IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

LOPEZ V. LOPEZ

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RAFAEL E. LOPEZ, APPELLEE,

V.

AMY O. LOPEZ, APPELLANT.

Filed November 17, 2026. No. A-25-987.

Appeal from the District Court for Platte County: JASON S. DOELE, Judge. Affirmed.

William J. Neiman, of Neiman Law Office, for appellant.

Kathleen Koenig Rockey and Garrett M. Adams, of Copple, Rockey, Schlecht & Mason, P.C., L.L.O., for appellee.

RIEDMANN, Chief Judge, and BISHOP and WELCH, Judges.

BISHOP, Judge.

I. INTRODUCTION

Amy O. Lopez appeals from the decree entered by the Platte County District Court that dissolved her marriage to Rafael E. Lopez, divided marital assets and debts, and awarded the parties joint legal and physical custody of their two minor children. In this appeal, Amy challenges only the district court's award of joint physical custody, arguing such arrangement is structurally unworkable and contrary to the children's best interests because of the 62-mile distance between the parties' homes. Although the court expressed some concerns regarding the distance, it nevertheless found other factors more persuasive when making its decision to award joint physical custody despite the children's long commute to school a couple days per week. Under an abuse of discretion standard of review, we cannot say that the district court's decision was untenable; we therefore affirm.

II. BACKGROUND

Amy and Rafael were married in 2017 and lived together in Columbus, Nebraska. They had two children, Eliana, born in 2017, and Liam, born in 2020. The parties separated in the summer of 2024. Shortly thereafter, Rafael moved into an apartment in Columbus, and Amy remained at the marital home. Prior to the commencement of dissolution proceedings, the parties operated under an informal parenting arrangement. Rafael watched the children after school on Mondays and Tuesdays until around 8 or 9 p.m. while Amy worked at a "part time job." Amy had the children on Wednesdays and Thursdays. The parties alternated parenting time each weekend.

On January 7, 2025, Rafael filed a complaint for dissolution of marriage. Relevant to this appeal, Rafael requested that the parties be awarded joint legal and physical custody of their children. Amy subsequently filed an "Answer and Cross-Complaint," which we will refer to as her answer and counterclaim. See Neb. Ct. R. Pldg. § 6-1107(a) (rev. 2025) (permitted pleadings). In her counterclaim, Amy sought "permanent care, custody, and control" of the children, "subject to [Rafael's] rights of reasonable parenting time."

On February 5, 2025, the district court entered a "Stipulated Temporary Order," awarding the parties temporary joint legal and physical custody of the children. The terms of the order were similar to the parties' informal parenting arrangement described above, except that Rafael's parenting time on Mondays and Tuesdays included keeping the children overnight.

At some point after the temporary custody order was entered, Rafael relocated from Columbus to Grand Island, Nebraska.

1. TRIAL

A trial on Rafael's complaint and Amy's counterclaim was held on November 24, 2025. Both parties testified and several exbibits were received as evidence. We set forth the evidence relevant to the issue of physical custody.

(a) Proposed Parenting Plans

At trial, each party submitted a proposed parenting plan to the district court. Both proposals called for an award of joint legal custody. However, the parties disagreed as to the issues of physical custody and parenting time.

Rafael's proposal provided for an award of joint physical custody. Parenting time during the school year under his plan mirrored the terms of the temporary custody order. Rafael would exercise parenting time on Mondays and Tuesdays, Amy would exercise parenting time on Wednesdays and Thursdays, and the parties would alternate custody on the weekends. Parenting time would switch to a "week-on/week-off" schedule at the beginning of summer break. Rafael testified that his proposal was in the children's best interests because it would allow them to spend "quality time" with both parents. He maintained that he had a strong relationship with the children. Rafael agreed with his counsel that he and Amy split parenting responsibilities "50-50" prior to their separation.

