



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
FILED
SUPREME COURT
STATE OF OKLAHOMA

WRANGLER COLE RICKMAN,)
Plaintiff/Appellant,)
v.)
VERONICA CLAIRE BUTLER,)
Defendant/Appellee.)

Case No. 119621
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District Court of Cimarron County

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**PLAINTIFF/APPELLANT, WRANGLER COLE RICKMAN'S
BRIEF IN CHIEF**

CHILD CUSTODY

THE DISTRICT COURT OF CIMARRON COUNTY, STATE OF OKLAHOMA
HON. CHRISTINE M. LARSEN, ASSOCIATE DISTRICT JUDGE, PRESIDING

Craig L. Box, OBA #10212
Julia C. Rieman, OBA #15337
GUNGOLL, JACKSON, BOX & DEVOLL, P.C.
P. O. Box 1549
Enid, OK 73702-1549
580/234-0436 Telephone
580/233-1284 Telecopier

Attorneys for Plaintiff/Appellant, Wrangler Cole Rickman

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Plaintiff/Appellant, Wrangler Cole Rickman (“Wrangler”) in support of his appeal of the custody ruling of the District Court, respectfully submits the following Brief in Chief:

INTRODUCTION

The District Court in this case decided which of two young, unmarried, parents should have primary custody of the parties’ young children and the visitation that would be awarded the noncustodial parent. The District Court awarded custody to the Defendant/Appellee, Veronica Claire Butler (“Veronica”), despite undisputed evidence that she had filed numerous unsubstantiated neglect and abuse charges against Wrangler; she requested unnecessary law enforcement “standbys” for visitation exchanges; she attempted to thwart Wrangler’s relationship with the children by relocating multiple times without notice to Wrangler; her employment history demonstrated her to be unreliable and irresponsible and, when she was working, her schedule required that the children be looked after by third-party caregivers; and, there was undisputed evidence of neglect of the children resulting in physical harm to them while in her physical custody.

In contrast, Wrangler, who was denied his request for primary custody, according to undisputed evidence, actively worked to try to effectively co-parent with Veronica; had matured into a responsible father who provided excellent care for and supervision of the children; and, held a steady job with flexible hours that allowed him to maximize his time with the children. Wrangler had also enjoyed fifty-percent physical custody of his children, pursuant to an agreed temporary order since the summer of 2019.

The District Court’s orders of custody and visitation are clearly against the weight of the evidence and an abuse of discretion. Wrangler requests this Court reverse the District Court’s award of custody to Veronica and remand this case with instructions to the District

Court to enter an order granting Wrangler primary custody of the minor children with visitation for Veronica.

SUMMARY OF THE RECORD

The parties' son, C.R.¹, was born December 18, 2015 and their daughter, K.R. was born April 2, 2018. (ROA 209, Journal Entry of Judgment, p. 1, ¶ 2). Wrangler and Veronica were never married. (ROA 1, Petition for Paternity, Custody and Visitation and Application for Temporary Orders, p. 1, ¶ 2). On February 27, 2019, Wrangler filed his Petition for Paternity, Custody and Visitation and Application for Temporary Orders, seeking a judicial determination of his paternity of the children, joint custody, with Veronica as the primary custodian and scheduled visitation for himself. (*Id.*, *passim*). On May 7, 2019, the District Court entered temporary orders granting custody to Veronica and visitation to Wrangler. (ROA 5, Court Minute and Order). However, in the early summer of 2019, the parties agreed, despite the temporary order, to share physical custody of the minor children, alternating weekly. (ROA 308, Tr. Vol. I, p. 54, l. 21 – p. 55, l. 5 [Veronica]). Their agreement was later memorialized in an order of the court. (ROA 43, Court Minute).

Later in the summer Veronica moved to Colorado, without court approval and without notice to Wrangler. (ROA 37, Motion to Appoint a Guardian Ad Litem, p. 1, ¶ 1.b; ROA 39, Plaintiff's Objection to and Application for Temporary Order Restraining Relocation of Children; ROA 41, Motion to Modify Temporary Order, p. 1, ¶ 2; ROA 309, Tr. Vol. II, p. 222, l. 21 – p. 223, l. 2; ROA 308, Tr. Vol. I, p. 136, ll. 4-20 [Tiffany Adams²]; and, ROA 308,

¹ The son's surname on his birth certificate was "Butler." However, the District Court ordered, over the objection of Veronica, that in the best interests of the minor child, his surname would be changed to that of his Father, "Rickman." (ROA 209, p. 4, ¶ 5; and, ROA 308, Tr. Vol. I, p. 91, ll. 7-9).

² Tiffany Adams is Wrangler's mother. (ROA 308, Tr. Vol. I, p. 129, ll. 2-3 [Tiffany]).

Tr. Vol. I, p. 176, l. 16 – p. 177, l. 5 [Wrangler]). In her court filings Veronica made no attempt to deny that she had moved to Colorado with the children without any notice to Wrangler. (*See, e.g.*, ROA 47, Defendant’s Response to Plaintiff’s Motion to Modify Temporary Order). By the time of trial though, she had changed her story and claimed to have consulted Wrangler regarding the move. (ROA 309, Tr. Vol. II, p. 223, ll. 17-24 [Veronica]). Wrangler was consistent in his court filings *and* his testimony that she had not done so. (ROA 309, Tr. Vol. II, p. 283, l. 22 – p. 284, l. 14 [Wrangler]).

