IN THE SUPREME COURT OF MISSOURI

Cause Number SC96307

S.S.S., L.W.V., & M.T.S.-V

Respondents,

v.

C.V.S.

Appellant

Appeal from the Circuit Court of the City of St. Louis
The Honorable David C. Mason

Substitute Brief of Respondents L.W.V. & M.T.S.-V

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JURISDICTIONAL STATEMENT

This case involves a stepparent adoption and the termination of Appellant's parental rights with respect to his biological daughter ("Minor Child"). Appellant challenges the Judgment entered by the Circuit Court of the City of St. Louis, Missouri in Cause Number 1422-JU00675 on February 29, 2016. The Judgment terminated Appellant's parental rights to the Minor Child and granted the adoption of Minor Child by her stepfather, Respondent L.W.V. (See Legal File ('LF') 64). Appellant appealed and the Missouri Court of Appeals Eastern District reversed the judgment of the trial court on January 31, 2017 in cause number ED 104249. Following the Court of Appeals denial of Respondents' Motion for Rehearing on March 14, 2017, Respondents filed an Application for Transfer in this Court on March 29, 2017. On May 30, 2017, Respondents' Application for Transfer was granted by this Court.

The Supreme Court of Missouri has jurisdiction over this case under Article V, Section 10 of the Missouri Constitution and Missouri Supreme Court Rule 83.04 because this Court has granted Respondents' Application for Transfer on the grounds that:

(1) the case presents questions of general interest and importance; and

(2) the opinion of the Court of Appeals in cause number ED 104249 is contrary to previous decisions of Missouri appellate courts.

STATEMENT OF FACTS

1. On December 23, 2014, Respondents filed their Petition for Termination of Parental Rights and for Adoption ("Adoption Petition") and Certificate of Decree of Adoption in the Circuit Court of the City of St. Louis in Cause Number 1422-JU00675 (LF 8, 17, 34-35; Exhibit ("Ex.") 1-2).

2. Appellant was served with a Summons and the Adoption Petition on May 14, 2015 (LF 18, 35; Ex. 3).

3. Appellant's trial counsel entered her appearance on June 10, 2015 and requested 30 additional days to file responsive pleadings (LF 20, 35; Ex.4).

4. Appellant filed his Answer and Objection to the Petition for Termination of Parental Rights and for Adoption ("Answer") more than two weeks out of time on July 27, 2015 (LF 22, 35; Ex.5; Tr. 231:11-18).

5. On December 14, 2015, three days before the trial of this matter, Appellant filed a Petition for Paternity, Child Support and Custody in the Circuit Court of the City of St. Louis in Cause Number 1522-FC03071, seeking a declaration of paternity and joint legal and joint physical custody of the Minor Child (LF 35; Transcript ("Tr.") 249:2-6).

6. The Minor Child is now seven (7) years old, was born Torrance, California and her birth is recorded with the Vital Records office of Los Angeles County, California (LF 8, 35; Tr. 89:1).

7. Respondent M.T.S-V. ("M.T.S-V.") is the Minor Child's biological mother (LF 8, 35).

8. Appellant is the natural father of the Minor Child and his name appears on her birth certificate. M.T.S-V. and Appellant were never married (LF 8, 36; Tr. 88:18-21).

9. M.T.S-V. and Respondent L.W.V. ("L.W.V.") were married on December 11, 2013 and have continuously resided together since that time as husband and wife (LF 9, 36; Tr. 66:1-2).

10. The Minor Child continuously resided in the lawful and actual custody of Respondents for a period of at least six months prior to the filing of the Adoption Petition (LF 36).

11. The trial court found M.T.S-V. and L.W.V. to be credible witnesses (LF 36).

12. The trial court found the social worker M.A.H. and lay witnesses D.L. and T.H. to be credible witnesses (LF 36).

13. The trial court did not find Appellant to be a credible witness (LF 36-42).

14. The trial court found Appellant made the following false statements and allegations under oath in his Answer:

a. That M.T.S-V. always allowed Appellant to have weekend visits with the Minor Child when he came to St. Louis (LF 23, 37; Tr. 37:6-23, 38:20-24 56:6-22, 117:21-118:7).

b. That it was only after Respondents married that Appellant was no longer allowed to have overnight weekend visits with the Minor Child (LF 23, 37; Tr. 118:8-16).

c. That Appellant has always provided support for the Minor Child (LF 23, 37; Tr. 119:6-12).

d. That M.T.S-V. relies heavily on a monthly stipend from her parents to provide for the Minor Child's needs (LF 23, 37; Tr. 119:6-18).

15. The trial court found Appellant made the following false and misleading statements under oath in his Interrogatory Answers:

a That Appellant has provided child support each and every month in the amount of $400 per month at least 6 months prior to the filing of this matter (LF 37; Tr. 81:1-14, 120:7-18; Ex. 7, , ¶ 5, ¶ 9).

b. That Appellant had overnight visits with the Minor Child before Respondents married (LF 37; Tr. 37:6-23, 38:20-24. 120:19-121:15; Ex. 7, ¶ 8).

c. That Appellant has traveled to St. Louis and been denied visitation with the Minor Child for the entire trip (LF 37; Tr. 120:22-121:3; Ex. 7, ¶ 8).

d. That Appellant has a close personal relationship with the Minor Child (LF 38; Tr. 123:23-124:13; Ex. 7, ¶12).

e. That Appellant is capable of providing for the Minor Child and is very close with her (LF 38; Ex. 7, ¶16).

f. That Appellant pays child support, visits the Minor Child once every two months, calls the Minor Child every other day, and buys the Minor Child gifts and clothing (LF 38; Tr. 127:9-20; Ex. 7, ¶20).

g. That Appellant has never told the Minor Child that he was coming to visit and then not shown up (LF 38; Tr. 128:16-129:4; Ex. 7, ¶33).

h. That Appellant has never made plans with the Minor Child and then failed to appear at the agreed upon place and time (LF 38; Ex. 7, ¶34; Tr. 41:22-42:11).

i. That there has only been one occasion on which Appellant made plans to see the Minor Child and then arrived more than thirty minutes late (LF 38; Tr. 42:12-24; 130:18-131:5; Ex. 7, ¶35).

16. The trial court found Appellant made the following conflicting statements about his employment and income at trial and in his discovery responses:

a. Appellant stated in his Interrogatory Answers that he has been self-employed since 2009 and that his average rate of pay is $20,000 per year (LF 38; Tr. 232:24-233:1; Ex. 7, p. 1-2, ¶2).

b. Appellant's tax returns produced in response to Respondents' discovery requests indicated that he earned $0 of wages with a total income of $2,111 in 2013 and earned $0 of wages with a total income of $3,041 in 2014 (LF 39 Tr. 233:12-234:14; Ex.10, p. 1; Ex.11, p. 1).

c. Appellant's trial counsel stated that Appellant does not work. (LF 39; Tr. 179:12-14).

17. The trial court found Appellant's Production of Documents contained the following false and misleading statements and did not corroborate Appellant's testimony at the trial:

a. Appellant falsely claimed that his April 26, 2013 text message communications with M.T.S-V., stating that he was locked out was evidence that he was staying overnight at M.T.S-V.'s home. Although Appellant visited M.T.S-V.'s home that day, he did not stay overnight. This was further corroborated by the testimony of T.H. and D.L. (LF 39; Tr. 37:6-23, 38:22-24, 56:9-22, 139:5-140:16; Ex.8, ¶7; Ex.12).

b. Appellant falsely claimed that the bank statements in his discovery responses were evidence that he paid child support, even though all bank statements admitted into evidencec indicated that the payments were made by Appellant's mother (LF 39; Tr. 105:3-114:5, 136:10-16; Ex.8, ¶ 8; Ex.9; Ex. 20-26).

c. Appellant testified at the trial that his trust fund account was the source of the child support payments and that he withdrew money from his trust account and gave the money to his mother who electronically transferred it to Respondents. Appellant did not produce any documentation of his trust account or proof of payments to his mother in his discovery responses to corroborate this testimony. There were not any corresponding deposits into

Appellant's mother bank account at or near the time of each such transfer to Respondents (LF 39-40; Tr. 199:17-200:13; Ex.8, ¶ 8; Ex.9).

d. Appellant falsely claimed the text messages he produced with his Production of Documents were evidence that he paid child support. The Production of Documents included text message communications with M.T.S-V. asking for a new bank account number for electronic transfers, but the message was sent by Appellant's mother and referred to Appellant in the third person (LF 40; Tr. 136:10-137:17; Ex.14).

18. Appellant's Motion to Dismiss filed on December 3, 2015 included several false and misleading statements of fact:

a. That Appellant's alleged presence in St. Louis from July 16-August 16, 2014 and again from September 5-16, 2014 establishes that he did not abandon the Minor Child (LF 27). The Minor Child was in the United Kingdom and then subsequently in Arkansas with her grandparents when Appellant initially arrived in St. Louis in July 2014 (LF 40; Tr. 179:15-180:14).

b. That Appellant himself paid a total of $2,000 of child support during the six months before Respondents filed the Adoption Petition, even though Appellant's Production of Documents and Respondents' trial exhibits indicate Appellant's mother made those payments (LF 27, 40; Ex. 9; Ex. 20-26).

c. That Respondents want to adopt the Minor Child in order to relocate to the United Kingdom (L.W.V.'s country of origin), even though M.T.S-V. sought Appellant's written consent for the Minor Child to return from the United Kingdom to the United States with her mother and stepfather (LF 27, 41; Tr. 67:2-25, 114:6-117:16).

19. The trial court made the following additional findings regarding Appellant's credibility:

a. Appellant is able to communicate via text message and can save screen shots from his mobile phone and further testified that he has a degree in sound engineering in which he has been trained to operate sophisticated equipment (Tr. 232:17-22; Ex. 12-13). Despite this apparent knowledge of electronic devices, Appellant claimed to be unable to use electronic banking to send his alleged child support payments and that he is not very good at purchasing airline tickets online (LF 41; Tr. 200:5-7, 235:22-23).

b. Appellant testified that he has more fun with the Minor Child than anyone else and that when he travels to St. Louis, he sits in his hotel room waiting for M.T.S-V. to contact him about seeing the Minor Child (Tr. 202:14-19, 216:1-6). Despite said testimony, Appellant frequently arrived late or failed to appear at all for scheduled visits (LF 41; Tr. 130:3-133:4, 173:10-18).

c. Appellant claims that the Minor Child's relationship with him is more important than Shabbat dinner and family movie night with Respondents

and attending soccer games and practices (213:22-214:1). Despite this assertion, Appellant never sought any court ordered parenting time with the Minor Child until three days before the adoption trial.

d. Appellant made conflicting and inconsistent statements about the source of funds from which he allegedly pays child support. When Guardian Ad Litem Robyn Kirk ("GAL") interviewed Appellant, he said the funds came from his work as a music producer, but then testified at trial that the funds came from his trust (LF 31; Tr. 199:17-200:4). The discovery responses and the trial exhibits did not corroborate either explanation by Appellant (LF 41-42).

e. During his interview with the GAL, Appellant initially reported no concerns about the Minor Child living with Respondents, but later accused M.T.S-V. of being an alcoholic and drinking heavily during her pregnancy with the Minor Child (LF 31; LF 42).

20. M.T.S-V. and Appellant were in a relationship on and off from 2007 through early 2010. Appellant had recently broken up with M.T.S-V. when she became aware of her pregnancy with the Minor Child. (LF 42; Tr. 89:19-90:3).

21. The pregnancy was unplanned and M.T.S-V. used birth control pills at all times that she had sexual relations with Appellant prior to the pregnancy (LF 42; Tr. 186:4-7).

22. Upon learning of M.T.S-V.'s pregnancy, Appellant denied he was the father and insisted on a paternity test. After a positive paternity test, Appellant took several months to decide if wanted any involvement in the child's life (LF 42; Tr. 90:2-12).

23. M.T.S-V. and the Minor Child resided with Appellant for the last month of M.T.S-V.'s pregnancy and the first eight months of the Minor Child's life. (LF 42; Tr. 90:13-18).

24. During the time that M.T.S-V. cohabited with Appellant, he was controlling, aggressive and suspicious of everything that M.T.S-V. did. Appellant was emotionally abusive toward M.T.S-V. and frequently yelled at her, punched walls, broke mirrors, and slammed his head into a keyboard stand when there was a disagreement. (LF 42-43: Tr. 90:19-91:13).

25. Appellant was mostly indifferent to the Minor Child when M.T.S-V. and the Minor Child lived with him and spent very little time with the Minor Child. (LF 43; Tr. 91:14-22).

