

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

MEREDITH V. MEREDITH

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DAWN L. MEREDITH, NOW KNOWN AS DAWN L. BRINDLE, APPELLEE,

v.

KENNY D. MEREDITH, APPELLANT.

Filed September 8, 2026. No. A-25-676.

Appeal from the District Court for Dawson County: CINDY R. VOLKMER, Judge. Affirmed.
Chevas Shaw, of Shaw Law, L.L.C., for appellant.
Mark T. Bestul of Legal Aid of Nebraska, for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

FREEMAN, Judge.

I. INTRODUCTION

Kenny D. Meredith appeals from the decree entered by the district court for Dawson County, dissolving his marriage to Dawn L. Meredith, now known as Dawn L. Brindle. Kenny argues that the district court erred in its award of primary physical custody and alimony. For the reasons explained below, we affirm.

II. BACKGROUND

Kenny and Dawn were married on November 14, 2012. During their marriage, the parties had one child, Ryley, born in May 2013. Dawn entered the marriage with five children who were not made part of the proceedings. Dawn filed her complaint for dissolution of marriage on February 23, 2024. At the time of filing, both parties lived in Cozad, Nebraska, but in separate residences.

1. PROTECTION ORDER

Prior to filing for dissolution of marriage, Dawn and Ryley were granted an ex parte domestic abuse protection order against Kenny on January 26, 2024. On February 26, the district court issued a modified protection order, which stated that Kenny did not contest the protection order but requested visitation with Ryley. The parties agreed to visitation with communication regarding the visits to go through individuals approved by Dawn. On May 23, after a hearing, the district court again amended the domestic abuse protection order after the parties agreed to use a parenting app to communicate about Ryley. On August 7, Dawn's new Kearney address was added to the protection order.

In December 2024, the district court renewed the domestic abuse protection order against Kenny upon Dawn's application until January 26, 2026. At a hearing on the renewal held at Kenny's request, the court maintained the protection order for Dawn but removed Ryley. The court considered that the serious allegations made by Dawn only occurred 16 months prior to the hearing. Her allegations were that Kenny had hit her on the head with his fist and that she received bruises on her arms, chest, and neck. Later, Kenny sent Dawn harassing, intimidating, and threatening messages. The court further determined the evidence was insufficient as to Ryley.

2. TEMPORARY ORDERS

Throughout the case, several temporary orders were issued. Pursuant to affidavits submitted by the parties, the district court issued a temporary order for child custody and support on April 3, 2024. The district court granted Dawn sole legal and physical custody of Ryley. Kenny was granted visitation every other week from 5 p.m. on Friday until 5 p.m. on Sunday. The district court ordered Kenny to pay Dawn \$558 a month for child support.

On April 16, 2024, the parties stipulated to a new temporary order. The parties agreed to joint legal and physical custody of Ryley and that Kenny would pay \$101 a month for child support. Kenny would receive parenting time on his days off from work according to an April through May calendar included in the order, which usually consisted of two overnights during the week and parenting time every other weekend.

On May 23, 2024, the parties presented testimony on how temporary custody should be ordered beginning in June after the calendar concluded for the previous temporary order. On June 21, the district court issued an amended temporary order continuing joint legal and physical custody with parenting time coinciding with Kenny's work schedule. Child support was ordered to remain as previously stipulated to in the April 16 order.

On July 10, 2024, the district court denied Dawn's motion for temporary orders of custody and visitation and reiterated that the June 21 order governed temporary matters.

On September 19, 2024, Kenny filed a motion for temporary matters, claiming that Dawn had enrolled Ryley in school in Kearney, Nebraska, about one hour from Cozad. Kenny requested that Ryley reside with him.

On October 15, 2024, the district court issued an order on temporary matters, which stated that a hearing was held on October 10, and that arguments were made by counsel. However, our bill of exceptions indicates that no hearing was held on that date and no recording was made.

According to the district court's order, it reviewed the affidavits of the parties. Dawn claimed that Ryley was doing well in Kearney. Because the final hearing was approximately 1

month away from the date of the order and because it was not in Ryley's best interest to change his physical placement, the district court denied Kenny's motion for temporary matters. The district court ordered that the June 21 order remain in effect regarding custody and child support; however, Kenny's parenting time was shortened to every other weekend coinciding with his work schedule.

