OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FOUR

SALLY A. WHITE,	)	No. ED108036
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	Marion County
vs.	)	
	)	Honorable Rachel L. Bringer Shepherd
CLAYTON H. WHITE,	)	
	)	
Appellant.	)	Filed: November 3, 2020

Clayton White ("Father") appeals the trial court's judgment and decree of dissolution of marriage ("Judgment") awarding sole physical custody of S.W., G.W., and E.W. (the "Children") to Sally White ("Mother") and joint legal custody of the Children to both him and Mother. He raises four points on appeal. In Point I, Father argues the trial court's grant of joint legal custody of the Children to Mother was unsupported by substantial evidence and a misapplication of law. In Point II, Father argues the trial court erred by granting Mother sole and "primary" physical custody of the Children as against the weight of the evidence. In Point III, Father argues the trial court misapplied the law under section 452.400.1(1) by failing to properly create a schedule for him to spend time with his oldest child, S.W. In Point IV, Father argues the trial court misapplied the law by designating Mother as having either "primary" or sole physical custody because primary physical custody is not statutorily permissible and because the Parenting Plan ("Plan") gives him significant physical custody of the Children.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

DIVISION IV HOLDS: Father's first point on appeal is without merit. We will not disturb a custody award unless we are "firmly convinced that the welfare of the children requires some other disposition." *Keel v. Keel*, 439 S.W.3d 866, 875 (Mo. App. E.D. 2001). Our standard of review does not allow us to reweigh the evidence when substantial evidence supports the trial court's conclusion.

Father's second point on appeal is denied as modified. The trial court erred by referring to the children's custody arrangement as "primary" physical custody instead of "sole" physical custody, because primary physical custody does not exist in Missouri. Morgan v. Morgan, 497 S.W.3d 359, 366-67 (Mo. App. E.D. 2016).

Father's third point on appeal is granted. The trial court misapplied the law because it delegated Father's custodial time with S.W. to a counselor to be appointed by Father and failed to specifically detail Father's visitation rights. Section 420.400.1 of the Missouri Revised Statutes requires the trial court must "enter an order specifically detailing the visitation rights of the parent without physical custody rights to the child and any other children for whom such parent has custodial or visitation rights." Courts may not delegate the visitation schedule to the counselor because "[p]ermitting others to alter custody arrangements is an impermissible

delegation of judicial authority." *Aubuchon v. Hale*, 384 S.W.3d 218, 223 (Mo. App. S.D. 2012).

Father's fourth point on appeal is denied. The trial court's award of sole physical custody of G.W. and E.W. to Mother was not against the weight of the evidence because the custody schedule qualifies as a Siegenthaler schedule. Siegenthaler schedules do not constitute joint physical custody because both parents do not have "significant" custodial time. *Morgan*, 497 S.W.3d at 369-70.

Accordingly, we affirm the trial court's judgment in part and reverse and remand in part.

Opinion by: Philip M. Hess, J.
Gary M. Gaertner, Jr., P.J. and Michael E. Gardner, J. concur.

Attorney for Appellant: Lawrence G. Gillespie

Attorney for Respondent: James D. Terrell

Guardian Ad Litem: Karla J. Roisum

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.