26. Appellant smoked marijuana multiple times per day when he cohabited with M.T.S-V. and did so in the presence of the Minor Child. Appellant spent time with the Minor Child while under the influence of marijuana and admitted this at the trial (LF 43; Tr. 92:2-13). M.T.S-V. further testified that Appellant has repeatedly told her that he sees nothing wrong with being high while raising a child (103:2-4).

27. On one occasion, M.T.S-V. briefly left the Minor Child in Appellant's care. M.T.S-V. returned home to find the Minor Child crying in her crib and she appeared to

have been crying for a long time, but Appellant was smoking marijuana in the bathroom and ignoring her needs (LF 43; Tr. 92:18-93:2).

28. Appellant testified that due to his work with audio equipment, he could not tolerate the sound of the Minor Child crying (Tr. 206:22-207:6). Appellant attempted to stop the Minor Child's crying by pinching her to the point of bruising, running cold water on the back of her head, and stuffing a paper napkin in her mouth as a gag (LF 43; Tr. 93:3-10).

29. Appellant frequently drove M.T.S-V.'s car to school despite living close enough to walk. On one occasion, the Minor Child had an intestinal illness and diarrhea for multiple days and needed medical attention. M.T.S-V. called Appellant to return her car, but he did not answer his phone, so M.T.S-V. had to walk 2.5 miles with the Minor Child to the doctor's office at a time when the outdoor temperature was over 90 degrees Fahrenheit (LF 43-44; Tr. 93:14-94:18).

30. T.H. testified that she spent several days with M.T.S-V., Appellant and the Minor Child in December 2009. T.H. testified that during this time, Appellant had very little to do with the Minor Child, that he fell asleep while the Minor Child was in his care, and acted like he did not even have a baby. T.H. further testified that Appellant never concerned himself with the Minor Child's needs, and that the Minor Child never registered in his thought processes (LF 44; 57:5-58:22).

31. As a result of Appellant's frequent emotional abuse of M.T.S-V., his lack of care and concern for the Minor Child, and his endangerment of the Minor Child's health

and safety, culminating with Appellant stuffing a napkin in the child's mouth, M.T.S-V. and the Minor Child moved to St. Louis, Missouri with the assistance of T.H. in early 2010 (LF 44; Tr. 54:10-19, 95:1-12).

32. M.T.S-V. and the Minor Child resided with T.H. and D.L. for approximately one year before moving to their own apartment in the same building. M.T.S-V. and the Minor Child resided in either the same apartment and/or the same building with T.H. and D.L. for approximately two years. T.H. and D.L. both testified that Appellant never exercised overnight or weekend visits with the Minor Child in M.T.S-V.'s home during the entire time that they lived in the same apartment and/or the same building (LF 44; Tr. 37:6-23, 56:6-22).

33. The emotional well being of M.T.S-V. and the Minor Child improved after they stopped living with Appellant. M.T.S-V. was isolated and raising the Minor Child alone when she lived with Appellant, but she had the support and assistance of trustworthy friends in St. Louis and went to therapy. M.T.S-V. obtained a computer science degree from the University of Missouri-St. Louis and secured full time employment as a Web Developer with goBrandgo (LF 44; Tr. 54:20-55:8, 95:13-96:16). M.T.S-V. further testified that it would not have been possible to further her education and career while she was living in Los Angeles with Appellant and caring for the Minor Child (Tr. 96:4-6).

34. After M.T.S-V. and the Minor Child moved to St. Louis, Appellant traveled there on a few occasions to visit the Minor Child. During one visit, M.T.S-V. left the

Minor Child in the care of Appellant at a hotel for 5 or 6 hours. When M.T.S-V. returned to the hotel, the Minor Child had a 102º fever and required immediate medical attention at Children's Hospital. Appellant failed to take any action or notify M.T.S-V. that the Minor Child was sick and merely placed her in front of the air conditioner in the hotel room. D.L. was present with M.T.S-V. when this occurred and corroborated M.T.S-V.'s testimony about this incident (LF 45; Tr. 38:25-40:11; 96:17-97:7).

35. After moving to St. Louis, M.T.S-V. and the Minor Child traveled to California approximately once a year and stayed at the home of Appellant's mother for seven to ten days. The last such trip to California was in 2013. Appellant's mother initiated and paid for all of these trips (LF 45; Tr. 97:8-15).

36. During the first few trips, Appellant was indifferent to the Minor Child during these visits and spent very little time with the Minor Child. Appellant slept late and smoked marijuana in the garage rather than spending time with the Minor Child. Appellant typically spent no more than 15 minutes with the Minor Child at any one time, not more than 30 minutes in a day, and during one trip, he did not even go to his mother's home until several days after M.T.S-V. and the Minor Child arrived (LF 45; Tr. 97:16-98:6, 159:3-6).

37. During one trip to California, Appellant was driving M.T.S-V. and the Minor Child to the airport. Appellant asked M.T.S-V. to move back to California, but she said no. Appellant became upset and swerved the vehicle across several lanes of highway traffic before stopping the vehicle in the middle of an exit ramp and refusing to drive any

further. This action seriously endangered the physical safety of the Minor Child (LF 45-46; Tr. 98:8-99:7).

38. When M.T.S-V. and the Minor Child traveled to California to stay at the home of Appellant's mother in May 2013, Appellant spent more time with the Minor Child than he had in the past, but neglected her health and safety in the following ways:

a. Taking the Minor Child hiking in flip flops (LF 46; Tr.100:21).

b. Taking the Minor Child to the playground and Chuck E. Cheese's wearing no shorts or pants (LF 46; Tr. 100:21-25).

c. Driving the Minor Child without using the appropriate seatbelt or child seat (LF 46; Tr.101:1-2).

d. Feeding excessive amounts of junk food to the Minor Child to the point of causing diarrhea (LF 46; Tr. 101:2-6).

39. After the May 2013 trip to California, M.T.S-V. no longer left the Minor Child alone with Appellant due to his lack of impulse control and poor decision making and because she no longer trusted Appellant to keep the Minor Child safe or make responsible choices (LF 47; Tr. 101:7-15). M.T.S-V.'s decision to stop leaving the Minor Child alone with Appellant was also due to Appellant's habitual marijuana use, even while the Minor Child was in his care (Tr. 150:23-151:7).

40. M.T.S-V. testified that Appellant began to show increased interest in the Minor Child around the time that she married L.W.V. (Tr. 118:17-2; 184:1-4).

41. M.T.S-V. testified that Appellant has always approached the Minor Child as a possession more than a person, that her marriage to L.W.V. threatened Appellant's control over the Minor Child and M.T.S-V., and that Appellant became more interested in the Minor Child in order to exert what influence he had left (Tr. 184:5-11).

42. M.A.H., a Licensed Clinical Social Worker employed by Good Shepherd Children and Family Services conducted a home study pursuant to R.S.Mo. § 453.070 and testified at the trial. The written home study report ("Home Study") was admitted into evidence (LF 47; Tr. 34:2-10; Ex. 6).

43. The Home Study makes it clear that L.W.V. is fully dedicated and committed to his role as a parent in all aspects of the Minor Child's life and there is a strong emotional bond between them (Ex. 6). M.A.H. testified that L.W.V. acts as the Minor Child's father in all ways (Tr. 14:3-4). This finding was further corroborated by the testimony of D.L. (LF 48; Tr. 41:5-18).

44. M.A.H., reported and testified that Respondents' home meets all Missouri State Licensing Requirements for space and safety and is suitable for raising children (Ex.6, p.13; Tr.14:13-21). The background checks of L.W.V. and M.T.S-V. revealed no records of child abuse or neglect and no criminal or sex offender records (LF 48-49; Tr. 15:3-22; Ex. 6, p. 14-15).

45. The Home Study included medical examinations of Respondents who were found to be in good physical, mental and emotional health, with no contagious diseases, and no evidence of past or current alcohol or drug dependence. Both Respondents were

recommended as adoptive parents by their respective physicians (LF 49-50; Tr. 16:22-17:11; Ex. 6, p. 15-16).

46. The Home Study provides that the Minor Child was examined by a physician, who reported she was in good health, has no communicable diseases, takes no prescription medications, and has not been referred to family or child counseling regarding emotional or behavioral problems. The physician indicated no concerns, and reported that the Minor Child is developing age appropriately and that her immunizations were current (LF 50; Tr. 17:11-17; Ex. 6, p. 16).

47. M.A.H. testified and reported favorably about Respondents' parenting, stating that Respondents have realistic expectations and they share very well in the care and parenting of the Minor Child (LF 50; Tr. 145:10-13; Ex. 6, p. 17-18).

48. M.A.H. testified and reported that Respondents have appropriate attitudes regarding all adoption issues, and will respect the Minor Child's right to know Appellant as long as they are able to ensure her safety when she is with him (LF 51; Tr. 19:17-20:25; Ex. 6, p. 18-19).

49. M.A.H. testified and reported that it is the recommendation of Good Shepherd Children and Family Services that L.W.V. be approved as an adoptive parent for the Minor Child (LF 51; Tr. 21:11-18, 72:11-21; Ex. 6, p. 19).

50. The GAL appeared at the trial on behalf of the Minor Child and submitted her written report ("GAL Report") to the Court on January 26, 2016 (LF 1, 6, 30-33, 51).

51. The GAL met and interviewed the Minor Child and Respondents twice in their home, spoke with Appellant by telephone, observed a visit between the Minor Child and Appellant, reviewed the Home Study, reviewed all pleadings and evidence of the parties, and spoke extensively with counsel for Appellant and counsel for Respondents (LF 30, 51).

52. The GAL reported the Minor Child "is experiencing some anxiety about her current family situation, that being issues arising from the uncertainty of her adoption, and her lack of understanding as to why her step-father has not been made her legal father as of yet." (LF 30, 51-52).

53. The GAL reported the following about her discussions with the Minor Child regarding the adoption:

> [Minor Child] expressed that she very much wants to be adopted by her step-father. In speaking with me about her family, she refers to her step-father as her "dad" and refers to her biological father by his first name. She expressed to me that she wants her step-father to adopt her because he is her "real dad in real life." She said she does not understand why her biological father would object to this because he is never around….I asked if she had close family she does not live with and she listed a number of relatives but not her biological father. She asked repeatedly if the Court would let her be adopted and how long it would take. It is very important to her. (LF 30-31, 52).

54. The GAL reported the following about the Minor Child's relationship with Appellant:

> [Minor Child] expressed that she neither objects to, nor requests, visitation with her biological father. She expressed that he visits her on occasion and "it's fine," even though much of the time he ignores her during visits. She would rather spend time doing other things or with other people. She stated that neither her mother or step-father has ever restricted her access to her biological father and she does not feel that they would be upset if she asked to see or speak to her biological father (LF 31, 52).

55. The trial court found the GAL Report corroborates the Home Study and the testimony of M.A.H. about Respondents' attitude toward allowing Appellant to have contact with the Minor Child (LF 52; Tr. 19:17-20:25; Ex. 6, p. 18-19). The trial court also found the GAL Report corroborates M.T.S-V.'s testimony that the Minor Child never asks to see Appellant and only asked to call him on one occasion (LF 52; Tr. 124:7-125:4).

56. The GAL reported the following about her interview with Appellant:

> Additionally during my interview of the biological father, he was unable to tell me much about [the Minor Child] at all beyond telling me how much [the Minor Child] loved him and how important he is to [the Minor Child]. He spoke almost exclusively about how [M.T.S-V.] is the reason [the Minor Child] does not see him as often as she should and about his relationship

with [M.T.S-V.]. Additionally, as we were preparing to end our phone call, he suddenly interjected that while he did not know if he should not share this, the biological mother is an alcoholic and drank very heavily during her pregnancy with [the Minor Child] and during the time they lived together as a family until [the Minor Child] was approximately 8 months old. I found this comment to be very strange as I had asked him previously if he had concerns about [the Minor Child] living with her mother and step-father, and he said no. (LF 31, 52-53).

57. Ms. Kirk reported the following about her observed visit between Appellant and the Minor Child:

> The GAL arranged for a one-hour visitation between the biological father and [the Minor Child] at a public library the day before the trial. Father arrived 20 minutes late…[The Minor Child] invited her biological father to play with some toys with her but it was almost entirely parallel play rather than interactive and it was not age-appropriate. She became very loud and very inappropriate for the setting of a library, whereas prior to his arrival, I saw her sitting nicely and behaving appropriately. Not only did he fail to redirect her, the biological father was equally loud and inappropriate. I had to apologize to the library staff for their behavior and ask for their patience and eventually had to redirect them myself. The GAL saw no eye contact between [the Minor Child] and her biological father and actually never saw

[the Minor Child] even look at his face during the course of the visit (LF 31-32, 53).