Amy requested sole physical custody of the children at trial. Her proposed parenting plan afforded Rafael parenting time "[e]very other weekend," beginning on Friday nights and concluding on Sunday evenings. This arrangement would remain in effect until the "second Sunday in July," so the children could participate in summer activities. At that time, the children

would "spend one week with [Amy] followed by one week with [Rafael]" until the children started school in the fall. Amy admitted at trial that Rafael would only have 2 full weeks of summer parenting time under her proposal.

Holiday parenting time under both plans alternated on a rotating basis.

The parties' disagreement over physical custody largely centered upon three topics: (1) the distance between Rafael's Grand Island residence and the children's school in Columbus, (2) the parties' inability to agree on extracurricular activities for the children, and (3) the parties' willingness to effectively communicate and coparent.

(b) Children's Commute to School

The children attended a parochial school in Columbus. At the time of trial, Eliana was in the second grade, and Liam was in preschool. Amy worked at the children's school as the daycare director and a preschool teacher. Both parties agreed that the children should continue to attend school in Columbus.

Approximately 6 months before trial, Rafael relocated from Columbus to Grand Island. Neither party offered evidence explaining the reason for the move. The distance between Rafael's Grand Island residence and the children's school in Columbus is 62 miles, about an hour's drive. It only took Amy "six minutes" to drive the children to school from her home in Columbus. Under the temporary custody order, Rafael was required to transport the children to and from school during his parenting time. Amy believed that the "long drive" between Grand Island and Columbus was "mentally and emotionally" damaging to the children. She thought it was in the children's best interests to "be in the same town where their school is" and maintain "a consistent routine."

Rafael was employed as a "case manager" for a nonprofit organization engaged in "refugee resettlement" of "[u]naccompanied minors." On Mondays and Tuesdays, Rafael "work[ed] from home," giving him flexibility to transport the children to school. However, his job duties required intrastate travel on Wednesdays, Thursdays, and some weekends. Rafael indicated that he was "able to flex [his] time." He was always on call for work emergencies, but such calls were rare.

Rafael testified about the children's routine under the temporary custody order. When he had the children on a school night, the children would go to bed at 8 p.m., wake up at 6 a.m. the next day, get ready for school, eat breakfast, and leave Grand Island at 6:35 a.m. According to Rafael, the children were "wide awake" during the drive to Columbus and tolerated the trip well; they listened to music, made conversation, and ate snacks. The children arrived at school around 7:30 a.m. Rafael would pick Liam up from preschool at 11 a.m. and take him to the library. While at the library, Rafael would work remotely in a "study room," and Liam would play with toys nearby. Rafael's "significant other" packed a meal for them to eat at the library. Around 2:30 p.m., Rafael and Liam would leave the library to either run errands or "walk around at the park." Rafael then picked up Eliana from school at 3:15 p.m. and transported the children back to Grand Island. Rafael indicated that he had never been late in getting the children to school or picking them up. When asked if he had noticed any "ill effects" on the children "associated with the driving," Rafael responded, "No."

Rafael offered as evidence Eliana's report cards from the 2024-2025 school year and from the "1st Quarter" of the 2025-2026 school year. Both report cards show Eliana is a strong student. Her teachers describe her as a natural leader in the classroom. Eliana missed 3 days of school

during the 2024-2025 term and had been absent 1 day during the 2025-2026 term, as of October 14, 2025. Amy testified that Liam does well in preschool.

Amy expressed concerns related to the children's commute between Grand Island and Columbus during Rafael's parenting time. She worried for the children's safety during the winter months, fearing that Rafael would make the drive to school in "bad weather." She also stated that Eliana had "complained" to her "a couple of times" about being tired at school. Amy testified that the children would be "able to sleep more" if she was awarded sole physical custody. On some days, Amy had to be at work by 7 a.m., and the children would get up around 6:25 a.m. According to Amy, this was usually on Mondays and Fridays. However, on Thursdays, she reported to work at 7:30 a.m., so the children could sleep until 6:45 or 6:50 a.m.