Since the filing of the Petition, Veronica relocated with the children four times in just a few months; moving them from Oklahoma to Kansas, Kansas back to Oklahoma, then Oklahoma to Colorado, then Colorado back to Kansas. (ROA 84, Plaintiff’s Application for Emergency Restraining Order, Motion to Suspend Visitation and Motion to Terminate Joint Custody, p. 3, ¶ 4.a; and, ROA 308, Tr. Vol. I, p. 57, l. 10 – p. 59, l. 6 [Veronica]). When Wrangler would receive his alternating custody with the children they always arrived hungry, they were bed-wetting, and they did not want to return to Veronica’s custody. (ROA 84, Plaintiff’s Application for Emergency Restraining Order, Motion to Suspend Visitation and Motion to Terminate Joint Custody, p. 3, ¶ 4.d).

Wrangler filed an Amended Petition on June 2, 2020, wherein he asked the court to award primary physical custody of the children to him, instead of Veronica, citing Veronica’s behavior over the course of the year. (ROA 116, Amended Petition for Paternity, Custody and Visitation, pp. 1-2, ¶ 6). Wrangler’s Amended Petition cited Veronica’s conduct in: relocating the children multiple times; failing to abide by and follow the orders of the court; efforts to program the children against Wrangler and make them believe he was dangerous; filing false charges against Wrangler concerning C.R. with the Oklahoma Department of Human Services,

and, previously with the authorities in the State of Kansas; and, failing to consult with Wrangler on important decisions involving the children's best interests, as the grounds supporting his change of position with respect to seeking primary custody of the children. (*Id.*).

The case was tried January 29, 2021 and February 26, 2021. (ROA 308, Tr. Vol. I; and, ROA 309, Tr. Vol. II). Wrangler presented, in addition to himself, multiple witnesses who supported his version of events and his request for custody. (*Id.*). Additionally, Veronica admitted under oath many of the facts that supported Wrangler request for custody. (*Id.*).

Wrangler's first witness was Elana Gloude, a Child Protective Service Worker with the Oklahoma Department of Human Services. (ROA 308, Tr. Vol. I, p. 7, ll. 5-12). Ms. Gloude testified to three referrals made to DHS in 2019-2020 against Wrangler, involving accusations of neglect, abuse or harm to C.R. (ROA 308, Tr. Vol. I, p. 8, l. 5 – p. 9, l. 5). The findings by DHS in *each and every one* of the referrals was that the allegations were "unsubstantiated." (ROA 308, Tr. Vol. I, p. 10, l. 17 – p. 11, l. 2; p. 12, l. 24 – p. 14, l. 22; and, p. 19, l. 5 – p. 20, l. 18; and, ROA 311, Plaintiff's Ex. 15). Additionally, Ms. Gloude testified DHS reports reflected there was *no evidence* of bruising or other marks on C.R. to support the accusations. (ROA 308, Tr. Vol. I, p. 10, ll. 6-9; p. 13, l. 16 – p. 14, l. 1; p. 19, ll. 9-17; and, p. 21, l. 24 – p. 22, l. 1). On cross-examination, she testified that when she asked C.R. what choking meant he said his mom [Veronica] *had told him to say it*. (ROA 308, Tr. Vol. I, p. 27, ll. 12-17).

As reflected in Plaintiff's Ex. 15, and by her own admission, Veronica was responsible for at least five of the reports to DHS, or to Kansas authorities, accusing Wrangler of abusing C.R. (ROA 308, Tr. Vol. I, p. 28, l. 25 – p. 29, l. 25 [Gloude]; ROA 308, Tr. Vol. I, p. 55, l. 12 – p. 56, l. 9 [Veronica]; and ROA 311, Plaintiff's Ex. 15). None of the reports of the investigations reflect any corroborating witnesses who could substantiate Veronica's

accusations. (ROA 308, Tr. Vol. I, p. 28, ll. 1-16 [Gloude]). Veronica also admitted she had not provided any photographs, even though she claimed to have some, of the alleged bruising on C.R.'s neck. (ROA 308, Tr. Vol. I, p. 97, ll. 11-18 [Veronica]).

Ms. Gloude testified one DHS report reflected the investigator witnessed C.R. come running into the house, excited to see his dad, throwing himself on his dad, hugging him, and telling him he missed him and loved him. (ROA 308, Tr. Vol. I, p. 15, ll. 3-15). The worker found "everything appeared to be appropriate with the father and the children." (ROA 308, Tr. Vol. I, p. 15, ll. 18-20 [Gloude]).

Wrangler's next witness was the Sheriff of Cimarron County, Oklahoma, Sheriff Michael Berguetski. (ROA 308, Tr. Vol. I, p. 31). Sheriff Berguetski testified Veronica made several allegations of neglect or abuse of the children by Wrangler, and made requests for civil standbys during custodial exchanges, but: "*There were never any substantiated claims based on those requests.*" (ROA 308, Tr. Vol. I, p. 35, l. 8 – p. 36, l. 3, emphasis added). In fact, matters reached the point where the Sheriff informed Veronica his office would no longer supervise the visitation exchanges. (ROA 308, Tr. Vol. I, p. 36, l. 20 – p. 37, l. 24 [Berguetski]).