58. The trial court found that the GAL Report corroborated the testimony of M.T.S-V. and D.L. about the nature of Appellant's interactions with the Minor Child (LF 53; Tr. 42:25-44:5, 125:5-12).

59. The GAL reported that the Minor Child does not appear to have emotional ties to her biological father (LF 32, 53).

60. The GAL reported that Appellant "has traveled to the St. Louis area but there have been many unexplained missed visits during that time, even after he had already arrived at his local hotel." (LF 32, 53).

61. The GAL reported that "she does not believe that any of the money provided to the mother for the care and support of the child came from the biological father." (LF 32, 54).

62. The GAL reported the following with respect to Appellant's commitment to the Minor Child:

> The GAL sees a lack of commitment on the part of the biological father. He is involved to a certain extent, but only when it suits him. He misses scheduled visits even after he is in town and at his hotel. This is most telling because there simply is not a justifiable excuse because he is minutes away with no obligations. Additionally, the biological father offered no explanation for his arriving 20 minutes late and missing out on a

> third of his GAL-observed visit with his child the day before the trial. He simply failed to appreciate the importance. The GAL believes that the biological father simply does not have the emotional maturity to display parental commitment (LF 32, 54).

63. The trial court found that the GAL Report corroborated the testimony of M.T.S-V. and D.L. about Appellant's lack of commitment to the Minor Child (LF 54; Tr. 40:17-25, 41:22-42:24, 128:16-129:4, 130:3-133:4, 173:10-18, 174:3-20). The trial court found the GAL Report corroborated the confirmations of Appellant's airline travel to St. Louis, which indicate each airline ticket was purchased by Appellant's mother (LF 54; Tr. 234:15-237:2; Ex.15-19).

64. The GAL Report concludes that granting the Adoption Petition is in the best interests of the Minor Child and provides that:

> The GAL believes that granting the petition is in the best interest of the child. This is based on her expressed wishes, on the biological father's lack of commitment in being a parent to her, and on the child's lack of emotional ties to the biological father. As to the adoption count specifically, the GAL finds the child's step-father to be fully committed to parenting and loving [the Minor Child] as his own child, as he had been doing this for some time already (LF 32; LF 54-55).

65. M.T.S-V. testified that on more than ten occasions, Appellant told the Minor Child that he was coming to visit and then failed to show up, and that this occurred during the six months prior to the filing of the Adoption Petition (LF 55; Tr. 130:10-17).

66. L.W.V. testified that Appellant missed scheduled visits with the Minor Child in the six months immediately preceding the filing of the Adoption petition (Tr. 83:10-14).

67. Appellant has traveled to St. Louis without notifying Respondents in advance and asked to see the Minor Child without considering the schedules and commitments of Respondents and the Minor Child (LF 55; Tr. 84:2-5; 127:211-128:15). Appellant testified that the Minor Child should skip scheduled activities to spend time with him, even though he could not document that he provided advance notice of his trips to St. Louis (Tr. 213:20-214:2, 248:3-13).

68. Appellant traveled to St. Louis on July 16, 2014 despite knowing that the Minor Child was in England with M.T.S-V. and L.W.V. at that time. The purpose of this trip was not to see the Minor Child but rather to attend a concert (Tr. 179:15-22; Ex.16).

69. M.T.S-V. testified that on multiple occasions, Appellant was more than thirty minutes late for scheduled plans to see the Minor Child, and that this occurred during the six months prior to the filing of the Adoption Petition (LF 55; Tr. 130:19-131:5).

70. On July 29, 2014, Appellant made plans to see the Minor Child at the library at 3:30 pm but did not arrive until 4:14 p.m. (Ex. 13, p. 1). The trial court found

that the text messages were printed or saved as screenshots by Appellant in California and do not reflect the local time in St. Louis when they were sent (LF 56; Tr. 131:14-132:3).

71. On August 3, 2014, Appellant made plans to see the Minor Child at Lindenwood Park in St. Louis at 11:00 a.m., but did not show up. M.T.S-V. made alternate plans for Appellant to see the Minor Child later that day at the library (LF 56; Tr. 132:4-20; Ex. 13, p. 1-2).

72. On August 5, 2014, Appellant made plans to see the Minor Child at Panera at 10:00 a.m. the following day (August 6, 2014), but did not show up (LF 56; Tr. 132:21-133:4; Ex. 13, p. 2).

73. The trial court found that D.L.'s testimony corroborated M.T.S-V.'s testimony that Appellant has repeatedly made plans to see the Minor Child and then either failed to appear or arrived more than thirty minutes late (LF 56; Tr. 41:22-42:24).

74. M.T.S-V. testified that it was upsetting to the Minor Child when Appellant repeatedly missed scheduled visits and she eventually stopped telling the Minor Child about scheduled visits ahead of time so that the Minor Child would not be disappointed when Appellant did not show up (Tr. 151:11-21).

75. M.T.S-V. testified that the Minor Child is mostly indifferent about Appellant, never asks about him, never asks to see him, and does not have a close relationship with him (Tr. 124:7-13).

74. L.W.V. testified that Appellant's relationship with the Minor Child is "minimalistic", not a father-child relationship and that there is no parental bond between Appellant and the Minor Child (Tr. 79:8-81:9).

76. M.T.S-V. testified that Appellant does not make the Minor Child a priority when he spends time with her and he does not want to go places that the Minor Child enjoys because he does not get her full attention. Appellant sometimes ignores the Minor Child entirely during visits (Tr. 125:10). M.T.S-V. further testified that Appellant prefers to take the Minor Child to places that are important to him without regard to the Minor Child's needs and interests (LF 56-57; Tr. 125:13-24). This corroborated the GAL's observation that Appellant is more concerned about his perceived importance to the Minor Child than he is about the Minor Child herself (LF 31, 56-57).

77. Appellant testified that the only purpose for his visits to St. Louis is to see the Minor Child and he has no other obligations in St. Louis (Tr. 216:1-6). In light of this, the trial court found that Appellant's habitual lateness and/or failure appear for scheduled visits demonstrated a willful abandonment of the Minor Child for a period of at least six months prior to the filing of the Adoption Petition pursuant to R.S.Mo. § 450.040.7 (LF 57; Tr. 83:10-17).

79. Appellant testified that he has more fun with the Minor Child than anyone else, claimed that the Minor Child loves him and that he is very important to her, and accused M.T.S-V. of restricting his access to the Minor Child (LF 31; Tr. 202:12-18). Appellant also testified that an adoption would take away his relationship with the Minor

Child (Tr. 225:9-12). However, after being served with a summons that put his parental rights at stake, Appellant's trial attorney requested a thirty day extension of time until July 10, 2015 to file responsive pleadings (LF 20). Despite retaining the services of his trial attorney on June 8, 2015, the attorney's invoice has no record of Appellant communicating with the attorney until July 8, 2015 (Ex. H, p.1; Tr. 255:1-8). Thereafter, Appellant did not file his Answer until July 27, 2015 which was seventeen days after the requested extension of time expired (LF 22-25). Appellant failed to file a paternity suit or seek any court ordered visitation until December 14, 2015, only three days prior to the trial of this matter. Appellant has never been incarcerated or otherwise unable to seek such relief, but did not take any legal action to seek court ordered parenting time with the child until nearly six years after M.T.S-V. and the Minor Child stopped cohabiting with him (LF 58).

80. The trial court found that despite having ample opportunities for visitation and communication, the evidence adduced at trial and the GAL Report demonstrate Appellant's long term lack of interest in the Minor Child (LF 58). The trial court also found that despite occasional contact, Appellant does not have meaningful interactions with the Minor Child and often arrives late or completely fails to appear for scheduled visits (LF 58). The trial court further found that Appellant's relationship with the Minor Child is superficial and insufficient to establish that he has not willfully abandoned the Minor Child (LF 58).

81. M.T.S-V. testified that Appellant has never shown an ongoing interest in providing financial support for the Minor Child. M.T.S-V. further testified that only Appellant's mother has ever shown any interest in providing financial assistance for the Minor Child (Tr. 140:17-24).

82. The monthly statements from Respondents' Bank of America account *7478 from June 20, 2014 through January 21, 2015 were admitted into evidence (Tr. 53; Ex. 20-26). M.T.S-V. had no other bank accounts in which Appellant or his mother could make electronic deposits from June 23, 2014 through December 23, 2014 (Tr. 105:9-110:10). Between June 23, 2014 and December 23, 2014, no funds from Appellant were deposited into the account and Respondents received no other funds from Appellant (LF 58; Tr. 105:13-110:20).

83. On July 30, 2014, September 17, 2014, October 16, 2014, November 5, 2014, and December 11, 2014, Appellant's mother made online banking transfers in the amount of $400.00 to Respondents' bank account (Ex. 21-25). The conformation numbers of the five online banking transfers from Appellant's mother to Respondents' bank account are identical to the confirmation numbers on the bank account statement in Appellant's discovery response that he claimed to be his own support payments (LF 59-60; Tr. 111:14-114:25; Ex.9, p.1-2; Ex. 21-25; Ex. C, ¶ 7).

84. The GAL Report also stated the following about Respondent's alleged financial support of the Minor Child:

> There was a debate at trial about who provided money to the biological mother for assistance in caring for the child. The written evidence (in the form of bank records) suggests that the money came from the child's paternal grandmother but the biological father's testimony was that it came from his trust and he gave the money to his mother to give to [M.T.S-V.] for him because he is not familiar with online banking. When I interviewed the biological father shortly after appointment as GAL, I asked him how he supported his daughter and he said by his work as a music producer. He made no mention of a trust at that time. Discovery requests were served on the biological father which the GAL believes obligated him to produce evidence of a trust, none of which was ever produced (LF 31; LF 60).

85. The trial court found that Appellant's discovery responses and Respondents' bank account statements that were admitted into evidence at trial clearly indicate that Appellant's mother was the source of all funds allegedly paid to M.T.S-V. (LF 60).

86. The trial court further found that aside from Appellant's own self-serving testimony, he failed to offer any credible evidence that he paid the money to his mother which was then transferred to Respondents. Appellant also testified that his support payments came from a trust account, but he never produced any evidence of the trust account in his Production of Documents (LF 60-61; Tr. 199:17-200:13; Ex. 8-9).

87. Appellant did not document that he paid any funds to support the Minor Child between June 23, 2014 and December 23, 2014, despite having the resources to do

so (LF 61). The trial court found that Appellant could not establish that his failure to financially support the child was not willful (LF 61).

88. D.L. testified that during the time she lived with M.T.S-V. and the Minor Child, she never received any money from Appellant to contribute toward the Minor Child's share of rent or utilities (Tr. 45:4-7).

89. T.H. testified that during the time she lived with M.T.S-V. and the Minor Child, she never received any contribution from Appellant for rent, utilities, or support of the Minor Child. T.H. also never observed Appellant provide any money or items of support to care for the Minor Child (Tr. 60:3-11).

90. L.W.V. testified that during the time he has lived with M.T.S-V. and the Minor Child, he has not received any money or items of support from Appellant (Tr. 78:2-4).

91. Based on the evidence and circumstances of this case, the trial court found that Appellant willfully, substantially and continuously neglected to support the Minor Child for a period of at least six months prior to the filing of the Adoption Petition (LF 61).

92. The trial court found that L.W.V. is willing to assume all of the rights, duties and other legal consequences of a parent-child relationship with the Minor Child, including the Minor Child's right to inherit from his estate (LF 61; Tr. 74:3-23).

93. Respondents both testified that they wish for L.W.V. to be listed as the Minor Child's father on her birth certificate and to legally change her name (LF 61; Tr. 73:4-15, 126:15-24).

94. Respondents both testified that they will still allow Appellant to visit and communicate with the Minor Child if the adoption is granted (LF 61; Tr. 73:22-74:2, 146:25-147:13).

95. Respondents both testified that they wish for L.W.V. to be the sole custodial parent of the Minor Child if M.T.S-V. were to die before the Minor Child reaches the age of majority. (LF 62; Tr. 74:24-75:3; Tr. 147:22-25)

96. L.W.V. testified that if the adoption is granted and M.T.S-V. dies before the Minor Child reaches the age of majority, then he would still allow Appellant to visit and communicate with the Minor Child. (LF 62; Tr. 75:4-10).

97. The trial court found that the Minor Child is suitable for adoption, and Respondents are suitable as parents for the Minor Child (LF 62).