This temporary order remained in effect during the 2024-2025 school year. Trial was held on May 29, 2025. On June 4, in the interim before the final decree, the parties submitted a stipulation that granted Kenny extended parenting time weekends in June and the entire month of July. The district court granted the stipulation on June 9.

3. PRIMARY PHYSICAL CUSTODY

At trial, Dawn and Kenny both requested sole custody of Ryley. The district court heard and received the following evidence.

(a) Dawn's Testimony

Dawn described her move to Kearney in June 2024 and the history of Ryley's medical and educational needs. Ryley has received medical care in Kearney for several years, even while the parties still lived in Cozad. She stated that Cozad did not offer the specialized medical care that Ryley needed. Ryley is currently in speech and occupational therapy and attends counseling.

Since preschool, Ryley attended Cozad Community Schools (Cozad Schools). He had an Individual Education Program (IEP) through Cozad and had multidisciplinary team evaluations completed. During his last year in the Cozad school system, he was having extreme behavioral outbursts. Dawn believed that the Cozad school system offered limited services for Ryley's educational needs. She also claimed that her son, Izac, almost failed high school because the Cozad school system took Izac off his IEP.

She eventually filed a complaint with Cozad Schools on March 2, 2022, that led to an investigation. The investigation was completed on April 28; however, for many of the allegations, no corrective action was required by the school district except to ensure that dates for progress reports were provided to the parents. On March 25, when Ryley was in second grade, both Dawn and Kenny signed a revocation of consent for special education and related services for Ryley in the Cozad school system.

Ryley was removed from Cozad Schools and homeschooled because it was "the safest and the best solution at the time." Dawn became certified and approved through the Department of Education as a homeschool parent. Though Kenny assisted with homeschooling, Dawn was the primary teacher as she did not work outside the home. Ryley was homeschooled for his third and fourth grade years.

Ryley was behind in school. While he had just finished his fifth grade year, he was academically on a second or third grade level. Dawn stated that she was unable to provide for Ryley's needs through homeschooling.

She believed that Kearney had a better school system than Cozad and enrolled him in the Kearney school system. Prior to attending school, Dawn participated in the creation of an IEP for Ryley to follow at Kearney. Kearney accommodated Ryley's needs and worked with him to adjust

to going back to public school. Ryley started on a part-time basis and worked toward attending school full-time.

Dawn stated that Ryley adjusted “really well” into the Kearney school system and is currently on a good path for his education. If awarded custody, she would continue Ryley in the Kearney school system. She believed that it would be detrimental to Ryley to be removed from the Kearney school system and that reentering the Cozad school system would not be in Ryley’s best interest.

(b) Kenny’s Testimony

Kenny testified that prior to Dawn moving to Kearney, Ryley had always lived in Cozad. Ryley had friends in Cozad and participated in extracurricular activities, such as Cub Scouts. He believed that Ryley would have a more stable environment if he stayed with Kenny in Cozad than if he stayed with Dawn. Ryley had also previously attended counseling in Lexington, Nebraska, near Cozad, for about a year before receiving counseling in Kearney. Kenny would be willing to continue to take Ryley to the therapy that he receives in Kearney.

Kenny believed that the Kearney school was too big for Ryley and that the school in Cozad was adequate for Ryley’s needs. He did not agree with filing a complaint with Cozad Schools that led to the investigation and did not agree with pulling Ryley out of Cozad Schools. He also stated that he was forced to sign the revocation of consent for Ryley’s special education at Cozad. Kenny clarified that it was not until one month after Ryley was pulled from school, after having received a truancy letter, that Ryley became homeschooled. If he was awarded custody of Ryley, he would place Ryley back into the Cozad school system.

Kenny also described the parties’ parenting styles. He stated that Dawn would scream and be very strict with the children, but she was never physical. His style was to talk to the children and explain why certain behavior was not appropriate.

Even though Dawn was not physical with the children, Kenny stated that she was physical with him. He described several instances where Dawn hit him with objects such as a knife, screwdriver, and clothes.

(c) Adult Children’s Testimony

Two of Dawn’s adult children, Jayden and Izac, testified for Kenny. Jayden described Dawn as a loving and kind mother. He confirmed that Dawn was physical with Kenny, but never with the children. Jayden believed that Ryley should reside in Cozad because more of his family lived there but agreed that Kearney probably had a better school system.