The Sheriff *never saw anything* in the visitation exchanges that caused him concern about Wrangler's treatment of, or relationship with, the children (ROA 308, Tr. Vol. I, p. 36, ll. 7-11 [Berguetski]). When he investigated Veronica's bogus accusations of abuse, the Sheriff found *no evidence* to corroborate her claims. (ROA 308, Tr. Vol. I, p. 38, ll. 17-23 [Berguetski]). Although Veronica claimed she had photographic evidence, she provided none to the Sheriff and he saw no evidence on the children of any trauma. (ROA 308, Tr. Vol. I, p. 39, ll. 2-22 [Berguetski]; p. 40, l. 8 – p. 41, l. 4; and, ROA 311, Plaintiff's Ex. 7).

Wrangler's next witness was a rancher neighbor, Larry Sauls. (ROA 308, Tr. Vol. I, p. 46, ll. 12-24 [Sauls]).³ Mr. Sauls keeps some cattle on Wrangler's place and thus goes over there daily to care for his cattle. (ROA 308, Tr. Vol. I, p. 47, ll. 20 [Sauls]). He witnessed Wrangler taking care of the children when they were in Wrangler's custody. (ROA 308, Tr. Vol. I, p. 48, ll. 2-5 [Sauls]). He had opportunities to witness Wrangler's interactions with the children in Wrangler's home. (*Id.*, ll. 10-18 [Sauls]). He testified the home was clean and well kept, with food in the cabinets. (*Id.*, p. 48, l. 23 – p. 49, l. 13 [Sauls]). The children never appeared to be fearful of Wrangler, nor did Mr. Sauls observe anything in Wrangler's interaction with the children that gave him cause for concern that they might be being abused or neglected by Wrangler. (*Id.* p. 49, l. 20 – p. 50, l. 1 [Sauls]). In fact, he testified:

Wrangler's a good father. He's always with his kids, you know, and I call Cole Colt 45. Him and his sister, you know, they feed cake to my cows there by the fence, and Wrangler's always there. I mean they're not out by themselves. I haven't seen any of that. You know, he's always watching them.

(ROA 308, Tr. Vol. I, p. 50, ll. 8-13).

When called in Wrangler's case in chief, Veronica admitted much of the evidence against her that demonstrated it was not in the best interests of the children for her to remain the primary custodian. For example, she admitted that she had agreed to shared custody, and that despite having made all the referrals to DHS, alleging Wrangler was abusing C.R., she never sought any emergency orders. (ROA 308, Tr. Vol. I, p. 54, l. 21 – p. 55, l. 25). She admitted that in addition to the referrals to DHS in Oklahoma, she made two reports to Kansas authorities – *and that those reports were likewise unsubstantiated.* (*Id.*, p. 56, ll. 1-9). She

³ The court's Journal Entry of Judgment erroneously omits Mr. Sauls when listing the witnesses whose testimony was heard by the court. (ROA 209, Journal Entry of Judgment, p. 1, opening paragraph).

admitted to moving, with the children, back and forth between Oklahoma, Kansas and Colorado until the court told her that she needed to pick a place to live. (*Id.*, p. 57, l. 10 – p. 59, l. 8).

She admitted that after she and Wrangler broke up for good in about December of 2018, she would not let him see either of his children for a period, and that she objected to C.R. having his father, Wrangler's, last name. (*Id.*, p. 90, l. 19 – p. 91, l. 9). She admitted that she had agreed to allow C.R. to participate in a school Christmas program during her week for custody, but then, at the last minute, knowing that Wrangler and his family would have been planning to attend the program, she told Wrangler that C.R. was not going to participate because the four-year old "didn't want to go." (*Id.* p. 109, l. 2 – p. 110, l. 19).

Veronica admitted her "fiancé" had moved in and out of her house. (ROA 308, Tr. Vol. I, p. 59, ll. 12-23). Despite supposedly being engaged to him, and the fact that she admitted he was around the children a lot and had the opportunity to observe her with the children, she did not call him as a witness to testify in her case. (*Id.*, p. 61, l. 5 – p. 62, l. 9 [Veronica]).

Veronica admitted to her erratic work history that demonstrated she was irresponsible and unreliable. (ROA 308, Tr. Vol. I, p. 62, l. 24 – p. 63, l. 2; p. 63, l. 25 – p. 65, l. 9; p. 66, l. 1 – p. 68, l. 10). She admitted she has changed jobs a lot. (*Id.*, p. 73, ll. 9-10). She was terminated from one job for not showing up for work. (*Id.* p. 79, ll. 13-19 [Veronica]; and, ROA 311, Plaintiff's Ex. 10, p. 4). Her work records for her brief job in Colorado reflected: "Was evicted then moved to Hugoton KS w/o working vehicle & never made it back to Springfield to finish out schedule." (ROA 311, Plaintiff's Ex. 10, p. 5). The records from another company where Veronica was employed for just two months reflected: "No call no show on to (sic) many shifts & to (sic) many call ins!! Not dependable." (ROA 311, Plaintiff's

Ex. 11, p. 1). For a four month period she held a job at a gas station/convenience store, but she walked off the job when they would not accommodate her every request for time off or schedule changes. (ROA 308, Tr. Vol. I, p. 85, l. 9 – p. 86, l. 9 [Veronica]; and, ROA 311, Plaintiff's Ex. 12). Records from that employer indicated they would not rehire her. (*Id.*).