98. The trial court found that Respondents have the ability to properly care for, maintain, and educate the Minor Child sought to be adopted (LF 62).

99. On February 29, 2016, the trial court entered its Findings of Fact and Conclusions of Law ("Judgment") (LF 34-65).

100. The trial court found that pursuant to R.S.Mo. § 453.040(7), Appellant's consent to the adoption was not required, in that:

a. Appellant willfully abandoned the Minor Child for a period of at least six months prior to Respondents filing the Adoption Petition (LF 63); and

b. Appellant willfully, substantially and continuously neglected to provide the Minor Child with necessary care and protection for a period of at least six months prior to Respondents filing the Adoption Petition (LF 63).

101. The trial court found that the Minor Child does not appear to have emotional ties to Appellant, as observed by the Guardian Ad Litem and corroborated by the testimony of other witnesses who have observed Appellant's interactions with the Minor Child (LF 63).

102. The trial court found that Appellant has failed to maintain regular visitation or other contact with the Minor Child by repeatedly missing scheduled visits without justification or explanation (LF 63).

103. The trial court found that Appellant has failed to pay for the cost of care and maintenance of the child despite being financially able to do so, in that all of Appellant's alleged support payments were actually made by Appellant's mother and Appellant had no credible evidence to support his testimony that he was the actual source of those funds (LF 63-64).

104. The trial court found that Appellant has continuously demonstrated a lack of commitment to the Minor Child, by neglecting the Minor Child's health and safety when she was in his care, showing very little interest in the Minor Child, missing scheduled visits without justifiable excuses, arriving 20 minutes late without explanation

and missing a third of his GAL-observed visit the day before the trial, failing to appreciate the importance of this meeting, and lacking the emotional maturity to display parental commitment (LF 64).

105. The trial court found that pursuant to R.S.Mo. § 453.080.1(8), it is fit and proper that Respondents' adopt the Minor Child, since the welfare of the Minor Child so demands (LF 64).

106. The trial court terminated Appellant's parental rights with respect to the Minor Child and ordered and decreed that the Minor Child shall for all legal intents and purposes be the child of Respondents (LF 64-65).

107. The trial court changed the name of the Minor Child and ordered and decreed that a new birth certificate be issued for the Minor Child, wherein L.W.V. is listed as the Minor Child's father (LF 65).

108. The Judgment became final on April 1, 2016 and the deadline for Appellant to file his Notice of Appeal was April 11, 2016.

109. On April 15, 2016, Appellant filed a Motion for Leave to File Notice of Appeal Out of Time.

110. On April 25, 2016, the Missouri Court of Appeals granted Appellant's Motion for Leave to File Notice of Appeal Out of Time over Respondents' objection, and Appellant filed his Notice of Appeal on May 10, 2016 (LF 67-69; Supplemental Legal File 0010).

111 On January 31, 2017, following oral arguments, the Missouri Court of Appeals reversed the Judgment of the trial court in cause number ED 104249 on the grounds that it was against the weight of the evidence and clearly erroneous.

112. On February 15, 2017, Respondents filed a Motion for Rehearing or Transfer in the Missouri Court of Appeals, which was denied on March 14, 2017.

113. On March 29, 2017, Respondents filed an Application for Transfer to the Supreme Court of Missouri, which was granted on May 30, 2017.

POINTS RELIED ON

I.

THE TRIAL COURT DID NOT ERR IN ITS JUDGMENT TERMINATING APPELLANT'S PARENTAL RIGHTS BECAUSE THE JUDGMENT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE, IN THAT RESPONDENTS PROVED BY CLEAR, COGENT AND CONVINCING EVIDENCE THAT APPELLANT WILLFULLY ABANDONED THE MINOR CHILD FOR A PERIOD OF AT LEAST SIX MONTHS PRIOR TO RESPONDENTS FILING THEIR PETITION FOR ADOPTION AS REQUIRED BY R.S.MO. SECTION 453.040(7), IN THAT APPELLANT'S REPEATED FAILURE TO APPEAR FOR SCHEDULED VISITS WITHOUT JUSTIFIABLE EXCUSES, HIS LACK OF EMOTIONAL BOND WITH THE CHILD, AND HI FAILURE TO SEEK ANY COURT ORDERED VISITATION UNTIL THREE DAYS BEFORE THE ADOPTION TRIAL INDICATE DEMONSTRATE A WILLFUL ABANDONMENT OF THE CHILD.

GSM v. THB, 786 S.W.2d 898 (Mo.App. E.D. 1990)

In re Adoption of H.M.C., 11 S.W.3d 81 (Mo.App. W.D. 2000)

In re Adoption of W.B.L., 681 S.W.2d 452 (Mo. Banc 1984)

In re K.L.C., 9 S.W. 3d 768 (Mo.App. S.D. 2000)

II.

THE TRIAL COURT DID NOT ERR IN ITS JUDGMENT TERMINATING APPELLANT'S PARENTAL RIGHTS BECAUSE THE JUDGMENT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE, IN THAT RESPONDENTS PROVED BY CLEAR, COGENT AND CONVINCING EVIDENCE THAT APPELLANT WILLFULLY, SUBSTANTIALLY AND CONTINUALLY NEGLECTED TO PROVIDE NECESSARY CARE AND PROTECTION TO THE MINOR CHILD IN THE SIX MONTHS PRIOR TO RESPONDENTS' FILING THEIR PETITION FOR ADOPTION AS REQUIRED BY R.S.MO. SECTION 453.040(7), IN THAT ALL OF APPELLANT'S ALLEGED SUPPORT PAYMENTS FOR THE MINOR CHILD WERE ACTUALLY MADE BY APPELLANT'S MOTHER.

In re Adoption of C.M., 414 S.W.3d 622 (Mo.App. W.D. 2013)

In re J.M.J., 404 S.W.3d 423 (Mo.App. W.D. 2013)

In re K.R.J.B., 228 S.W.3d 611 (Mo.App. S.D. 2007)

S.L.N. v. D.L.N., 167 S.W.3d 736, 741 (Mo.App. W.D. 2005)

STANDARD OF REVIEW

In court tried cases, the judgment of the trial court will be sustained by the appellate court unless there is no substantial evidence to support it, unless it is against the weight of the evidence, unless it erroneously declares the law, or unless it erroneously applies the law. Murphy v. Carron, 536 SW 2d 30, 32 (Mo.banc 1976).

"Greater deference is granted to a trial court's determinations in custody and adoption proceedings than in other cases." S.L.N. v. D.L.N., 167 S.W.3d 736, 741 (Mo.App. W.D. 2005). Appellate courts defer to the trial court's credibility determinations and accept as true the evidence and inferences favorable to the judgment. In re M.F., 1 S.W.3d 524, 532 (Mo.App. W.D. 1999). Appellate courts give greater deference to the trial court's determinations of credibility in an adoption case than in other civil cases. In re C.D.G., 108 S.W.3d 669, 674 (Mo.App. W.D. 2002). Generally, an appellate court will not disturb the judgment in an adoption case unless the welfare of the child requires another disposition. Id. A Missouri appellate court will only reverse an adoption judgment if it is left with the firm belief that the judgment is wrong. In re Adoption of H.D.J.K., 336 S.W.3d 516, 518 (Mo.App. W.D. 2011). In a stepparent adoption appeal, the court must "accept as true the evidence and permissible inferences favorable to the judgment and disregard all contrary evidence and inferences." In re the Matter of A.L.H., 906 S.W.2d 373, 376 (Mo.App. E.D. 1995). In reviewing questions of fact, the appellate court must view "the evidence and any reasonable inferences therefrom in the light most favorable to the [trial] court's decision." A.D. v. N.R. (In re Estate of

L.G.T.), 442 S.W.3d 96, 100 (Mo.App. S.D. 2014) (internal quotations omitted). Further, the appellate court may not "re-evaluate testimony through its own perspective." Id.

"An appellate court is not in the position of second-guessing a trial court's evaluation and weighing of evidence. In a case so fact-based and in which witness testimony is so crucial, it is particularly important that the appellate court exercise proper deference to the trial court's judgment." Essex Contracting, Inc. v. Jefferson County, 277 S.W.3d 647, 653 (Mo. Banc 2009). "So long as there is credible evidence on which the trial court can formulate its beliefs, the appellate court may not substitute its judgment to reach a different result." Harberding v. Mercantile Trust Co., N.A., 732 S.W.2d 567, 569 (Mo.App. E.D. 1987).

> "The phrase 'weight of the evidence' means its weight *in probative value, rather than the quantity or amount of evidence*. The weight of the evidence is not determined by mathematics, but depends on its effect in inducing belief. An appellate court exercises extreme caution in considering whether a judgment should be set aside on the ground that it is against the weight of the evidence and will do so only upon a firm belief that the judgment was wrong."

In re Marriage of Altergott, 259 S.W.3d 608, 613 (Mo.App. S.D. 2008) (emphasis added).

Adoption of proposed findings and conclusions is not reversible error. Neal v. Neal, 281 S.W.3d 330, 337-38 (Mo.App. E.D. 2009). When a trial court adopts a party's

proposed findings and conclusions, the standard of review is still guided by Murphy v. Carron, 536 S.W.2d at 32, which applies to all appeals of court-tried cases. Neal, 281 S.W. 3d at 338. Upon appellate review, the trial court's adoption of proposed findings "may show that the trial court gave the necessary judicial consideration to the issues before it." Id. It is not erroneous for a trial court to adopt a party's proposed findings and conclusions unless the court ignores its statutory mandate in doing so. Binkley v. Binkley, 725 S.W.2d 910, 911-12 (Mo.App. E.D. 1987). Proposed findings and conclusions are useful in bench tried cases and there are times when the proposal will be "correct in all details." State v. Griffin, 848 SW 2d 464, 472 (Mo. Banc 1993). A trial court is still presumed to have "made its own determination of the actual facts" and decided that the proposed findings and conclusions were correct when it adopts a party's proposed judgment. Id.

An adoption judgment shall be affirmed on appeal unless there is an abuse of discretion. In the Interest of A.R.M., 750 S.W.2d 86, 87 (Mo.App. E.D. 1988). "An abuse of discretion may be found only when the trial court's decision is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." C.D.G., 108 S.W.3d at 674 (internal quotation omitted).

In both of his Points Relied on, Appellant claims that the trial court's judgment was against the weight of the evidence. As such, this court should use an abuse of discretion standard of review for both points raised by Appellant.

ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN ITS JUDGMENT TERMINATING APPELLANT'S PARENTAL RIGHTS BECAUSE THE JUDGMENT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE, IN THAT RESPONDENTS PROVED BY CLEAR, COGENT AND CONVINCING EVIDENCE THAT APPELLANT WILLFULLY ABANDONED THE MINOR CHILD FOR A PERIOD OF AT LEAST SIX MONTHS PRIOR TO RESPONDENTS FILING THEIR PETITION FOR ADOPTION AS REQUIRED BY R.S.MO. SECTION 453.040(7), IN THAT APPELLANT'S REPEATED FAILURE TO APPEAR FOR SCHEDULED VISITS WITHOUT JUSTIFIABLE EXCUSES, HIS LACK OF EMOTIONAL BOND WITH THE CHILD AND HIS FAILURE TO SEEK ANY COURT ORDERED VISITATION UNTIL THREE DAYS BEFORE THE ADOPTION TRIAL INDICATE DEMONSTRATE A WILLFUL ABANDONMENT OF THE CHILD.

The grounds for adoption and termination of parental rights are set forth in R.S.Mo. § 453.040(7), which provides that consent for adoption is not required of parents who willfully abandon the child or willfully, substantially and continuously neglect to provide the child with necessary care and protection for a period of at least six months prior to filing the petition for adoption.

"The terms 'abandoned' and 'neglected' as used in § 453.040 are disjunctive and consequently, either ground, if supported by substantial evidence, will obviate the need

for parental consent." In re K.L.C., 9 S.W. 3d 768, 772 (Mo.App. S.D. 2000). "Abandonment and neglect are different, but not mutually exclusive concepts." Id. "Abandonment is defined as the voluntary and intentional relinquishment of the custody of a child with the intent to never again claim the rights or duties of a parent, or, as the intentional withholding by the parent of his or her care, love, protection and presence, without just cause or excuse." Id. at 772-73.

As applied here, this Court must grant both of Appellant's points relied on in order for the trial court's Judgment to be reversed. The granting of only one point is insufficient to reverse the Judgment.