Amy also expressed worries regarding Rafael's ability to provide the children breakfast on school days. On cross-examination by Amy's counsel, Rafael admitted that a teacher told him during an October 2025 parent-teacher conference that Eliana came to school hungry. However, Rafael was adamant that he made the children breakfast in the mornings and that they both ate before leaving for school. He prepared foods like "pancakes," "eggs," and "milk." After learning that Eliana was coming to school hungry, Rafael packed the children "more snacks" in their backpacks. Rafael also testified to his mistaken belief that the school offered breakfast for students. When Rafael learned of his misunderstanding, he began offering Eliana "a juice to go and a snack."

(c) Children's Extracurricular Activities

Another issue at trial was the parties' inability to agree on extracurricular activities for the children. At the time of trial, Eliana was enrolled in gymnastics in Columbus. Liam was not involved in any activities. Amy testified that she had signed the children up for various activities, including ballet, tee ball, an after-school track program, and vacation Bible school. However, disputes arose over the children's enrollment in those activities because Rafael would not allow the children to participate during his parenting time. They did attend during Amy's parenting time. On cross-examination by Amy's counsel, Rafael explained that his actions were not "a punishment" or intended to "deprive" the children. Rather, he wanted the children "to do their activities with [him]." Rafael claimed that Amy signed the children up for activities without first getting his express approval. Rafael did indicate a willingness to allow participation "when there's communication with Amy."

Rafael's proposed parenting plan included a provision governing extracurriculars. It provided that "[n]either parent shall plan or schedule activities . . . during the time the minor children are to be with the other parent, without reasonable notice and consent in advance from the parent with whom the children are or will be residing at the relevant time." Consent to participate in activities was "not [to] be unreasonably withheld," and once an activity was agreed to, the parties were required to use their "best efforts to ensure the children's attendance." The children were limited to a single activity "per semester, so as to not unreasonably interfere with either parent's parenting time." Amy's proposed parenting plan gave her "final say" to choose activities and make other "major decision[s]" affecting the children in the event of an impasse. When asked why it was in the children's best interests for her to have final decisionmaking authority, Amy stated, "[T]his is not about what Rafael wants. It's about what the kids enjoy[.]"

(d) Parties' Communication and Coparenting

Both Rafael and Amy acknowledged that they had some difficulty communicating with each other during the pendency of the dissolution proceedings. Rafael testified that he and Amy primarily communicated via text messages. However, Amy said "[f]ew words" to Rafael when they spoke in person and sometimes ignored him in front of the children. Rafael agreed with his counsel that he would like the communication between him and Amy "to be better." Amy stated that she "only communicate[d] with [Rafael] in text messages or emails." She did not speak with him "[u]nless it ha[d] to do with the kids."

The parties also struggled to effectively coparent at times. Rafael took Eliana to see a counselor in Grand Island due to concerns that Eliana falsely accused Amy's "significant other" of inappropriate conduct. Rafael wanted Eliana to meet with the counselor to discuss the importance of being honest. Amy objected to Eliana seeing a counselor. She believed that "[t]here was no reason to put [Eliana] in counseling for lying." In a text message received by the district court, Amy wrote to Rafael: "If you want to take [Eliana] to a therapist, you're more than welcome to do so on your time and your dime. I talked to [Eliana] again one on one, and she maintains that she never said those things and that nothing has ever happened."

Rafael testified to another incident where he had dressed Liam in a T-shirt and Eliana in a dress for "picture day" at school. He later learned that Amy had caused the children to change and wear other clothes for their pictures. Amy admitted that she changed Liam into a "nice shirt" and gave Eliana the choice to change into a dress that she had brought to school. However, Amy testified that the children "do not come to school prepared with clothing" "[a] lot of times." In another incident, Rafael picked up the children in Columbus for Halloween. Upon arriving, Rafael noticed that Liam had "[v]omit" on his jacket and pants. Rafael asked Amy "if she [could] change Liam." Amy "ignored" him, and Rafael had to take Liam to a "truck stop" to clean him. Amy denied that Rafael ever requested assistance.