Izac described Dawn as uncontrollable and unpredictable. He also confirmed that Dawn was physical with Kenny, but never with the children. Izac believed that Ryley should reside with Kenny because he is financially stable, responsible, a good parent, and would let Dawn see Ryley whenever Ryley wanted.

4. ALIMONY

During trial, a child support worksheet created by Kenny’s counsel was received by the district court. It listed Dawn’s net monthly income at \$2,881.79 and Kenny’s net monthly income at \$3,768.61. The parties presented the following testimony regarding Dawn’s request for alimony.

(a) Dawn's Testimony

Throughout the marriage and even prior to the marriage, Dawn was a homemaker. She has been a homemaker for 30 years. She stated that she primarily took care of Ryley's educational and medical needs, such as being responsible for getting Ryley to his appointments, due to Kenny's work schedule. She testified that Kenny is currently working 12-hour shifts at Nebraska Plastics.

During the marriage, she took care of the children, took care of the house, handled paying the bills, and sold antiques while at home to contribute to the income. She is currently receiving \$1,000 per month from her grandmother's trust.

Dawn went to community college for a year but did not finish a degree. She is in job training through "Voc Rehab" and hopes to start working as soon as possible.

(b) Kenny's Testimony

Kenny stated that Dawn had worked prior to their marriage. He believed that Dawn worked at a nursing home doing laundry and at a motel cleaning rooms. He was not aware of any reason why Dawn was incapable of getting another entry level job.

5. POST-TRIAL PROCEEDINGS

On June 5, 2025, the parties filed a stipulation to reopen evidence, which was approved by the district court on June 9. The evidence submitted indicated that an action was taken against Dawn for late rent payments at her residence in Kearney. An agreement was reached with the rental company that Dawn would vacate the premises by June 30. The evidence also included an action filed against Dawn in Buffalo County on May 22, for third degree assault and disturbing the peace.

6. DISTRICT COURT'S ORDER

The district court entered a decree of dissolution of marriage on August 5, 2025. The district court found that both Dawn and Kenny were fit and proper persons to be involved in the parenting of Ryley. The district court granted both parents joint legal custody; however, because of the distance between the parties' homes, the district court determined that joint physical custody was untenable and granted Dawn primary physical custody of Ryley.

Kenny was granted parenting time every other weekend during the school year and 6 weeks of parenting time during the summer. Kenny was ordered to pay \$557 a month for child support and \$250 a month in alimony for 60 months.

Kenny appeals.

III. ASSIGNMENTS OF ERROR

Kenny assigns, restated, that the district court erred in its award of (1) primary physical custody and (2) alimony.

IV. STANDARD OF REVIEW

In an action for the dissolution of marriage, an appellate court reviews de novo on the record the trial court's determinations of custody, child support, property division, alimony, and attorney fees; these determinations, however, are initially entrusted to the trial court's discretion

and will normally be affirmed absent an abuse of that discretion. *Backhaus v. Backhaus*, 318 Neb. 891, 20 N.W.3d 81 (2025). A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition. *Id.* 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 another. *Id.*

V. ANALYSIS

1. PHYSICAL CUSTODY

Kenny assigns that the district court abused its discretion by awarding Dawn primary physical custody of Ryley. Kenny argues that there was no evidence that he was unfit to share joint physical custody, the district court heard no testimony that would support an award of primary physical custody to Dawn, the temporary order granting joint physical custody should have been maintained, and the best interests of Ryley support that Kenny should be awarded primary physical custody or at least joint physical custody.

First, Kenny's argument that there was no evidence that he was unfit is supported by the record. In fact, the district court found that both parties were fit and proper parents.

Second, there was evidence that supported an award of primary physical custody to Dawn. Dawn has been primarily responsible for taking Ryley to appointments and becoming certified as a homeschool parent. Her son, Jayden, described Dawn as loving and kind, and multiple parties confirmed that Dawn was never physical with the children. Kenny even testified that Ryley loved spending time with both parents.

Dawn and Jayden testified that Kearney was a better school system than Cozad. Dawn believed that Ryley was doing very well at Kearney, and it would be determinantal to Ryley if he was removed from the school district.