Appellant cites In the Matter of O'Brien, 600 S.W.2d 695 (Mo.App. W.D. 1980), presumably to apprise the Court of the standard of proof in an adoption case (Appellant Br. 17). This case is not on point with the present case, as it involves involuntary commitment in which the issue was whether the appellant presented a likelihood of serious physical harm to himself or to others. Id. at 695. This case did not involve an adoption or a termination of parental rights and is completely irrelevant and immaterial to this appeal.

Appellant argues that the clear, cogent and convincing burden of proof in an adoption case reflects that parents have a fundamental liberty interest in their child remaining in their custody and control (Appellant Br. 18). In support of this argument, Appellant cites Troxel v. Granville, 530 U.S. 57 (2000). Troxel is not on point with this case, as it addressed the constitutionality of a third party visitation statute in the State of

Washington. Id. at 75. The biological father in Troxel was deceased and the paternal grandparents obtained third-party visitation. Id. at 60-61. Troxel held that the rights of the children's mother and *adoptive step-father* were superior to those of their paternal grandparents. Id. at 75 (emphasis added).

Troxel provides that "the State's recognition of an independent third-party interest in a child can place a substantial burden on the traditional parent-child relationship." Id. at 64. Troxel notes that the third-party visitation statute was invalidated "because it authorized a contested visitation order at the intrusive behest of any person at any time subject only to a best-interests-of-the-child standard." Id. at 77.

This is not a situation of an "independent third party" seeking visitation, because L.W.V. is married to the mother of the Minor Child who fully supports the adoption. Furthermore, L.W.V. is not just 'any person' in the Minor Child's life. He is a step-father who acts as the Minor Child's father in all ways and is fully dedicated and committed to his role as a parent in all aspects of the Minor Child's life (LF 48; Ex. 6; Tr. 14:3-4).

Troxel invalidated the third-party visitation statute, in part, because it allowed a court to "disregard and overturn *any* decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition." Id. at 67. Troxel further noted that the paternal grandparents did not allege and no court ever found that the biological mother and adoptive stepfather were unfit parents. Id. at 67. By contrast, the trial court in this matter did find that it was fit and proper for L.W.V. to adopt the Minor Child and that it was in her best interests for the adoption to be granted.

(LF 64). There was also ample evidence that Appellant was not a fit parent, both in the Guardian Ad Litem report and in the testimony of credible witnesses (LF 43-46, 53-54; Tr. 92:2-94:18, 96:17-97:7, 98:8-99:7, 100:21-101:6).

Troxel provides that there are constitutional restrictions on state interference with parents' fundamental liberty interest in care, custody and management of their children. Id. at 63. In this case, Appellant did almost nothing to assert his fundamental liberty interest. Despite the fact that M.T.S-V. and the Minor Child moved from California to St. Louis, Appellant took no legal action to seek visitation rights until December 14, 2015, a mere three days before the adoption trial (LF 35; Tr. 249:2-6). Appellant even admitted that he could have filed a paternity case at any time since the Minor Child was born (Tr. 249:10-12). Respondents and the Minor Child should not be expected postpone the adoption indefinitely so that Appellant can retain the parental rights that he rarely sought to assert.

Troxel also provides that parents' interest in the care, custody and control of their children "is perhaps the oldest of the fundamental liberty interests recognized by this Court." Id. at 65. "[T]he liberty protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and to control the education of their own." Id. (internal quotations omitted).

In this case, Appellant's rights have been fully protected by the Due Process clause. He was lawfully served with a summons and has been represented by counsel throughout all phases of these proceedings. Appellant filed his answer to the Adoption

Petition out of time and was not found in default (LF 22, 35; Ex. 5; Tr. 231:11-18). He had ample opportunity to conduct discovery or depositions, cross-examine Respondents and their witnesses, and to present credible evidence that he did not abandon or neglect the Minor Child. Appellant was also allowed to proceed with this appeal over Respondents' objections despite filing his Notice of Appeal out of time. Furthermore, the Missouri adoption statute (R.S.Mo. § 453.040) has not been found unconstitutional or in violation of the Due Process clause.

Respondents further submit that Appellant relies on Troxel to have his parental rights adjudicated in a vacuum without balancing any other considerations. M.T.S-V. is the biological mother of the Minor Child and she also has a fundamental liberty interest in the care, custody and control of the child. A critical component of M.T.S-V.'s fundamental liberty interest in the care, custody and control of the Minor Child is the role of L.W.V. assuming the role of the father at the present time and in the future, especially if something ever happened to M.T.S-V. that prevented her from caring for the Minor Child. The protection of appellant's parental rights that he never even sought to legally exercise until three days before the adoption trial must be balanced against those of the Minor Child's mother who has always cared for her.

Appellant cites In the Interest of T.A.L., 328 S.W.3d 238 (Mo.App. 2010), which is a termination of parental rights case under R.S.Mo. Chapter 211 and not an adoption case. After losing custody of her child due to unsanitary conditions in her home, the mother complied with nearly all of her service treatment tasks. Id. at 240-41. The

mother also consistently attended weekly visitations with the child and made child support payments. Id. at 242-43. Despite this substantial compliance, the court terminated the mother's parental rights. Id. at 245. The judgment was reversed on appeal because of the trial court's failure to establish completely different criteria than in an adoption case, namely mental state, attendance of team meetings, sobriety, attendance, counseling and visitation. Id. at 249-53. The only common criteria between T.A.L. and this case are visitation and child support. While the mother in T.A.L. regularly attended visits with the child and did pay support, the evidence when viewed in a light most favorable to the judgment is that Appellant frequently missed scheduled visits and failed to provide any of his own financial support for the Minor Child.

As appellant notes, T.A.L. provides that "denying a parent the right to raise her child is an awesome power, and courts should not exercise it lightly." Id. at 246. In this case, there is no evidence that the trial court exercised its powers lightly or failed to carefully consider the evidence and testimony. Furthermore, the inquiries are completely different in adoption cases. Whereas a termination of parental rights case under R.S.Mo. Chapter 211 looks closely at the parent's conduct after the child is taken into custody by the state, the most significant events giving rise to the grounds for adoption have already occurred at the time the case is filed. Parents who are the subject of a state-filed termination of parental rights case almost always more involved in their children's lives than those defending against a stepparent adoption. If a non-custodial parent abandons or fails to financially support a child who is cared for by another relative and is not the

subject of an adoption, there would be no compelling reason for a juvenile officer to initiate a termination of parental rights proceeding under R.S.Mo. Chapter 211. In fact R.S.Mo. § 211.447.4(1) specifically states that it is not necessary for the juvenile officer to file a termination of parental rights petition under those circumstances. Likewise, if an adoption were not pending in this case, it is highly unlikely that a juvenile officer would seek to terminate Appellant's parental rights. Because of the vast differences in the circumstances, inquiries and criteria between termination of parental rights and adoption cases, the applicability of one type of case to another is necessarily limited.

Appellant also cites In re K.A.W., 133 S.W.3d 1 (Mo. Banc 2004), which is not on point with the present case procedurally. K.A.W. was a termination of parental rights case filed by a juvenile officer pursuant to R.S.Mo. Chapter 211 and did not involve an adoption. K.A.W. was reversed and remanded because the trial court failed to consider and make findings on each of the statutorily required factors for termination of parental rights upon which the trial court based its decision. Id. at 21. By contrast, Appellant's appeal asserts that the findings of abandonment and neglect were against the weight of the evidence.

Appellant cites K.A.W. for the proposition that "the constitutional implications of a termination of parental rights also inform the standard of appellate review" because "the bond between parent and child is a fundamental societal relationship." Id. at 12. K.A.W. also provides that "[t]he fundamental liberty interest of natural parents in raising their

children does not evaporate simply because they have not been model parents or have lost temporary custody of their children to the State." Id. at 12.

This argument is inapplicable to the present case. The evidence held in the light most favorable to the trial court's judgment is that: (1) there is no parental bond between Appellant and the Minor Child, (2) Appellant has failed to build and strengthen a parental bond with the Minor Child, and (3) the Minor Child does not appear to have emotional ties to Appellant (LF 32, 53; Tr. 79:8-81:9, 133:14-18). Furthermore, Appellant has never obtained or exercised any custodial visitation rights such that could be lost to the State or anyone else. Asking M.T.S-V. to voluntarily allow him to spend more time with the Minor Child does not relieve Appellant of his obligation to build and strengthen his parental bond with the child.

Appellant also cites In re MDR, 124 SW 3d 469 (Mo. Banc 2004), which is not on point with this case either procedurally or factually. In MDR, the child was born to an incarcerated mother and placed in foster care. Id. at 471. After her release from prison, the mother was incarcerated again for a parole violation and her parental rights were eventually terminated. Id. The key issue in MDR is the mother's challenge to the constitutionality of of R.S.Mo. Section 211.447.2(1). Id. at 472. By contrast, Appellant has never challenged the constitutionality of the adoption statutes in this case. MDR provides that the Due Process Clause would be offended if the state broke up a natural family over the objections of the parents without some showing of unfitness and solely because it was thought to be in the children's best interests. Id.

None of these issues are applicable here. As discussed above, the granting of this adoption would not break up the Minor Child's natural family. The Minor Child has lived exclusively with her mother (and not Appellant) for more than seven years and will continue to do so if the trial court's judgment is affirmed. Aside from being listed on the Minor Child's birth certificate, Appellant took no other legal actions to assert or expand his parental relationship with the Minor Child until three days before the adoption trial. Furthermore, the undisputed evidence is that this is an open adoption in which Respondents will continue to allow Appellant to contact and spend time with the Minor Child LF 52; Tr. 19:17-20:25; Ex. 6, p. 18-19). M.T.S-V. has allowed Respondent to contact and spend time with the Minor Child even in the absence of court order requiring her to do so, and there is no indication that this would stop if the adoption judgment is affirmed.

Appellant also cites In re P.C., 62 S.W.3d 600 (Mo.App. W.D. 2001) to reiterate Appellant's fundamental liberty interest in a parent-child relationship. P.C. provides that termination of parental rights is "a drastic intrusion into the sacred parent-child relationship." Id. at 603 (internal quotations omitted).

As applied here, Appellant barely had any relationship with the Minor Child that was subject to intrusion as a result of the adoption. The evidence viewed in a light most favorable to the judgment is that that L.W.V. acts as the father of the Minor Child in all ways (LF 32, 48, 54-55; Tr. 14:3-4, 41:5-18). Appellant never sought court ordered visitation until three days before trial and there was evidence that he could continue same

interactions with the Minor Child even if adoption was granted. The granting of the adoption still preserves the Minor Child's current interpersonal relationships with both of her biological parents, whereas denial of the adoption could very well lead to more disruption and instability in the Minor Child's life. It is unclear how the adoption takes away any actual relationship that Appellant has ever had with the Minor Child. Appellant should not be permitted to take no legal action to seek parenting time and then block an adoption to prevent termination of a relationship that never existed in the first place.

P.C. is also not on point with this case, in that it is a termination of parental rights case filed by the juvenile officer as opposed to an adoption. The child in P.C. was taken into custody by the state after suffering 2nd degree burns while in the mother's care. Id. The mother did complete a parenting skills class and exercised some visitation, but initially declined to attend counseling and an outpatient substance abuse program as recommended. Id. at 602. The trial court terminated the mother's parental rights but the judgment was reversed on appeal. Id. at 606. In reversing the termination of parental rights judgment, P.C. provides that "[t]he record suggests that [mother] may well be able to correct the shortcomings noted by the circuit court." Id. at 606. In this case there is no evidence that Appellant may be able to correct his shortcomings. Furthermore, the potential to correct current problems is not even relevant to establishing the statutory grounds of abandonment and neglect under R.S.Mo. § 453.040 in an adoption matter. While that could potentially factor into whether an adoption is in a child's best interests, the best interests of the Minor Child are not at issue in this appeal.

P.C. also provides that "[t]o allow only [a] review of very recent events is both short sighted and dangerous. All grounds for termination must to some extent look to past conduct because the past provides vital clues to present and future conduct." Id. at 604 (internal quotations omitted).

As applied here, the trial court appropriately considered Appellant's conduct outside of the six month statutory period in finding that he abandoned the Minor Child. Although there was evidence that Appellant made more efforts to contact the Minor Child after Respondents married and during the six month statutory period, there was also a lengthy history of Appellant making very little effort to be involved in the Minor Child's life and missing numerous scheduled visits.