Wrangler and Veronica disagree over the school the children should attend, with Wrangler wanting them to attend Yarborough school in Oklahoma and Veronica wanting them to attend school in Hugoton, Kansas. (ROA 308, Tr. Vol. I, p. 65, ll. 10-20 [Veronica]). Despite living in Hugoton, and wanting the children to attend school there, Veronica had not applied for a job in health care (her field) in Hugoton. (*Id.* p. 68, ll. 6-10 [Veronica]). She also admitted to not working in Elkhart, Kansas (which is on the Oklahoma border and only a little over 9 miles from the Yarborough school) so as to intentionally mislead the court regarding the convenience of the Yarborough school. (*Id.*, p. 72, l. 18 – p. 76, l. 12). Additionally, her choice to avoid working in Elkhart, and to work elsewhere, meant she often had to leave for work at 4:30 a.m. (ROA 308, Tr. Vol. I, p. 71, ll. 12-17 [Veronica]; and, p. 78, ll. 1-9 [Veronica]).

Veronica admitted at trial that she leaves the children with Wrangler's paternal grandmother, Debi Davis, whose turkeys have pecked two-year old K.R., leaving marks on her more than once. (ROA 308, Tr. Vol. I, p. 98, ll. 1-22 [Veronica]). In Ms. Davis' own testimony, she not only admitted that her turkeys peck both children, but, more horrifyingly, that she has made it the "chore every morning" for K.R. – a little two-year old girl – to go out and feed and water the very turkeys who peck her. (ROA 309, Tr. Vol. II, p. 93, l. 9 – p. 99, l. 7 [Davis]). Veronica also admitted to an incident when C.R. was bitten on the face by a dog severely enough to puncture the skin, and she, Veronica: 1) did not seek any medical treatment for him;

2) did not verify whether the dog had its shots; and, 3) did not tell Wrangler about the incident. (ROA 308, Tr. Vol. I, p. 100, l. 22 – p. 103, l. 2 [Veronica]).

Tad Cullum, a local farmer, Wrangler's mother's boyfriend, and Wrangler's employer, also testified for Wrangler. (ROA 308, Tr. Vol. I, pp. 120-121). Mr. Cullum testified he had no problems with Wrangler with respect to his work ethic or any substance abuse.⁴ (*Id.*, p. 122, ll. 3-9). Prior to working for Mr. Cullum, Wrangler had worked as a cook at a truck stop in Elkhart but working for Mr. Cullum gave him a more flexible schedule to allow him to be available for his children. (*Id.*, ll. 10-20 [Cullum]). Mr. Cullum observed Wrangler around the children and testified he absolutely never saw anything that would indicate they were neglected or abused when in Wrangler's care; there was no indication the children feared Wrangler; and, Wrangler kept the house clean, dishes done, clothes washed, etc. when caring for the children. (*Id.*, p. 122, l. 21 – p. 125, l. 24 [Cullum]). Mr. Cullum also observed Wrangler making an effort to coparent with Veronica. (*Id.*, p. 126, ll. 15-18 [Cullum]).

Wrangler's mother, Tiffany Adams, corroborated Wrangler's claims that when he initially filed his Petition: Veronica was not allowing Wrangler to see either of his children (ROA 308, Tr. Vol. I, p. 130; ll. 5-21); Wrangler had been providing financial support to the children (*Id.*, p. 132, ll. 5-15); Veronica never notified Wrangler of any of her multiple relocations while the case was pending – including her move to Colorado (*Id.*, p. 136; ll. 1-20); Ms. Adams, had never seen any evidence of C.R. having been choked and Veronica has never told her of it directly or claimed to have pictures (*Id.*, p. 138, ll. 1-25); Wrangler's job with Mr. Cullum gives him flexibility to be available to the children (*Id.*, p. 139, ll. 17-22);

⁴ There were previous allegations, early in the case, by both parties of substance abuse by the other.

Wrangler cleans the house, does the laundry and cooks for the children and the children are happy and healthy when in his care (*Id.*, p. 140, ll. 2-14); and, she'd never seen Wrangler deny Veronica phone time with the children when they were with him (*Id.* p. 143, l. 23 – p. 144, l. 7). Ms. Adams also testified Wrangler tries to coparent with Veronica, but Veronica does not reciprocate. (*Id.*, p. 155, l. 22 – p. 156, l. 17).

Ms. Adams identified Plaintiff's Exhibit 1 as photographs she had taken of the dog bite on C.R.'s face, a week after he had been bitten. (ROA 308, p. 145, l. 22 – p. 148, l. 6 [Adams]; and ROA 311, Plaintiff's Ex. 1). She corroborated that Veronica had not told Wrangler about the dog bite, had not made any effort to find out whether the dog had its shots, and had not sought any medical care for C.R. (*Id.*, [Adams]). She testified to K.R. returning from Veronica's custody multiple times with turkey peck marks that had broken her skin and identified Plaintiff's Exhibit 2 as a photograph she had taken of one of the peck marks on K.R. (ROA 308, Tr. Vol. I, p. 148, l. 7 – p. 149, l. 16 [Adams]; and, ROA 311, Plaintiff's Ex. 2). K.R. was two years old at the time and short for her age, so a turkey could easily peck her on the face. (ROA 308, Tr. Vol. I, p. 150, ll. 11-20 [Adams]). Ms. Adams identified at trial other photographs she had taken of both children with bruises and marks on their bodies after returning from being in Veronica's custody. (*Id.*, p. 150, l. 21 – p. 151, ll. 22 [Adams]; and, ROA 311, Plaintiff's Ex. 3). Just the weekend before the first day of trial, K.R. returned from Veronica's care with a scratch under her eye that she said the dog had given her and a very serious bruise on her privates. (ROA 308, p. 152, l. 10 – p.153, l. 5 [Adams]).

