

FILED OCT 16 2023

MELISSA A. HINTZ
CLERK OF COURT

COURT OF APPEALS OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

In Re the Welfare of .
Children in Need of Assistance:

App. Court File No. 053-23

Appellant,

v.

Family and Children Services Department
of the Shakopee Mdewakanton Sioux
Community,

Appellee

Opinion and Order

Before ADAMS, MASON MOORE, and SIXKILLER, Appellate Judges.

On May 3, 2023, the Appellant timely filed a Notice of Appeal from a Children's Court order issued by Judge Hogen on April 3, 2023 establishing permanency of the Appellant's children with their respective fathers. This Court issued a Scheduling Order on May 23, 2023 ordering the Appellant to file her opening brief by June 13, 2023. The Appellant filed her opening brief on June 14, 2023. The Appellee timely filed a brief on July 13, 2023. The Appellant has not filed a reply brief. This

Court issued an Order Regarding Oral Argument on October 6, 2023 deeming the case fully submitted on the briefs as of August 3, 2023 and determining that oral argument in this matter is not necessary.

The Notice of Appeal indicated that the basis for the appeal is that “the trial court erred in applying the legal standard of the laws of the SMSC.”¹ The Appellant’s opening brief was in the form of a letter to this Court, requesting a retrial or a new trial (which terms are used interchangeably in the Appellant’s brief and herein), a different visitation schedule, and to have the courts help create a plan for the Appellant to regain shared custody of her children.²

Analysis

This Court has jurisdiction over this matter,³ reviews matters of law *de novo*,⁴ and uses a standard of review of whether the trial court’s findings of fact were clearly erroneous and whether the trial court erred in its conclusions of law.⁵ In this matter, the Court must consider the Appellant’s three requests in her brief as framed by her assertion that the trial court erred as the basis for her appeal: whether the Appellant has the right to a new trial, whether the Children’s Court erred in its determination regarding the Appellant’s visitation with her children, and whether the Children’s

¹ See Notice of Appeal.

² See Appellant’s Brief at 1, 2.

³ SMSC R. Civ. P. 31.

⁴ *Stopp v. Little Six*, 1 Shak. A.C. 23 (Jan. 29, 1996).

⁵ *Kostelnik v. LSI*, 1 Shak. A.C. 92 (Mar. 17, 1998).

Court erred in its determination of how the Appellant can regain custody of her children.

1. The Appellant has no right to a new trial.

A motion for a new trial must be filed no later than 28 days after the entry of judgment,⁶ and a party may file a motion to enlarge the time thereof.⁷ The Appellant had the opportunity to request the Children's Court to grant her a new trial but did not timely make a motion to do so. Consequently, the Appellant has no right to a new trial in the Children's Court.

The Appellant has supplied the Court with no basis on which she would be afforded a new trial on appeal. The Appellee contends that a party is not entitled to pursue a new trial on appeal unless that party makes an appropriate post-verdict motion in the lower court.⁸ The Court concurs with the Appellee, and, consequently, the Appellant has no right to a new trial on appeal.

2. The Children's Court did not err in its determination regarding visitation.

As the standard of review is whether the trial court's findings of fact were clearly erroneous and whether the trial court erred in its conclusions of law, the Appellant

⁶ SMSC R. Civ. P. 28; Fed. R. Civ. P. 59(b).

⁷ SMSC R. Civ. P. 7(b).

⁸ See Appellee's Brief at 7-8, citing *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 403 (2006).

must indicate how the Children's Court erred in its determination regarding visitation. The Children's Court determined that the Appellant shall have supervised visitation with the children, but the Appellant would like a different visitation arrangement. However, the Appellant has neither asserted how the Children's Court erred in its determination nor provided any support for a different arrangement. The Appellee has provided the Court with ample background and information to support the Children's Court's consideration and determination regarding visitation.⁹ Therefore, the Court finds no error in the Children's Court's determination regarding visitation.

3. The Children's Court did not err in its determination regarding how the Appellant can regain custody of her children.

As the standard of review is whether the trial court's findings of fact were clearly erroneous and whether the trial court erred in its conclusions of law, the Appellant must indicate how the Children's Court erred in its determination regarding how she can regain custody of her children. The Children's Court's permanency order created a plan by establishing conditions that the Appellant can fulfill before petitioning the Children's Court to reopen the case and regain custody of her children.¹⁰ However, the Appellant has neither asserted how the Children's Court erred in its determination nor provided any support for a different arrangement. The Appellee has provided the

⁹ See Appellee's Brief at 13-14.

¹⁰ See Appellee's Brief at 15, citing *In re* . . . , Shak. C.C. 140, 19-20 (Apr. 3, 2023); *In re* . . . , Shak. C.C. 130, 19-20 (Apr. 3, 2023).

Court with ample background and information to support the Children's Court's consideration and determination regarding this issue.¹¹ Therefore, the Court finds no error in the Children's Court's determination regarding how the Appellant can regain custody of her children.

Order

For the foregoing reasons, the Children's Court order is affirmed.

Dated: October 16, 2023

Per Curiam

¹¹ See Appellee's Brief at 15.