"Abandonment focuses on the parent's intent, taking into consideration all evidence of the parent's conduct before and after the applicable statutory period." In the Interest of C.J.G., 75 S.W.3d 794, 797 (Mo.App. W.D. 2002). "[A] parent cannot avoid abandonment by maintaining a superficial or tenuous relationship with the child." Id. at 798. "To prove abandonment, there must be evidence which shows the accessibility of the child for purposes of visitation and communication." Id. at 801. "Not every gesture by a natural parent will terminate abandonment." In re C.W., 753 S.W.2d 933, 940 (Mo.App. E.D. 1988). "Abandonment can also occur if a parent intentionally withholds from the child without just cause or excuse the care, love, protection and presence of a parent." In re Adoption of H.M.C., 11 S.W.3d 81, 88 (Mo.App. W.D. 2000).

Appellant claims that the trial court committed error by finding that he willfully abandoned the Minor Child (Appellant Br. 22). Because Appellant lives in California, he claims that cannot see the Minor Child on a daily or weekly basis due to the distance (Appellant Br. 23). Appellant asserts that M.T.S-V. chose to move herself and the Minor Child to Missouri in 2010 and that this Court must consider the geographic distance when evaluating whether abandonment occurred (Appellant Br. 23). Appellant asserts he did not willfully abandon the Minor Child during the six months before Respondents filed the Petition because: (1) everyone agreed he had three or four weekend visits with the Minor Child that were an average of three to five hours each weekend day, (2) he makes regular attempts to call the Minor Child, and (3) that he has asked M.T.S-V. for more time with the Minor Child (Appellant Br. 23-24). Appellant also asserts that M.T.S-V. limits his access to the Minor Child by supervising the visits and dictating the time and place of the visits (Appellant Br. 24-25).

These arguments lack merit. As to the length of visits, Appellant's own testimony was that his visits with the Minor Child never exceeded two hours (Tr. 214:18-20). Appellant's allegedly limited access to the Minor Child does not establish that the trial court's finding of abandonment was against the weight of the evidence. Even though M.T.S-V. and the Minor Child moved to Missouri in 2010 and M.T.S-V. supervises his visits, Appellant took no legal action to seek visitation rights until December 14, 2015, a mere three days before the adoption trial (LF 35; Tr. 249:2-6). Appellant even admitted that he could have filed a paternity case at any time since the Minor Child was born (Tr.

249:10-12). Because Appellant failed to take any legal action to spend more time with the Minor Child, his limited access and informal requests to spend more time with the child are irrelevant and immaterial when viewing the evidence in the light most favorable to the judgment.

C.W., 753 S.W.2d at 940, affirmed the trial court's determination that the natural mother willfully abandoned the child. During the six year period from when the biological mother last resided with the child until the filing of the adoption petition, the biological mother did not attempt through the police or the court system to locate the child or secure any custody or visitation rights. Id. at 939. This failure to seek any court ordered visitation was relevant to the court's finding of abandonment. Id.

As applied here, Appellant's failure to avail himself of the legal remedies that are available to parents is evidence that he acquiesced to spend limited time with Minor Child, despite claiming to want more time. Because Appellant failed to take legal action to seek more time with the child for nearly six years after M.T.S-V. and the Minor Child moved from California to St. Louis, the fact M.T.S-V. supervised his visits during that time does not preclude a finding of abandonment.

Appellant's efforts to contact the Minor Child by phone and his sporadic visits during and before the six-month statutory also fail to establish that the the trial court's finding of abandonment was against the weight of the evidence. A parent who lives farther away from a child cannot see that child as often as a parent who lives nearby, and that may be relevant to determining if abandonment occurred under R.S.Mo. § 453.040.

However, even if less frequent contact due to the geographical distance *could* preclude a finding of abandonment, the trial court properly considered the nature and quality of Appellant's interactions with the Minor Child.

As stated above, 'weight of the evidence' refers to the probative value of evidence and its effect in inducing belief as opposed to the quantity or amount. Altergott, 259 S.W.3d at 613. "This standard of proof for abandonment may be met even when the court is presented contrary evidence." H.M.C., 11 S.W.3d at 87. "Evidence in the record, which might have supported a different conclusion, does not necessarily demonstrate that the trial court's determination is against the weight of the evidence." Id. at 88. A reversal of the trial court's finding of abandonment because of Appellant's visits and phone calls with the child during the six-month statutory period, would require this Court to second-guess the trial court's evaluation and weighing of evidence. Essex Contracting, 277 S.W.3d at 653. It would also require this Court re-evaluate testimony and evidence through its own perspective, which is not permissible under the applicable standard of review. A.D., 442 S.W.3d at 100. If this Court relied on Appellant's arguments to determine that Respondents failed to meet their burden of persuasion, it would inescapably have to re-evaluate trial testimony and substitute its judgment for the trial court's evaluation of testimony and evidence, the inferences drawn therefrom, and the trial court's judgment.

In this case, the trial court acted well within its discretion as the trier of fact to give greater weight to the numerous missed visits and the lack of emotional ties than it did to

the visits and phone calls that did occur. Appellant is effectively asking this Court to re-evaluate the evidence and give greater weight to his visits and phone calls with the Minor Child, which is not permitted under the appellate standard of review in adoption cases.

Although Appellant traveled to St. Louis on multiple occasions in the six months prior to Respondents filing the Adoption Petition, he failed to make the Minor Child a priority by repeatedly missing scheduled visits with the child and arriving late for visits (Tr. 173:10-17). This occurred even though he was in St. Louis for the sole purpose of seeing the Minor Child and had no other responsibilities during those trips (Tr. 216:1-6). There was also evidence of occasions that Appellant told the Minor Child he was going to fly to St. Louis and then failed to do so, even though M.T.S-V. had arranged a visit (Tr. 128:16-129:17, 168:5-9). Furthermore, the Minor Child was out of town during one of Appellant's trips to St. Louis during the six months prior to the filing of the Adoption Petition (Tr. 179:15-22; Ex.16).

In addition to the chronic lateness and missed visits, there was ample evidence that Appellant failed to build and strengthen a parental bond with the Minor Child (Tr. 133:14-18). On one visit, Appellant ignored the Minor Child for nearly the entire time and only spent about 30 seconds with her when she asked him to play with her (Tr. 133:16-23). There is evidence that Appellant either ignores the Minor Child or forces her to talk about what he wants to talk about, that they struggle to interact, that he does not make the Minor Child a priority, and that the visits are more about his needs (Tr. 125:5-24). The GAL observed that Appellant is more concerned about his perceived importance

to the Minor Child than he is about the Minor Child herself (LF 31). Appellant testified that "I think we have a real relationship, like in the way that two best friends have a relationship" (Tr. 228:4-6). Appellant further testified that "[w]e run around like we're two little kids on the playground." (Tr. 202:15-16). There was substantial evidence that even Appellant does not really perceive his relationship with the Minor Child to be a parental relationship.

In GSM v. THB, 786 SW 2d 898, 903 (Mo.App. E.D. 1990), the trial court denied a stepparent adoption petition, but the judgment was reversed with instructions to grant the adoption. GSM provides that "there is almost a total absence of any filial ties with the natural father." Id. "Granting the adoption will not interfere with any of these benefits the child gets from the natural father." Id. at 904. GSM further reasoned that "nothing in the record shows any emotional filial ties which would be harmed by granting the adoption." Id.

As applied to this case, in the trial court found that the Minor Child does not appear to have emotional ties to Appellant (LF 63). When the GAL asked the Minor Child if she has close family that she does not live with, she listed a number of relatives but not Appellant (LF 30-31, 52). The trial court found that despite having ample opportunities for visitation and communication, the evidence demonstrated Appellant's long term lack of interest in the Minor Child (LF 58). The trial court further found that despite occasional contact, Appellant does not have meaningful interactions with the Minor Child and that their relationship is superficial and insufficient to establish that

Appellant has not willfully abandoned the Minor Child (LF 58). When the GAL observed Appellant's visit with the child, she saw no eye contact between the Minor Child and Appellant and never saw the Minor Child look at his face during the course of the visit (LF 32, 53). The GAL described Appellant's interaction with the Minor Child as "almost entirely parallel play rather than interactive" (LF 32, 53). The GAL reported that Appellant offered no explanation for arriving 20 minutes late and missing out on a third of his GAL-observed visit with his child the day before the trial (LF 32, 54). The GAL also observed and reported that Appellant lacked commitment to the Minor Child, failed to appreciate the importance of his GAL-observed visit, and that he lacks the emotional maturity to display parental commitment (LF 32, 54). The GAL further reported that Appellant "is involved to a certain extent but only when it suits him." (LF 32, 54).

Appellant argues that the evidence clearly shows he has maintained more frequent contact with the Minor Child since Respondents married in 2013 and has attempted to spend more time with the Minor Child since that time (Appellant Br. 25). However, M.T.S-V. credibly testified that Appellant's increased interest in the Minor Child during the statutory period was not about his parental relationship, but because her marriage to L.W.V. threatened Appellant's control over M.T.S-V. (Tr. 184:5-11). To rely on Appellant's argument to reverse the judgment would require the court to re-evaluate testimony and evidence outside the scope of the applicable standard of review.

There was also evidence of abandonment prior to the six month statutory period before Respondents filed their Adoption Petition. While M.T.S-V. was pregnant with the

Minor Child, he denied the child was his, insisted on a paternity test and then took several months to decide if he wanted any involvement in the child's life (LF 42; Tr. 90:2-12). When M.T.S-V. and the Minor Child still lived with Appellant, he was mostly indifferent to the Minor Child (LF 43; Tr. 91:14-92:13). There was also testimony that Appellant had very little to do with the Minor Child, ignored the child when asked to care for her, and acted like he did not have a child (LF 44; Tr. 57:5-58:22).

Appellant's behavior when the Minor Child and M.T.S-V. made annual trips to California is further evidence of abandonment. Appellant typically did not spend more than 15 minutes with the Minor Child at any one time or more than 30 minutes in a day. During one trip, he did not even come to his mother's home until several days after M.T.S-V. and the Minor Child arrived (LF 45; Tr. 97:16-98:6). Appellant's lack of commitment to the Minor Child is further underscored by the fact that all of his airline tickets to St. Louis admitted into evidence at the trial were purchased by his mother (LF 54; Tr. 234:15-237:2; Ex.15-19).

Appellant's lack of commitment to the Minor Child is also evident in Appellant's conduct during the trial and appellate proceedings. After Appellant was served with a Summons and Petition for Adoption on May 14, 2015, his trial counsel filed an Entry of Appearance on June 10, 2015 and requested 30 additional days to file an Answer (LF 18, 20, 35; Ex. 3-4). Despite retaining his trial attorney on June 8, 2015, the invoices admitted into evidence have no record of Appellant communicating with the attorney until July 8, 2015 (Ex. H, p.1; Tr. 255:1-8). After requesting that extension, the deadline

to file an Answer was July 10, 2015, but Appellant's Answer was not filed until July 27, 2015, seventeen days after the extension of time had expired (LF 22, 35; Ex.5). Given that Appellant's parental rights to the Minor Child were at stake after being served with the Summons, the fact that he first sought additional time to respond, and then still filed his Answer out of time demonstrate a lack of commitment consistent with a finding of abandonment. After Appellant's parental rights were terminated, the Judgment became final on April 1, 2016 and the deadline to file a Notice of Appeal was April 11, 2016. Appellant took no action until April 15, 2015, when he filed a Motion for Leave to File Notice of Appeal Out of Time (LF 67-69; Supp. LF 0010). Appellant's filing of a Notice of Appeal out of time with leave of the Court of Appeals after having his parental rights terminated is also emblematic of his lack of commitment to and abandonment of the Minor Child.

It was well within the trial court's discretion to find that despite occasional visits and phone calls, the nature of Appellant's interaction with the Minor Child, the frequent missed visits and his failure to establish a meaningful bond were willful abandonment. M.T.S-V. testified that she stopped telling the Minor Child about scheduled visits with Appellant, because he was so unreliable about showing up and the Minor Child became upset when he failed to arrive. (Tr. 151:14-21). Appellant is so unreliable about showing up to see the Minor Child that most of their visits are not known to the Minor Child in advance. This level of uncertainty about whether the Minor Child even sees Appellant is not compatible with the care, love and presence of a parent-child relationship. This

constitutes a withholding of the care, love, protection, and presence of a parent without just cause or excuse. H.M.C., 11 S.W.3d at 87. Despite having some contact, Appellant has not interacted with the Minor Child as though he were a parent and the trial court found that he is only involved when it suits him. It was well within the trial court's discretion to find that Appellant willfully abandoned the Minor Child.

Appellant cites several cases in support of his argument that the finding of abandonment was against the weight of the evidence. However, none of these cases support a reversal of the trial court's judgment.

