

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**SCOTTY D. BOHRN, RESPONDENT; JACQUELINE M. BOHRN,
RESPONDENT,**

v.

TERRY AND JOHN KLICK, APPELLANTS.

DOCKET NUMBER WD69192

DATE: January 20, 2009

Appeal From:
MILLER COUNTY CIRCUIT COURT
THE HONORABLE KENNETH L. OSWALD, JUDGE

Appellate Judges:
Division Four: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:
James C. Dowling, Esq., Fulton, MO., **for Appellant.**

Robert James Seek, Esq, Eldon, MO., Attorney for Respondent Scotty Bohrn, and
Jacqueline Bohrn, Respondent Acting Pro Se, Fulton, MO.,

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS – WESTERN DISTRICT

SCOTTY D. BOHRN,

RESPONDENT,

JACQUELINE BOHRN,

RESPONDENT,

V.

TERRY AND JOHN KLICK,

APPELLANTS.

WD69192

Miller County

Before Division Four Judges: Thomas H. Newton, C.J., Victor C. Howard and Alok Ahuja, JJ.

A Judgment dissolving the marriage of Scotty Bohrn (“Father”) and Jacqueline Bohrn (“Mother”) was entered by the Miller County Circuit Court on August 25, 2005. The Judgment awarded Mother and Father joint legal and physical custody of the parties’ two minor children, with primary physical custody awarded to Mother.

After the decree was entered, Mother and the children came to stay with Terry and John Klick. Terry Klick is the children’s maternal grandmother and is married to John Klick. When Mother thereafter left the Klicks’ home, the children remained behind. The Klicks filed a Petition for Guardianship of the minor children in the Probate Division of the Circuit Court of Callaway County and were granted an order of temporary guardianship on or about September 9, 2005.

On December 30, 2005, while the children were residing with the Klicks, Father filed a Petition for Modification of Orders for Child Custody and Support. That same day, the trial court issued an order joining the Klicks as parties.

The Klicks answered Father’s Petition for Modification on January 30, 2006. On July 10, they filed a Counter-Motion to Modify, in which they alleged that both Mother and Father were unfit, unsuitable, and unable to adequately care for the children, and requested an order awarding them primary physical custody of the children.

During trial, the Klicks called Ms. DeBrodie, who had counseled the children while they resided with the Klicks, as a witness. Mother objected on the basis of privilege; Father and the childrens' guardian *ad litem* eventually joined in the objection, which was sustained by the trial court. The Klicks then made an offer of proof as to Ms. Debrodie's proposed testimony.

On appeal, the Klicks argue that the trial court erred in excluding the testimony of the licensed clinical social worker who provided counseling services to the children, Mary Beth DeBrodie, on the basis of privilege.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Division Four holds:

While Missouri law recognizes a privilege for communications with licensed clinical social workers, that privilege is subject to certain exceptions, including custody proceedings involving known or suspected child abuse or neglect and/or where the client's welfare is at issue.

The Klicks' Counter-Petition sought third-party custody of the Bohrns' children on the basis "that each parent is unfit, unsuitable, or unable to be a custodian." During her offer of proof, Ms. DeBrodie indicated that the children had witnessed and/or been the victims of domestic violence, and described incidents of substance abuse by the parents including while driving with the children in the car. Thus, the offer of proof presented evidence which was relevant to the Klicks' allegations that Father and Mother were unfit custodians of the children.

In order to decide whether the Klicks established a claim for third-party custody under § 452.375.5(5) based on a "find[ing] that each parent is unfit, unsuitable, or unable to be a custodian," the trial court must have at its disposal all non-privileged, non-cumulative, material evidence pertaining to the childrens' welfare. Because Ms. DeBrodie's testimony was erroneously excluded, the case is reversed and remanded for further proceedings.

Opinion by: Alok Ahuja, Judge

January 20, 2009

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