Third, Kenny argues that the parties temporarily followed a joint physical custody arrangement for several months without incident, and the district court should have ordered a return to that arrangement. However, this temporary order was entered prior to Dawn and Ryley's move to Kearney. We agree with the district court that the 1-hour difference between the parties makes a joint physical custody arrangement untenable. Regardless of any temporary order, the paramount consideration in determining child custody is the best interests of the child, as discussed below. See *Scott v. Scott*, 319 Neb. 877, 25 N.W.3d 439 (2025).

Lastly, we will review the best interests of Ryley regarding physical custody. When both parents are found to be fit, the inquiry for the court is the best interests of the children. *Maska v. Maska*, 274 Neb. 629, 742 N.W.2d 492 (2007).

Neb. Rev. Stat. § 43-2923 (Reissue 2016) of Nebraska's Parenting Act sets forth a nonexhaustive list of factors to be considered in determining the best interests of a child in regard to custody. *Munsell v. Munsell*, 321 Neb. 363, 34 N.W.3d 413 (2026).

Section 43-2923(6) states:

In determining custody and parenting arrangements, the court shall consider the best interests of the minor child, which shall include, but not be limited to, consideration of the foregoing factors and:

(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

(e) Credible evidence of child abuse or neglect or domestic intimate partner abuse. For purposes of this subdivision, the definitions in section 43-2922 shall be used.

In addition to the “best interests” factors listed in § 43-2923, a court making a child custody determination may also 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. *Munsell v. Munsell*, *supra*.

In our review of the record, we cannot say the district court abused its discretion in concluding that it was in Ryley’s best interest for Dawn to have primary physical custody. In arguing otherwise, Kenny points to the evidence of Dawn’s violence toward him, instability, and violations of court orders and of Dawn lying under oath about her housing. He also points to the evidence of his stability and how Ryley is more familiar with Cozad.

The district court heard all of this evidence and also heard evidence favorable to Dawn, as discussed above. As stated, 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 another. See *Backhaus v. Backhaus*, 318 Neb. 891, 20 N.W.3d 81 (2025).

The district court’s award of primary physical custody to Dawn is not clearly untenable. There was evidence to support that both parties were fit and proper parents. However, due to the distance between the parties, joint physical custody was not in Ryley’s best interest. Therefore, the district court did not err.

2. ALIMONY

Kenny argues that the district court erred in its award of alimony.

Pursuant to Neb. Rev. Stat. § 42-365 (Reissue 2016):

When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other and division of property as may be reasonable, having regard for the circumstances of the parties, duration of the marriage, a history of the contributions to the marriage by each party, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities,

and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party.

In addition to the specific criteria listed in § 42-365, a court should consider the income and earning capacity of each party and the general equities of the situation. *Scott v. Scott*, 319 Neb. 877, 25 N.W.3d 439 (2025). The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances make it appropriate. *Id.*

In reviewing an alimony award, an appellate court does not determine whether it would have awarded the same amount of alimony as did the trial court, but whether the trial court's award is untenable such as to deprive a party of a substantial right or a just result. *Id.* The ultimate criterion is one of reasonableness. *Id.* An appellate court is not inclined to disturb the trial court's award of alimony unless it is patently unfair on the record. *Id.*

Kenny argues that because the district court did not have evidence to consider all the factors, the alimony award was unreasonable. Specifically, the district court "received no testimony of the circumstances of the parties," and the district court was unaware of the expenses of the parties. However, even if this information was not provided, these are only some of the factors in § 42-365 that the district court considers.

The district court found that the duration of the marriage and Dawn's ability to engage in gainful employment without interfering with Ryley's interests supported an award of alimony. Additionally, even though no evidence was provided on the expenses of the parties, the district court was informed that Kenny continued to pay all expenses related to the marital home, even when he was temporarily moved out at the beginning of the parties' separation. Kenny does not argue that these findings were made in error.

We agree that an award of \$250 a month in alimony for 60 months is not patently unfair on the record for a homemaker of 30 years who is making efforts to obtain a job in the near future, and who has been the primary caregiver for the minor child for all of his life. Therefore, the district court did not err in its award of alimony.

VI. CONCLUSION

We conclude that the district court did not abuse its discretion in its award of primary physical custody and alimony.

AFFIRMED.