Appellant cites In re C.M.B.R., 332 S.W.3d 793 (Mo.banc 2011), which is not on point procedurally with this case. C.M.B.R. reversed a judgment of adoption on the grounds that the trial court did not order and review an investigation and written post-placement assessment as required by statute. Id. at 812-13. The issue of whether parental rights could be terminated without consent of the biological mother due to neglect or abandonment was rendered moot because of the reversal on procedural grounds. Id. at 820. C.M.B.R. is not procedurally relevant to this Court's determination of whether the trial court judgment was an abuse of discretion.

Appellant cites a portion of C.M.B.R. which provides that adoption statutes are liberally construed to promote the best interests of the child, but that liberal construction should not extend to the question of whether natural parents may be divested of their rights. Id. at 807. This portion of C.M.B.R. is a direct quotation from In re Adoption of R.A.B., 562 S.W.2d 356 (Mo.banc 1978). R.A.B. is clearly distinguishable from the

present case, in that there was never a claim of abandonment and it only addressed whether there was substantial evidence to support a finding of neglect. Id. at 357. R.A.B. reversed the adoption judgment where there was clear evidence that the biological father provided financial support that benefitted the children. Id. at 361. The children also spent two consecutive weeks in the biological father's home during the statutory period prior to the filing of the adoption petition. Id. at 360. Unlike this case, there was clearly financial support and meaningful interaction with the biological father during the statutory period prior to filing the adoption petition.

Appellant cites In re T.S.D., 419 S.W.3d 887, 896 (Mo.App. E.D. 2014), which affirmed a finding of abandonment where the biological mother only saw the child once in the past six years and had no contact with the child in the six month statutory period.

Appellant cites In re J.M.J., 404 S.W.3d 423, 432-33 (Mo.App. W.D. 2013), which upheld a finding of abandonment where the biological mother had sporadic visits with the child despite living in the same community, and was not involved in the child's doctor appointments, school, extracurricular or church activities despite having the opportunity.

Appellant relies on T.S.D. to argue that because Appellant had more contact with the Minor Child than the biological mother in T.S.D., then *a fortiori* his rights should not be terminated on abandonment grounds. Appellant relies on J.M.J to argue that because he must travel out of state to visit the Minor Child (unlike the biological mother in J.M.J.), then *a fortiori* his rights should not be terminated on abandonment grounds. However, these arguments are not persuasive in the appellate review of an adoption case.

"While reference to other abandonment and neglect cases may provide some helpful guidance in reaching a decision, the very nature of these proceedings is such that each case must turn on its own unique set of facts." A.L.H., 906 S.W.2d at 376.

Much of what Appellant seeks to argue is that other abandonment cases involved situations in which the biological parent had little or no contact with the adopted child prior to the filing of the adoption cases. By contrast, Appellant did have some phone contact and a few brief visits with the Minor Child during the six months prior to Respondents filing the Adoption Petition. While this evidence *might* have supported a different conclusion, it does not establish that the Judgment was against the weight of the evidence. H.M.C., 11 S.W.3d at 88. The finding of abandonment was dependent on the facts of this case and there was substantial evidence of willful abandonment.

Although each adoption case must be viewed under its own specific circumstances, as noted in A.L.H., 902 S.W.2d at 376, other abandonment cases still provide helpful guidance to this Court's appellate review.

In J.M.J., 404 S.W.3d at 432, the biological mother "had not provided any meaningful emotional support" for the child. J.M.J. further provides that the biological mother interacted more with the adoptive parents than her own child during the visits, and the child's therapist testified that she was not meeting the child's emotional needs and did not commit to improving their relationship. Id. The failure to provide emotional support to the child and the lack of interest in the child during the visits supported a finding of abandonment. Id. at 433.

As applied here, there was evidence that Appellant often ignores the Minor Child during visits (LF 31, 52; Tr. 125:5-24, 133:16-23). The GAL observed that the Minor Child does not appear to have emotional ties to Appellant, saw no eye contact between Appellant and the Minor Child during the GAL-observed visit, and described the visit as "parallel play" (LF 31-32, 53).

K.L.C., 9 S.W. 3d at 773, affirmed an adoption in a case with facts analogous to this case. There was evidence that the biological father visited the children, brought gifts, and occasionally gave them pocket money in the six-month period prior to filing the adoption case. However, the biological father only made one court-ordered support payment and often failed to show up for scheduled visits. Id. K.L.C. provides that "slight acknowledgments such as birthday and Christmas gifts do not prevent neglect from occurring nor do they atone for the lack of support or visitation." Id.

As applied here, despite some phone calls and occasional visits, Appellant often failed to show up for scheduled visits with the Minor Child with no justifiable excuse (LF 32, 56; Tr. 132:4-20-133:4, 173:10-17). K.L.C., 9 S.W.3d at 773, establishes that even when a parent is attending some scheduled visits or making some support payments, it does not necessarily preclude a finding of abandonment. In light of all the missed visits, the interaction that did occur is insufficient to reverse a finding of abandonment or neglect.

In re Adoption of W.B.L., 681 S.W.2d 452, 456 (Mo. banc 1984), affirmed an adoption judgment and a determination that the natural mother willfully abandoned and

neglected the child. The natural mother offered various excuses for not seeing or communicating with the child including transportation, inclement weather, and denial of visitation. Id. at 455-56. W.B.L. provides "[i]t is of critical significance that in virtually every instance these excuses were directly contradicted and impeached. The trial court expressly found them 'not credible,' and 'unconvincing and transparent.'" Id. at 456.

Appellant and his attorney claimed that his missed visits with the child were due to transportation issues such as rush hour, jet lag, rental cars and hotels (Tr. 173:19-174:7, 175:9-17, 244:12-15). Appellant also made repeated claims that M.T.S-V. has restricted his access to the Minor Child (LF 31, 52-53; Tr. 208:5-13; 209:13-18; 214:7-216:6; Appellant Br. 19-20). However, the trial court found that Appellant was not a credible witness (LF 36-42). This Court defers to the trial court's credibility determination and factual inferences. M.F., 1 S.W.3d at 532. Appellant's arguments that he did not willfully abandon the child because of his testimony about rush hour, jet lag and other transportation difficulties must fail.

Other cases have found that missed visits or failing to visit with the child despite having opportunities to do so support a finding of abandonment. See S.L.N., 167 S.W.3d at 739; In the Matter of B.S.R., 965 S.W.2d 444, 450 (Mo.App. W.D. 1998); C.E.H. v. L.M.W., 837 S.W.2d 947, 956 (Mo.App. W.D. 1992).

The trial court's finding of abandonment was supported by similar evidence that supported abandonment and/or neglect in other adoption cases. This Court accepts as true the evidence adduced at trial and the permissible inferences favorable to the

judgment while disregarding all contrary evidence and inferences. A.L.H., 906 S.W.2d at 376. Appellant's arguments in Point I require this Court to make inferences and consider evidence that is contrary to the Judgment. In spite of some phone calls and occasional visits, the trial court's determination that Appellant willfully abandoned the Minor Child pursuant to R.S.Mo. § 453.040(7) is not against the weight of the evidence. Therefore, Respondents respectfully request that this Court deny Point I of Appellant's Substitute Brief.

II.

THE TRIAL COURT DID NOT ERR IN ITS JUDGMENT TERMINATING APPELLANT'S PARENTAL RIGHTS BECAUSE THE JUDGMENT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE, IN THAT RESPONDENTS PROVED BY CLEAR, COGENT AND CONVINCING EVIDENCE THAT APPELLANT WILLFULLY, SUBSTANTIALLY, AND CONTINUALLY NEGLECTED TO PROVIDE NECESSARY CARE AND PROTECTION TO THE MINOR CHILD IN THE SIX MONTHS PRIOR TO RESPONDENTS FILING THEIR PETITION FOR ADOPTION AS REQUIRED BY R.S.MO. SECTION 453.040(7), IN THAT ALL OF APPELLANT'S ALLEGED SUPPORT PAYMENTS FOR THE MINOR CHILD WERE ACTUALLY MADE BY HIS MOTHER

"Neglect is the intent to forego parental duties, which includes both the obligation to provide financial support for a minor child, as well as the obligation to maintain meaningful contact with the child." T.S.D., 419 S.W.3d at 895. Neglect of a child is demonstrated by "failure to provide financial support, without just cause or excuse, whether or not ordered to provide such support by judicial decree." In re Adoption of C.M., 414 S.W.3d 622, 656 (Mo.App. W.D. 2013). "The financial support of a minor child is a continuing parental obligation, and a parent has a duty to contribute as much as he or she can. If a parent fails to provide support, the parent must then show why this failure is not willful." Id. Where a parent provides little or no financial support for a child despite having the resources to do so, it supports a finding of neglect. Id. at 645-46.

"[A] finding of neglect alone, if supported by substantial evidence, will support termination in an adoption case." S.L.N., 167 S.W.3d at 741. "A non-custodial parent's failure to contribute to the financial support of his or her children combined with other evidence of lack of contact is sufficient to sustain a finding of willful neglect in failing to provide proper care and maintenance." In re Marriage of A.S.A., 931 SW 2d 218, 222 (Mo.App. S.D. 1996). "The juvenile court gives little or no weight to token and infrequent contributions to support." In re K.R.J.B., 228 S.W.3d 611, 619 (Mo.App. S.D. 2007) (internal quotation omitted).

As applied here, even if Point I of Appellant's Substitute Brief is granted, the Judgment will not be reversed if Point II is denied. Appellant's failure to contribute to the financial support of the Minor Child is sufficient to affirm the adoption Judgment.

Appellant alleges that M.T.S-V. received $400.00 per month of child support for the Minor Child despite testifying that the funds are paid by Appellant's mother (Appellant Br. 28). Appellant claims his trial testimony was that the child support payments are paid from his funds but are routed through his mother because she knows how to do electronic banking (Appellant Br. 28-29). Appellant also claims the funds are from his trust account, that he has paid child support for four to five years, and that he has regularly given birthday gifts and at least one Christmas gift to the Minor Child (Appellant Br. 29).

These arguments are outside the scope of this Court's permissible standard of review and therefore lack merit. The only way this Court could find that Appellant did

not neglect the child because of the money sent by Appellant's mother was to re-evaluate the testimony and inferences drawn therefrom and substitute its own perception of the testimony and evidence. "In reviewing a parent's intent, this court defers to the trial court on factual issues because it is in a better position not only to judge the credibility of witnesses and the persons directly, but also their sincerity and character and other trial intangibles which may not be completely revealed by the record." T.S.D., 419 S.W.3d at 895 (internal quotation omitted). "As the trier of fact, the trial court has leave to believe or disbelieve all, part or none of the testimony of any witness." W.B.L., 681 S.W.2d at 455. "The trial court is in an especially advantageous position to determine the intent of a parent-witness in an adoption case." Id.

Appellant is asking this Court to retry the issue of whether the funds transferred to Respondents' bank account were from Appellant or his mother. The trial court was free to believe all, part, or none of Appellant's testimony. It was within the trial court's discretion as the trier of fact to believe M.T.S-V.'s testimony and Respondents' supporting trial exhibits that all of the payments received to support the Minor Child were from Appellant's mother and not Appellant. It was also within the trial court's discretion to not believe Appellant's testimony that the support for the Minor Child came from his trust account and that he gave those funds to his mother who then transferred the funds to Respondents.

Appellant is essentially requesting that this Court ignore the trial court's credibility determinations and give greater weight to his uncorroborated and self-serving testimony

that he provided money to his mother that was sent to Respondents. The trial court found that Appellant was not a credible witness and this Court must defer to that finding (LF 36-42). The trial court's finding that Appellant lacked credibility was thoroughly supported by many inconsistencies in Appellant's pleadings, discovery responses, GAL interview, and trial testimony. Appellant claimed to earn around $20,000.00 per year in studio work and production, but his Federal Income Tax Returns indicated $0 wages with incomes of $2,111 and $3,041 in 2013 and 2014, respectively (LF 38-39; Ex.10, p. 1; Ex.11, p.1). This further conflicted with the statement of Appellant's trial counsel that Appellant does not work (LF 39; Tr. 179:12-14). Appellant failed to produce any documentation of his trust account or proof of payments to his mother in his responses to Respondents' discovery requests to corroborate his testimony to that effect, and there were no corresponding deposits into his mother's bank account at the time of each transfer to Respondents (LF 39-40; Tr. 199:17-200:13; Ex.8, p. 3, ¶ 8; Ex.9). Appellant also made no mention of payments from his trust account in his Interrogatory answers (Ex. 7). The trial court found that Appellant falsely claimed the text message in his discovery response was proof he paid child support, in that the person requesting the bank account number from M.T.S-V. was Appellant's mother and the message referred to Appellant in the third person (LF 40; Tr. 136:10-137:17; Ex.14). The trial court found that Appellant gave conflicting and inconsistent information about the source of funds from which he allegedly paid child support. When the GAL interviewed Appellant, he said the funds came from his work as a music producer, but then testified at trial that the

funds came from his trust and there were no documents to corroborate either explanation (LF 31, 41-42; Tr. 199:17-200:4).