Although she is Wrangler's mother, Ms. Adams' credibility was enhanced by the fact that, initially when Wrangler and Veronica were having difficulties, she told Wrangler to leave the home and she continued to help Veronica, including financially, to some extent to the

exclusion of Wrangler. (ROA 308, Tr. Vol. I, p. 130, l. 23 – p. 132, l. 17). But Veronica started not coming home after work; bringing her boyfriend to the house where the children were; having parties; and, some of the visitors may have been doing drugs in the house. (*Id.* p. 133, l. 10 – p. 134, l. 20; and, p. 161, l. 15 – p. 162, l. 14). Then one day Veronica just up and left with the children and did not come back, with no notice to anyone. (*Id.*, p. 135, ll. 3-14).

Wrangler testified on his own behalf that he thought the parties should continue to split time with the children 50/50, “Because I believe that both kids should have both parents in their lives.” (ROA 308, Tr. Vol. I, p. 166, . 17 – p. 167, l. 4). Nevertheless, he explained clearly why he was the better parent; having shown himself to be more reliable, more responsible and having provided a more suitable home. (*Id.*, p. 167, ll. 15-22). He had tried to coparent with Veronica but did not believe she had done the same with him. (*Id.*, p. 167, l. 23 – p. 168, l. 3 [Wrangler]). He denied that he had ever blocked Veronica from talking to the children on the phone when they were with him. (*Id.* p. 176, ll. 8-15).

With respect to the abuse allegations, Wrangler testified under oath that he had never harmed his children and that Veronica had never contacted him directly to question him about any of the allegations. (*Id.*, p. 168, ll. 10-20). He confirmed, however, that the children had been physically harmed while in *Veronica’s care* and that she would never tell him about it. (*Id.* p. 168, l. 21 – p. 171, l. 8).

Wrangler provides financial support, food and clothing for the children when they are with him. (ROA 308, Tr. Vol. I, p. 172, ll. 17-19 [Wrangler]). He supervises them when they are outside and although there are cattle and a dog on his property, the children have never been hurt by the animals – unlike when they are in Veronica’s care. (*Id.* p. 172, l. 20 – p. 173

[Wrangler]). His job working for Mr. Cullum allows him to spend time with his children. (*Id.*, p. 172, ll. 2-21 [Wrangler]).

In a typical day, when the children are in Wrangler's custody, he gets up when it is time to get C.R. up for his school, he gets C.R. ready and gets him off to the school bus, he bathes the children, plays with them, helps his son with his homework when he gets home and talks with him about his day, he takes the children out to check the cattle and they play and have fun. (*Id.*, p. 174, l. 24 – p. 175, l. 6 [Wrangler]). He cooks and cleans for them, does the laundry, knows their favorite meals, has a routine time for meals and bedtimes, and he puts them to bed at that time. (*Id.*, p. 175, l. 6 – p. 176, l. 2).

In her own case in chief, Veronica repeated many of the admissions she had made when called to testify in Wrangler's case in chief. (ROA 309, Tr. Vol. II, pp. 205-252). She also admitted that her own dog bites the children. (*Id.*, p. 261, ll. 6-11). She testified to the fact that while the children have been in her care she left them with a variety of friends and relatives as third-party caregivers while she was working. (*Id.*, p. 216, l. 15 – p. 217, l. 2). By the time of trial, she was leaving them with Debi Davis – the great-grandmother who made it the two-year old K.R.'s daily chore to feed and water the turkeys that would peck her. (*Id.*, p. 235, l. 12 – p. 236, l. 3; and, p. 259, l. 23 – p. 260, l. 8 [Veronica]).

Veronica admitted that both Ms. Gloude of DHS and Sheriff Berguetski believe she is influencing the children with respect to the abuse allegations and that the allegations have no merit. (ROA 309, Tr. Vol. II, p. 259, ll. 8-18). She did not deny the accuracy of their belief. (*Id.*). With respect to her alienation of the children from Wrangler, Veronica admitted to telling the children they could call her fiancé "dad." (*Id.*, p. 260, l. 14 – p. 261, l. 5).

Aside from herself, the only witnesses Veronica called to support her plea for custody were her mother, Amanda Verner, and Wrangler's grandmother, the previously mentioned Debi Davis. (ROA 309, Tr. Vol. II, pp. 290-312). While they, of course, testified generally that Veronica was a good mother, Ms. Verner admitted that she only saw Veronica with the children for a few hours at a time on visits every two weeks. (ROA 309, Tr. Vol. II, p. 308, l. 11 – p. 309, l. 4). There was no testimony from Ms. Verner regarding having seen the children with Veronica in their home environment. Ms. Verner also didn't know that her grandson, C.R. had been bitten on the face by a dog – she thought he was “nipped,” on “maybe a leg, or I don't know.” (*Id.*, p. 310, ll. 15-22 [Verner]). And, Veronica did not even tell her that; she thinks C.R. told her. (*Id.*, p. 310, ll. 23-24 [Verner]).