During her testimony, Amy indicated that she was primarily responsible for taking the children to doctor and dentist appointments. According to Amy, Rafael had only "taken [the children] once or twice to urgent care" after the parties' separation. However, on cross-examination by Rafael's counsel, Amy admitted that she scheduled the children's appointments "when they work[ed] for [her]" and did not notify Rafael.

2. District Court's Decree

On December 1, 2025, the district court entered a decree of dissolution of marriage. As for the issue of custody, the court found "both parties to be fit parents" and awarded them joint legal and physical custody of the children. It adopted Rafael's proposed parenting plan.

In reaching this determination, the district court observed that the parties' competing parenting plans "differ[ed] dramatically." It noted that Rafael's proposal was a "50/50 plan," whereas Amy's proposal was "more of a traditional alternating weekend plan with approximately two weeks of summer parenting time." The court indicated that it "share[d] the same concerns" as Amy regarding the children's commute between Grand Island and Columbus during the school year. However, it pointed to evidence of the children's "school performance," specifically Eliana's 2025-2026 "1st Quarter" report card. According to the court, this report card showed Eliana was "doing very well in school" and had "minimal absences and no tardies" since the transportation to

and from Grand Island commenced. Similarly, while the court acknowledged the disagreements over the children's activities, it explained that the "parties [were] just beginning the process of learning how to co-parent" and that Rafael's proposed parenting plan "provide[d] a framework" to resolve disputes over the children's extracurriculars. The court concluded that the "parties have demonstrated they can work together well enough for the benefit of their children."

Amy appeals.

III. ASSIGNMENT OF ERROR

Amy assigns as error that the district court abused its discretion in awarding joint physical custody "where the parties reside more than sixty miles apart and the parenting plan requires daily intercity commuting for school" and "despite a record of evidence of parental conflict and cooperation deficiencies." She also contends the court "failed to make sufficient findings demonstrating how the imposed custody structure satisfies Nebraska's statutory requirements of stability and regular school attendance."

IV. STANDARD OF REVIEW

In a marital dissolution action, an appellate court reviews the case de novo on the record to determine whether there has been an abuse of discretion by the trial judge. *Seemann v. Seemann*, 318 Neb. 643, 18 N.W.3d 118 (2025). This standard of review applies to the trial court's determinations regarding custody, child support, division of property, alimony, and attorney fees. *Id.*

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.*

V. ANALYSIS

When deciding custody issues, the court's paramount concern is the child's best interests. *Avery v. Whittle*, 34 Neb. App. 126, 33 N.W.3d 446 (2026). A Nebraska statute provides that 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 . . . :
>
> (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 . . . ; and
>
> (e) Credible evidence of child abuse or neglect or domestic intimate partner abuse.

Neb. Rev. Stat. § 43-2923(6) (Reissue 2016). A trial court must consider the above statutory factors, at a minimum, when making determinations about the best interests of a child, in the context of custody. *Avery v. Whittle, supra*.

Other relevant considerations include stability in the child's routine; minimalization of contact and conflict between the parents; the general nature and health of the individual child; the moral fitness of the child's parents, including sexual conduct; respective environments offered by each parent; the age, sex, and health of the child and parents; the effect on the child as a result of continuing or disrupting an existing relationship; the attitude and stability of each parent's character; and parental capacity to provide physical care and satisfy educational needs of the child. *Janda v. Janda*, 32 Neb. App. 953, 9 N.W.3d 212 (2024). No single factor is determinative, and different factors may weigh more heavily in the court's analysis depending on the evidence presented in each case. *Avery v. Whittle, supra*.