Appellant's contention that he regularly gave the Minor Child birthday gifts and at least one Christmas gift was largely irrelevant to the trial court's determination of whether or not he neglected the Minor Child (Appellant Br. 29). The Minor Child's birthday is in April, and the Adoption Petition was filed on December 23, 2014, so there was not even any occasion to give the Minor Child a birthday or Christmas gift during the six month statutory period (LF 8, 17; Tr. 88:14-17).

Appellant contends that the only months he did not pay support to M.T.S-V. were when she changed her bank account and his mother could no longer make electronic transfers (Appellant Br. 29). This argument lacks merit for several reasons. First, the trial court found that the money was paid by Appellant's mother and that Appellant was not the source of those funds. Second, the undisputed testimony at trial was that Respondents did not even change bank accounts until 2015, after the Petition was filed and the six-month statutory period had already ended. (Tr. 137:6-14). It was also undisputed that Respondents had the same bank account for the entire six-month statutory period (Tr. 105:3-114:5; Ex. 20-26).

Appellant also asserts that the only month that M.T.S-V. did not receive a "child support check" prior to changing her bank account was August 2014 (Appellant Br. 29). This assertion is a wildly inaccurate depiction of the undisputed evidence that all of the funds sent to M.T.S-V. from Appellant's mother were sent via electronic transfer and were

certainly not checks (LF 58; Tr. 105:13-110:20; Ex 20-26). By asking this Court to draw inferences that are not supported by *any* testimony or evidence whatsoever, Appellant is seeking to divest the trial court of its role as the trier of fact.

Appellant also argues that because M.T.S-V. referred to the money received from Appellant's mother as 'support' during the trial, it establishes that Appellant supported the Minor Child and he cites to specific pages of the the trial transcript (Appellant Br. 29). This argument is highly disingenuous. All but one of the times that M.T.S-V. stated the word "support" on pages 120, 122, and 127 of the trial transcript were simply M.T.S-V. reading Appellant's own statements in his discovery responses (Tr: 120:9, 122:16-20, 127:9). Likewise, M.T.S-V did not say the word "support" herself on pages 168, 170 or 190 of the trial transcript as Appellant claims (Tr. 168:17, 170:14, 170:16). When questioned about "support" at that point of the trial, M.T.S-V. simply stated that the money came from Appellant's mother (170:17). At one point, M.T.S-V. testified that "[Appellant's] mother pays the child support." (Tr. 127:17), but this was in response to a question by counsel as to whether Appellant's discovery response that he paid child support was truthful. Likewise, when questioned by counsel for Appellant as to whether there were any months in 2014 that she did not receive money from Appellant's mother, M.T.S-V. testified that "I believe August she didn't send child support." (Tr. 190:24-191:2).

Despite the lengthy direct and cross examination of Appellant and Respondents about the funds from Appellant's mother, there was only one instance that M.T.S-V. ever

used the term "child support" in her own testimony when she wasn't reading Appellant's discovery response or testifying about its truthfulness (Tr. 191:2). As such, Appellant's assertion that M.T.S-V. termed the money received "support" throughout the trial is a highly inaccurate portrayal of the trial testimony.

Appellant also argues that because there was no evidence that Appellant's mother paid the funds to M.T.S-V. without Appellant's direction, Respondents did not meet their statutory burden of proving neglect by clear, cogent and convincing evidence (Appellant Br. 29-30).

This argument is flawed for several reasons. First, there was ample evidence from which the trial court could draw the inference that Appellant's mother paid funds to Respondents without Appellant's direction. There was no written documentation or testimony from other witnesses that Appellant directed his mother to pay the funds to Respondents. Appellant's mother, not Appellant, sent a text message to M.T.S-V. inquiring about her new bank account (LF 40; Tr. 136:10-137:17; Ex.14). M.T.S-V. also testified that Appellant has never shown an ongoing interest in providing financial support for the Minor Child, and that only Appellant's mother has ever shown interest in providing financial assistance for the Minor Child (Tr. 140:17-24).

Second, for this court to reverse the finding of neglect on the grounds that there was no evidence that Appellant did not direct his mother to pay the funds to Respondents requires this Court to make an inference that is contrary and unfavorable to the trial Court's Judgment. Such a reversal would also require this Court to disregard inferences

that are favorable to the judgment, which is outside its permissible scope of appellate review. Furthermore, a reversal would require this court to substitute its judgment for the trial court, re-weigh the evidence and give greater weight to the alleged lack of evidence that Appellant did not direct his Mother to pay the funds. It would require this Court to give less weight to the evidence that Appellant's mother communicated directly with M.T.S-V. about her bank account information via text message. Finally, this Court would have to give less weight to the testimony that Appellant has not shown an ongoing interest in providing financial support, and that only Appellant's mother has shown any interest. Even if the trial court could have given different weight to this evidence, for this Court to do so in order to reverse a judgment is outside the permissible scope of appellate review.

Given all of the inconsistencies and the lack of corroborating documents, the trial court was well within its discretion to find that Appellant was not a credible witness and that Appellant's mother paid the funds to Respondents. Aside from the trial transcript, legal file, exhibits, pleadings and discovery, the trial court could have properly relied on its perception of the parties' sincerity and other intangibles when making those findings. This Court is not in a position to disturb those findings.

By contrast, the trial found both Respondents to be credible witnesses (LF 36). The trial court's finding that Appellant's mother was the source of the alleged support payments was supported by credible evidence and testimony. Respondents had no other bank accounts besides Bank of America *7478 in which Appellant or his mother could

make electronic deposits from June 23, 2014 through December 23, 2014, no funds from Appellant were deposited into the account, and Respondents received no other funds from Appellant during this time (LF 58; Tr. 105:13-110:20; Ex 20-26). The trial court found that Appellant's mother made online transfers to Respondents' bank account, all of which had identical confirmation numbers to those on the fund transfers that Appellant alleged was the support he paid (LF 59-60; Tr. 111:14-113:13; Ex.9, p.1-2; Ex. 20-26; Ex. C, ¶ 7). The trial court also found that Appellant had endangered the Minor Child's safety on multiple occasions prior to the six-month statutory period prior to the filing of the Petition for Adoption (LF 43-46; Tr. 92:2-94:18, 96:17-97:7, 98:8-99:7, 100:21-101:6). Furthermore, as set forth in Point I herein, there was ample evidence that Appellant did not maintain meaningful contact with the Minor Child, despite having resources to visit and regular phone access. T.S.D., 419 S.W.3d at 895. These findings further supported the determination that Appellant willfully neglected the Minor Child. When considering the lack of financial support from Appellant himself, the endangerment of the Minor Child's safety and the failure to maintain meaningful contact the trial court's finding of neglect was not against the weight of the evidence.

Appellant cites several cases in support of his argument that the trial court's finding of neglect was against the weight of the evidence.

T.S.D., 419 S.W.3d at 896, which affirmed the trial court's finding of neglect where the biological mother contributed only $400.00 of support over the course of six years.

J.M.J., 404 S.W.3d at 432, which affirmed the trial court's finding of neglect where the biological mother gave only two birthday gifts and provided some donated clothes over the course of six years.

B.S.R., 965 S.W.2d at 449-50, in which the biological father provided no support and argued he was not obligated to because the child was severely injured in an accident and received a monthly annuity for the rest of his life as part of a personal injury settlement. B.S.R. held that the biological father was still obligated to support the child despite the presence of personal injury settlement funds, and affirmed the finding of willful neglect. Id. at 450-51.

A comparison of the present case to T.S.D., J.M.J., and B.S.R. does not merit a reversal of the Judgment. The parents whose rights were terminated in those cases all failed to provide financial support for their children during the six month period prior to filing the adoption cases, and there was little evidence of support prior to those statutory periods. In this case, when considering the evidence in the light most favorable to the trial court's Judgment, Appellant failed to provide any financial support to the Minor Child during the six months prior to Respondents filing the Petition for Adoption. Much like the situation in B.S.R., the fact that other money was available for the benefit of the Minor Child, namely the money from Appellant's mother, did not relieve Appellant of his own obligation to support the Minor Child. The money provided by Appellant's mother to Respondents is irrelevant, because the trial court determined that Appellant did not provide financial support himself. For this Court to revisit whether the funds from

Appellant's mother qualified as support paid by Appellant is outside its permitted scope of appellate review.

Appellant's argument that the money paid to Respondents by his mother preludes a finding of neglect ignores the precise nature of the inquiry into neglect and whether there has been "a failure to perform the duty with which *the parent is charged* by the law and by conscience." J.M.J., 404 S.W.3d at 432 (emphasis added). Third parties do not owe a legal duty to other people's children. The correct inquiry is whether the parent has performed his or her duty, not whether another person has performed that parent's duty. "Evidence of this intent [to continue a parent-child relationship] is lacking when the parent fails to make any contribution, no matter how small the amount." C.M., 414 S.W.3d at 657 (Mo.App. S.D. 2013) (emphasis added).

Appellant cites E.K.L. v. A.L.B., 488 S.W.3d 764 (Mo.App. W.D. 2016), in which the biological father was incarcerated and did not personally send any money to support the child. Id. at 767. The child's paternal grandmother provided some diapers and food for the child, but made no contributions during the six-month period prior to filing the adoption case, and received no direction from the biological father to send money, diapers or food to support the child. Id. On appeal, the biological father claimed the evidence established that he had requested his mother to provide financial support on his behalf and that met his obligation. Id. at 769. Despite this contention, the record established that the paternal grandmother did not provide any support to the child behalf of the

biological father during the six months prior to filing the adoption case. Id. E.K.L. affirmed the trial court's finding of willful neglect. Id.

Appellant cites E.K.L. to argue that because Appellant's mother financially supported the Minor Child in the six-month statutory period but the paternal grandmother in E.K.L. did not, then *a fortiori* his rights should not be terminated on willful neglect grounds. This argument is flawed for several reasons. First, it requires this Court to make a factual inference that is unfavorable to the Judgment, namely that the lack of evidence that Appellant did not direct his mother to make payments to Respondents meant that the payments were at Appellant's direction. This inference is not permitted under the standard of review for this appeal. Second, the biological father in E.K.L. was incarcerated and had far fewer resources and means than Appellant to financially support his child, such that contributions by his mother at his direction carried more significance. Third, there is nothing in E.K.L. to indicate that the outcome of the trial or appeal would have been any different with stronger evidence of financial contributions by the paternal grandmother and/or requests by the biological father to the paternal grandmother to contribute financially.

Appellant's arguments in Point II require this Court to make inferences and consider evidence that are contrary to the trial court's judgment. In spite of payments by Appellant's mother and Appellant's uncorroborated and self-serving testimony about Appellant's trust account, the trial court's determination that Appellant willfully neglected the Minor Child pursuant to R.S.Mo. § 453.040(7) is not against the weight of

the evidence. Therefore, Respondents respectfully request that this Court deny Point II of Appellant's Substitute Brief.

CONCLUSION

The trial court's Judgment terminating Appellant's parental rights and granting the adoption of the Minor Child was not against the weight of the evidence. The determination that Appellant willfully abandoned the Minor Child was supported by evidence of numerous missed visits without a justifiable excuse, as well as the lack of emotional bond and the superficial nature of the interactions between Appellant and the Minor Child. Appellant's contention that the adoption intrudes on his fundamental liberties is misplaced, given the actual nature of his relationship with the Minor Child. The determination that Appellant willfully neglected the Minor Child was supported by evidence that all of the money Appellant claims he paid to Respondents was actually from Appellant's mother and not Appellant himself. Appellant's Substitute Brief essentially seeks to retry the case by re-evaluating the trial court's credibility determinations and factual findings, which is not permitted under the deferential appellate standard of review in adoption cases. This court should affirm the trial court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the limitations in Rule 84.06(b), because the brief contains 19,584 words.

2. This brief has been prepared in a proportionally spaced typeface (13-point Times New Roman) using Microsoft Word.

3. That pursuant to Rule 84.06(g), Respondents have electronically filed their brief with the Court of Appeals containing the case and party name as a searchable PDF document.

Respectfully submitted,

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The undersigned hereby certifies that a true and accurate copy of the foregoing was sent via electronic filing notification on this 10th day of July, 2017 to:

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