As for Veronica's other witness, Ms. Davis, this is the woman who thought it was appropriate to assign a small, two-year old girl, the daily chore of feeding and watering the turkeys who peck her. (ROA 309, Tr. Vol. II, p. 294, l. 16 – p. 295, l. 7 [Davis]). Ms. Davis admitted she had not seen her own grandson, Wrangler, in a year. (*Id.*, p. 95, ll. 14-16). She also admitted she is not on speaking terms with Wrangler's mother, Tiffany Adams. (*Id.*, p. 98, ll. 13-15).

With respect to her own credibility, Veronica admitted in Wrangler's case in chief that she had illegally received state assistance from the state of Kansas while she was living in Oklahoma. (ROA 308, Tr. Vol. I, p. 105, l. 16 – p. 106, l. 8 [Veronica]). She initially invoked the Fifth Amendment in response to written discovery on this issue, because she knew it was illegal. (*Id.*). Somewhat mysteriously, she also invoked the Fifth Amendment in response to written discovery asking her to identify persons she had hired for childcare, what she had paid them and, dates she had used them. (*Id.* p. 107, ll. 6-15). Prior to trial, the court entered an

order of sanctions against Veronica, ordering her to pay \$2,000.00 of Wrangler's attorney fees for her failure to answer discovery for over a year. (ROA 135, Court Minute). Veronica admitted at trial that she had made no effort to pay those fees. (ROA 308, Tr. Vol. I, p. 112, ll. 3-11). She also admitted at trial that she repeatedly neglected to produce documents in discovery, cooperate with counsel, or do the things the court ordered her to do. (ROA 308, Tr. Vol. I, p. 111, l. 19 – p. 112, l. 2).

After hearing two days of evidence and from multiple witnesses, the court took approximately a 15 minute break and then returned with a ruling. (ROA 309, Tr. Vol. II, p. 342, ll. 14-20). Despite the fact almost two years had gone by, during which the parties had shared physical custody of the children, and the court had heard multiple witnesses during the trial, the Judge stated on the record that in making her ruling she relied on notes she had taken from the hearing on temporary orders “back in May of 2019.” (*Id.*, p. 343, ll. 4-8). Inexplicably, and with no stated rationale, the trial court awarded sole legal custody of the children to Veronica. (*Id.*, p. 343, ll. 18-19; and ROA 209, Journal Entry of Judgment, p. 1, ¶ 3).

ARGUMENT & AUTHORITIES

STANDARD OF REVIEW

“The standard of review in custody proceedings is whether the decree is against the clear weight of the evidence.” *Fleck v. Fleck*, 2004 OK 39, ¶ 9, 99 P.3d 238, 240. A custody decision will be reversed where there has been an abuse of discretion, or this Court finds the decision was “clearly contrary to the weight of the evidence.” *Daniel v. Daniel*, 2001 OK 117, ¶ 21, 42 P.3d 863, 871. Likewise, visitation orders are subject to the abuse of discretion standard of review. *Petty v. Petty*, 1995 OK CIV APP 12, 890 P.2d 1364, 1366, *citing*, *Gamble v. Gamble*, 1970 OK 150, 477 P.2d 383.

“An *abuse of discretion* occurs when a decision is based on an erroneous conclusion of law or where there is *no rational basis in evidence* for the ruling.” *Marriage of Bilyeu v. Bilyeu*, 2015 OK CIV APP 58, ¶ 4, 352 P.3d 56, 59 (emphasis original in part and added in part), citing, *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, ¶ 13, 171 P.3d 890. “An abused judicial discretion is manifested when discretion is exercised to an end or purpose not justified by, and clearly against, reason and evidence. It is discretion employed on untenable grounds or for untenable reasons, or a discretionary act which is manifestly unreasonable.” *Christian v. Gray*, 2003 OK 10, ¶ 44, 65 P.3d 591, 609, quoting *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, ¶ 20, 987 P.2d 1185, 1194. The Court of Civil Appeals, in the *Bilyeu* case, analyzed the standard of review in custody cases, and, citing to the language used by this Court in *Williamson v. Williamson*, 2005 OK 6, ¶ 5, 107 P.3d 589, concluded: “the ‘clear weight of the evidence’ inquiry is part of the abuse of discretion standard, and the generally accepted definition of an abuse of discretion applies in custody cases.” *Marriage of Bilyeu* 2015 OK CIV APP 58, ¶ 5.

“The decree contrary to the weight of the evidence refers to the specific adjudication the trial court in equity was required to make, an equitable discretion exercised to determine the best interests of the child for the purpose of child custody.” *Duke v. Duke*, 2020 OK 6, ¶ 8, 457 P.3d 1073, 1077. “If the appellate record is sufficient to show a decision has been made contrary to the weight of the evidence, *then this Court will render the decree in equity the trial judge should have rendered.*” *Id.* (Emphasis added), citing *Hedges v. Hedges*, 2002 OK 92, ¶ 23 & n. 37, 66 P.3d 364, 372; and, *Larman v. Larman*, 1999 OK 83, ¶ 18, 991 P.2d 536, 542-543. In the present case, Wrangler submits the appellate record is adequate to demonstrate that the District Court’s award of custody to Veronica was clearly against the weight of the

evidence and the record is sufficient for this Court to instruct the District Court, on remand, to enter the decree that should have been entered, awarding custody to Wrangler.