Amy argues that the district court's award of joint physical custody and its adoption of Rafael's "50/50" parenting plan is not workable and is contrary to the children's best interests. She specifically contends that the 62-mile distance between Rafael's residence in Grand Island and the children's school in Columbus places "a structural burden on the children's daily lives affecting wake times, school readiness, homework, extracurricular participation, and rest." Brief for appellant at 9. Relying on this court's memorandum opinion in *Ziemba v. Ziemba*, No. A-21-842, 2022 WL 2125734 (Neb. App. June 14, 2022) (selected for posting to court website), Amy claims that the trial court's decision in this matter is inconsistent with the common practice in Nebraska. In *Ziemba*, we affirmed the trial court's rejection of a joint physical custody arrangement where the noncustodial parent lived approximately 20 miles away from the children's school. We wrote, "Given the distance between [the parties'] homes, it would be difficult for the parties to share joint physical custody of the children." *Id.* at *4.

We agree with Amy that a significant distance between parental homes is a salient fact that often weighs against an award of joint physical custody. See, *Meredith v. Meredith*, No. A-25-676, 2026 WL 2640886 (Neb. App. Sept. 8, 2026) (selected for posting to court website) (affirming trial court's rejection of joint physical custody where parties lived 1 hour apart); *Mann v. Lambertsen*, No. A-24-555, 2025 WL 758021 (Neb. App. Mar. 11, 2025) (selected for posting to court website) (affirming trial court's rejection of joint physical custody where parties lived 1 hour apart, and distance placed burden on child's school routine); *Wortman v. Carrender*, No. A-17-1317, 2019 WL 192427 (Neb. App. Jan. 15, 2019) (selected for posting to court website) (affirming trial court's rejection of joint physical custody where parties lived 18 miles apart, and minor child struggled during transition from one parent to other). But see *Gray v. Gray*, No. A-23-571, 2024 WL 1635344 (Neb. App. Apr. 16, 2024) (selected for posting to court website) (noting parties in modification proceeding successfully maintained joint physical custody arrangement before father began struggling with alcohol addiction, despite living 64 miles apart).

However, as Rafael correctly points out in his brief, there is no "mileage rule" that categorically precludes an award of joint physical custody based solely on the distance between parental residences. Brief for appellee at 18. In fact, no custody or parenting time arrangement is favored or disfavored as a matter of Nebraska law. See *State on behalf of Kaaden S. v. Jeffery T.*, 303 Neb. 933, 932 N.W.2d 692 (2019). Instead, all custody and parenting time arrangements are to be decided based on the best interests of the child. See *id.* See, also, Neb. Rev. Stat. § 43-2921 (Reissue 2016) (in proceedings involving child, best interests of child shall be standard by which court adjudicates custody and parenting time). Therefore, we must analyze the district court's custody determination in light of the children's best interests.

As the district court noted in its decree, the record clearly demonstrates that both parties are fit and capable parents who deeply care for their children. Nebraska law generally acknowledges that it benefits a child to have as much time as possible with a parent, so long as the parent demonstrates their ability to act in their child's best interests and have shared in the responsibilities of raising the child. See § 43-2923(3). Here, Rafael testified that he and Amy equally shared parenting responsibilities before their separation, and at the time of trial, the parties had successfully operated under a temporary custody order for almost 10 months wherein each exercised equal parenting time. For approximately 6 of those months, Rafael lived in Grand Island. Under the temporary order, Rafael exercised parenting time on Mondays and Tuesdays, Amy had the children on Wednesdays and Thursdays, and the parties alternated custody on the weekends. The permanent parenting time arrangement adopted in the trial court's decree was substantially similar to the temporary custody order, the only major difference being that parenting time switched to a "week-on/week-off" schedule during summer break.

Although the district court expressly acknowledged that it "share[d] the same concerns" as Amy regarding the children's commute to Columbus for school during Rafael's parenting time, it pointed to evidence showing that the children's academic performance had not suffered under the temporary custody order. The court specifically discussed Eliana's report card from the "1st Quarter" of the 2025-2026 school year. It found that the report card showed Eliana was "doing very well in school," was "nearly a straight A student," and was "putting forth good effort with minimal absences and no tardies" despite the commute from Grand Island. Rafael further testified at trial that the children tolerate the trip well; he had not observed any negative impact on the children since moving to Grand Island. However, Amy testified that Eliana had complained about being "tired" because of the drive, but this only happened "a couple of times."

