.Dist. 2015), is also distinguishable. Again, in this case, the Court was determining which parent should be awarded the sole legal and physical custody of the children. In this case, the Mother argues she should have been awarded custody because she was the primary caretaker, and she was a teacher and would be able to have the child when he was not in school. She argued that the father's occupation as a farmer kept him away from the child during the child's waking hours. Interestingly, all of these arguments seem to be consistent with the arguments of Wotoe. Ultimately, the Court considered many other factors in determining custody and ultimately found that the parties' work schedules alone were not outcome determinative and it was still in the child's best interests to have Father's home designated as the child's residence.

The cases that Wotoe cited that is most consistent with the case at hand are *Albright v. Albright*, 2017 (WL 4406981(Ky.App. Oct. 6, 2017) and *Hensen v. Carosella*, No. A-20-096, 2020 WL 6878566 (Neb. App. Nov. 24, 2020). In *Albright*, the trial court declined to give the father equal parenting time due to the father's work schedule which would necessitate the children having to wake up by 5:00 a.m. In this matter, the Appellant Court found that the Trial Court's order was within its discretion, and therefore there was no error in this finding. *Albright v. Albright*, 2017 (WL 4406981(Ky.App. Oct. 6, 2017). Likewise, in *Hensen*, the Appellate Court found that the trial court did not abuse its discretion in finding that the Mother should have custody due in part to Father's work schedule. *Hensen v. Carosella*, No. A-20-096, 2020 WL 6878566 (Neb. App. Nov. 24, 2020). That said, neither of these holdings equal a finding that a work schedule like Okeng's should prohibit him from having custody of the children. It seems that *Albright* and *Hensen* would likely hold that a finding as awarded in this case would also be within the Court's discretion and would not disturb such finding on appeal.

Therefore, it is clear that the Court did not abuse its discretion in awarding equal parenting time, and therefore we ask this Court to affirm the Parenting Plan awarded by the trial court.

### **III. ARGUMENT ON APPELLANT'S THIRD ASSIGNMENT OF ERROR**

The Trial Court did not abuse its discretion in awarding child support. The evidence was clear that Okeng had additional children that he was providing care for. There was also testimony that he was covering the minor children on his health insurance through his work. Both of these items are deductions in child support awards. Furthermore, it is clear that Wotoe's income will likely be increasing the next several months due to her graduation from school and passing her nursing boards. Therefore, Okeng requests that the Trial Court's child support order be affirmed.



## **SUMMARY OF ARGUMENT ON CROSS APPEAL**

In a civil action, attorney fees and expenses may only be recovered where provided for by statute. *Coleman v. Kahler*, 17 Neb. App. 518, 766 N.W.2d 142 (2009) That the Neb. Rev. Stat. § 42-1412 does provide that the court in its discretion can award attorney fees to be paid against the father in the manner specified in § 43-512.04. While attorney fees are allowed in paternity and child support cases, customarily they are awarded only to the prevailing party or assessed against those who file frivolous suits. *Id.* Due to the findings that Okeng and Wotoe are both fit and proper persons to have the joint legal and physical custody of the children, and that the Court awarded the parties the joint legal and physical custody of the children, it is clear that the court did not determine Okeng's Complaint to modify frivolous and therefore, the Court abused its discretion in awarding Wotoe attorney fees. (T142)

## **ARGUMENT ON CROSS APPEAL**

### **I. THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING ATTORNEY FEES TO WOTOE TO BE PAID BY OKENG**

As a general rule, attorney fees and expenses may be recovered in a civil action only where provided for by statute or when a recognized and accepted uniform course of procedure has been to allow recovery of attorney fees. *Coleman v. Kahler*, 17 Neb. App. 518, 766 N.W.2d 142 (2009). Although attorney fees and costs are statutorily allowed in paternity and child support cases, customarily they are awarded only to the prevailing party or assessed against those who file frivolous suits. *Id.* And, an award of attorney fees depends on multiple factors that include the nature of the case, the services performed and results obtained, the earning capacity of the parties, the length of time required for preparation and presentation of the case, customary charges of the bar, and the general equities of the case. *Burcham v. Burcham*, 24 Neb. App. 323, 886 N.W.2d 536 (2016).

As the Nebraska Supreme Court explained in *Korth v. Luther*, 304 Neb. 450, 485, 935 N.W.2d 220, 243 (2019):

Frivolous for the purposes of § 25-824 is defined as being a legal position wholly without merit, that is, without rational argument based on law and evidence to support a litigant's position in the lawsuit. It connotes an improper motive or legal position so wholly without merit as to be ridiculous. Any doubt whether a legal position is frivolous or taken in bad faith should be resolved in favor of the one whose legal position is in question.

In the case at hand, Okeng filed an Answer and Counter-Claim alleging that the parents are both fit and proper persons to have the care, custody, and control of the minor children and requesting the joint legal and physical custody of the children. (T28). Wotoe filed an Answer and Counter Claim requesting that she be awarded the sole legal and physical custody of the minor children. (T83). After trial, the Court determined that it was in the children's best interests as outlined above, that the parties be awarded the joint legal and physical custody. (T142). Therefore, it is clear that Wotoe was not the prevailing party and Okeng's Complaint was not frivolous. Therefore, the Court abused its discretion in awarding attorney fees to be paid to Wotoe by Okeng.

## CONCLUSION

The trial court correctly found that it was in the children's best interests for the joint legal and physical custody to be awarded to the parties. Therefore, we respectfully request that the decision of the trial court be affirmed. We further request the court find that the trial court abused its discretion in awarding Wotoe attorney fees to be paid by Okeng.

Respectfully Submitted,

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**CERTIFICATE**

The undersigned hereby certifies that the preceding brief complies with the word count as specified in [Nebraska Court Rules 2-103\(3\)\(a\)](#).

Word Count: 5475

Word Processing Software: Microsoft Office Home and Business 2016  
This brief complies with the Typeface and Size Requirements; Century Schoolbook Size 12.

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# Certificate of Service

I hereby certify that on Monday, April 21, 2025 I provided a true and correct copy of this *Brief of Appellee With Cross Appeal* to the following:

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