PROPOSITION

The District Court's Award of Custody to Veronica was an Abuse of Discretion

A. The Decision was Clearly Against the Weight of the Evidence

Wrangler recognizes the standard of review in this appeal is very deferential to the District Court. Nevertheless, on this record it is evident that the District Court's decision on custody is clearly against the weight of the evidence, and thus an abuse of discretion. *Williamson*, 2005 OK 6, ¶ 5 (Recognizing a decision clearly against the weight of the evidence constitutes an abuse of discretion). Multiple witnesses testified in support of Wrangler's case; the DHS representative, Ms. Gloude, Sheriff Berguetski, Wrangler's neighbor, Mr. Sauls, his employer, Mr. Cullum (also his mother's boyfriend), and his mother, Ms. Adams. Further, as shown above, Veronica's own testimony corroborated Wrangler's claims and his case for custody.

Certainly, the "weight of the evidence" does not mean the sheer number of witnesses. *See, In re Estate of Holcomb*, 2002 OK 90, ¶ 8, n. 3, 63 P.3d 9, 13. "It refers to the power of the evidence to persuade. The quality and plausibility of the evidence as well as other intangible factors enter into that assessment." *Id.* However, this Court should consider in this regard that Veronica – the principal witness to support her own quest for custody – *admitted* on the stand to illegally bilking the state of Kansas out of state benefits while she was living in Oklahoma; *admitted* that neither the Sheriff nor DHS found her multiple accusations of abuse against Wrangler to be credible; *admitted* that she intentionally chose not to work in Elkhart in an conscious attempt to mislead the District Court as to the convenience of getting the children to

the Yarborough school; and, *admitted* that she *repeatedly* neglected to produce documents in discovery, cooperate with counsel, or do the things the court ordered her to do. These admissions, in themselves, are sufficiently damning as to tarnish the quality and plausibility of the meager testimony she offered to support her own plea for custody. She gave *no* testimony of her own claim to parenting skills – nothing about her daily interactions with the children, whether she cooked for them, fed them, did their laundry, helped with C.R.’s homework, knew their favorite meals, had any set bedtime for them – all the things Wrangler did for the children.

Veronica’s other two witnesses, her own mother, Ms. Verner, and Wrangler’s grandmother, Ms. Davis provided little support for her case. Ms. Verner, her mother, only saw the children every other week and only for a few hours at a time – she did not observe them in their home environment in Veronica’s care. Ms. Davis, the children’s great-grandmother, with her admission that she tasked the two-year old K.R. with the chore of feeding and watering her turkeys who were prone to pecking the little girl, her admission that she was estranged from her own grandson, and not on speaking terms with her former daughter-in-law, demonstrated a degree of hostility and eccentricity that rendered her testimony of what a good mother she believed Veronica to be, questionable. Given her own irresponsible behavior with respect to the children and her turkeys – deliberately exposing the children to danger – Ms. Davis’ opinion of good parenting is dubious.

Consider, also, Veronica admitted C.R. was bitten on the face by a dog while under her care and that she did nothing to make sure the dog had its shots, sought no medical treatment for C.R., and did not tell Wrangler of the incident. She admitted that she initially did not allow Wrangler to see his children at all when they first broke up. She admitted she’s told C.R. he can call her fiancé “dad.” She admitted to making the numerous referrals to DHS – all of which

that agency found to be unsubstantiated, and to requesting the law enforcement supervision of visitation exchanges that the Sheriff testified was unnecessary and a waste of law enforcement resources. She objected to changing C.R.'s name so that he would have the surname of his father, Wrangler. She claimed whether he carry the name of his father should be the child's decision at some point. Wrangler was forced by Veronica to file a motion requesting an order from the court for the name change.

“An *abuse of discretion* occurs when a decision is based on an erroneous conclusion of law or where *there is no rational basis in evidence for the ruling.*” *Marriage of Bilyeu*, 2015 OK CIV APP 58, ¶ 4 (emphasis original in part and added in part). The record in this case reflects there was no rational basis in the evidence for the District Court's ruling granting sole legal custody of these two young, vulnerable, children to Veronica.

B. The Decision was Against the Best Interests of the Children

Despite the District Court's discretion in awarding custody and visitation, “*the best interests of the child must be a paramount consideration* of the trial court when determining custody and visitation.” *Daniel v. Daniel*, 2001 OK 117, ¶ 21, 42 P.3d 863, 871(emphasis added). In the case of *Marriage of Bilyeu*, 2015 OK CIV APP 58, ¶ 15 the Court of Civil Appeals, speaking specifically of “moral transgressions” of the parties noted:

The determinative factor in this case, as in all such cases, must be *the effect of the questioned behavior on the welfare of the child*. To establish an abuse of the trial court's discretion, there must be a showing that this requisite nexus is present and that the effect of the behavior is detrimental to the best interests of the child.

In the case, the court recognized it is appropriate for the trial court to consider contemptuous conduct by one parent “in determining the welfare of the child.” *Marriage of Bilyeu*, 2015 OK CIV APP 58, ¶ 15. Accordingly, the District Court should have considered Veronica's

admissions that she had repeatedly failed to comply with court orders and had attempted to intentionally mislead the court (with respect to her ability to work in Elkhart and the corresponding convenience of the Yarborough school) in determining the welfare of these children. Clearly, it did not.