While reasonable minds could certainly differ as to whether an award of joint physical custody was appropriate in this case given the distance between the parties' homes, we are cognizant of our standard of review. See *Seemann v. Seemann*, 318 Neb. 643, 18 N.W.3d 118 (2025) (appellate court reviews custody determinations in marital dissolution actions de novo on record for abuse of discretion). The Nebraska Supreme Court has stated that an "abuse of discretion is a highly deferential standard of review," and an appellate court's opinion "supplants the [trial] court's decision only in the instance where its decision was untenable." *Osantowski v. Osantowski*, 298 Neb. 339, 371, 904 N.W.2d 251, 274 (2017). Notably, in the cases cited above where this court affirmed the various trial courts' decisions to reject joint physical custody because of distance between the parents' residences, our affirmation was guided by this highly differential standard of review. The same is true here.

Upon our de novo review of this specific factual record, we cannot say that the district court abused its discretion in concluding that joint physical custody was in the children's best interests. We cannot say that the decision was untenable, even if we agree with Amy that the distance involved in this case is more than a "minor inconvenience" for the children. Brief for appellant at 9. As discussed above, the record supports that both parties are fit and deserving of time with the children. There is no indication that the commute from Grand Island to Columbus has negatively impacted the children's academics or development, and even after Rafael had moved to Grand Island, the parties had successfully operated under a similar joint custody arrangement for approximately 6 months prior to trial.

In a separate but somewhat related argument, Amy claims that the district court's award of joint physical custody is problematic because the parties have "communication problems." Brief for appellant at 10. She correctly points out that a parenting arrangement "requiring coordination across cities cannot work without cooperation." *Id.* We agree with Amy that the record does show that Amy and Rafael struggled to communicate and coparent at times. Rafael agreed with his counsel that he would like the communication between him and Amy "to be better." Amy testified that she did not speak with Rafael "[u]nless it ha[d] to do with the kids." Rafael also candidly admitted at trial that he had refused to allow the children to participate in extracurricular activities during his parenting under the temporary custody order. Amy writes, "It is difficult to imagine any parenting arrangement that prohibits or significantly limits children from participating in extracurricular or after-school activities as being in the child's best interests." *Id.*

However, upon our de novo review of the record, we cannot say the district court abused its discretion in concluding that the parties "have demonstrated they can work together well enough for the benefit of their children." While communication between Amy and Rafael may not be perfect, as mentioned previously, they had successfully operated under a joint physical custody arrangement for several months prior to trial. Likewise, the parenting plan adopted by the trial court provides a detailed framework to resolve issues related to the children's involvement in extracurricular activities. Under the plan, neither parent can schedule activities that take place during the other's parenting time "without reasonable notice and consent in advance." Consent is not to be unreasonably withheld, and the parties are to use their "best efforts to ensure the children's attendance." The parenting plan also limits the children to one activity "per semester, so as to not unreasonably interfere with either parent's parenting time." The parenting plan adopted by the trial court balances the children's ability to participate in activities with each parent's right to exercise meaningful parenting time.

Amy also contends that the district court's decree contained "no findings explaining how this arrangement promotes stability or educational continuity" and a "custody structure that predictably disrupts a child's routine cannot be reconciled with Nebraska law." Brief for appellant at 9. However, as Rafael points out and as we have discussed above, the court did not ignore the concerns related to the children's commute. It acknowledged that it "share[d] the same concerns as [Amy] when it comes to the time the children are on the road during the school year," and that "[a]s they age they will inevitably become more involved with friends, school activities, after-school sports and activities, and one day begin driving themselves." The court stated that the "parties have demonstrated they can work together well enough for the benefit of their children," thus intimating an expectation that as the children age and their interests and activities change, the parties will cooperate in making decisions that benefit their children and not themselves. We cannot say that the court's findings in this regard are insufficient or untenable.

VI. CONCLUSION

For the foregoing reasons, we affirm the district court's award of joint physical custody in its December 1, 2025, decree of dissolution.

AFFIRMED.