Because the best interests of the child must be the “paramount consideration,” *Daniel* 2001 OK 117, ¶ 21, the same holds true for *all* relevant conduct of the parents, not just what might be deemed “moral transgressions.” Where the parental behavior in question has a negative impact on the welfare of the child, an award of custody to that parent is an abuse of discretion. Veronica’s admitted behavior has negatively impacted the children. In addition to the emotional impact her unstable employment and multiple relocations have had on the children, there was undisputed evidence of physical harm to the children due to her neglect of their well-being when in her care.

Additionally, that one parent’s work schedule makes them more available to the minor children weighs in favor of awarding custody to that parent. *See, Acox v. Acox*, 2000 OK CIV APP 136, ¶ 3, 18 P.3d 363, 364. The District Court ignored that Veronica’s erratic work schedule required her to leave home sometimes as early as 4:30 in the morning and return home sometimes as late as 7:00 at night – leaving the children in the care of a variety of caregivers, including her fiancé, her friends, and Wrangler’s eccentric grandmother. Wrangler, by contrast, had steady employment in a job with flexible hours that allowed him to be available for his children when they need him.

By statute, the District Court should have considered, in making its custody decision, which parent was more likely to allow the children frequent and continuing contact with the noncustodial parent when such contact is in the children’s best interests. Okla. Stat. Ann. tit.

43, § 112(3)(a). *See also, Hoedebeck v. Hoedebeck*, 1997 OK CIV APP 69, ¶ 10, 948 P.2d 1240, 1243. Wrangler testified to his belief in the importance of the children having both parents in their lives. Veronica, on the other hand, denied Wrangler any visitation when the parties first ended their relationship; sought to estrange the children from their father with her numerous, bogus, referrals to DHS and requests for law-enforcement supervision of visitation exchanges, refused to permit C.R. to participate in the school Christmas program (allegedly in consideration of the four-year old having stated he didn't want to participate), and, encouraged the children to call her fiancé "dad."

The District Court's custody decision was contrary to the best interests of the children. Accordingly, it should be reversed, with instructions from this Court to enter an order awarding primary physical custody of the children to Wrangler and visitation to Veronica. "If the appellate record is sufficient to show a decision has been made contrary to the weight of the evidence, *then this Court will render the decree in equity the trial judge should have rendered.*" *Duke*, 2020 OK 6, ¶ 8, (Emphasis added), *citing Hedges*, 2002 OK 92, ¶ 23 & n. 37; and, *Larman*, 1999 OK 83, ¶ 18.

CONCLUSION

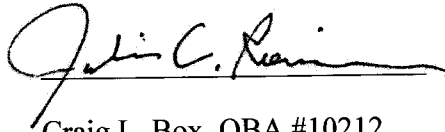
The evidence at trial and reflected in the record on appeal showed Wrangler to be a mature and responsible father. He maintained a clean home where the children were well fed and cared for when in his custody. He held steady employment, with flexible hours that permitted him to be available to the children. Wrangler made efforts to coparent with Veronica and stated his belief in the importance of the children having both parents in their lives. Multiple witnesses supported Wrangler's case, including, but not limited to, the clearly unbiased DHS representative, the Sheriff, and a rancher neighbor.

In contrast, the evidence at trial and in the record in this appeal showed Veronica to be unstable, irresponsible, dishonest and neglectful of the children's welfare. By her own admission, she defrauded the State of Kansas out of state benefits and she ignored and disregarded court orders. She admitted to making multiple, ultimately unsubstantiated allegations to DHS of alleged abuse to the children by Wrangler. She admitted to being fired from a job for unreliability and to having walked off another the job. She admitted to attempting to deceive the court to try to influence the court's decision. She admitted to her multiple relocations. She admitted to not seeking any medical treatment for C.R. when he was bitten by a dog, or even bothering to verify if the dog had its shots. She admitted to leaving the children in the care of their great-grandmother who was either incapable of, or unwilling to, adequately supervise them around her turkeys to prevent injuries to the children.

On this record, the District Court's award of sole custody of the minor children to Veronica was an abuse of discretion. The decision should be reversed with instructions to award custody to Wrangler with visitation awarded to Veronica.

WHEREFORE, premises considered, the Plaintiff/Appellant, Wrangler Cole Rickman, respectfully requests this Court reverse the custody and visitation order of the District Court and render the decree that should have been rendered, granting custody to Plaintiff/Appellant, Wrangler Cole Rickman.

Respectfully submitted,



Craig L. Box, OBA #10212
Julia C. Rieman, OBA # 15337
Gungoll, Jackson, Box & Devoll, P.C.
P.O. Box 1549
Enid, OK 73702-1549
Telephone: 580/234-0436
box@gungolljackson.com
rieman@gungolljackson.com

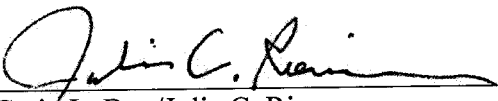
ATTORNEYS FOR PLAINTIFF/APPELLANT,
WRANGLER COLE RICKMAN

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Entry of Appearance was mailed this 1st day of February, 2022, by depositing it in the U.S. Mail, postage prepaid or by electronic mail to:

Nathan McCaffrey
112 NE 4th Street
P.O. Box 1739
Guymon, OK 73942

Christopher Liebman
104 NE 4th St.
Guymon, OK 73942



Craig L. Box/Julia C. Rieman