WD86003

IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

ELAINE PAYNE,

Respondent,

vs.

LINDSEY NILSSON and JOSHUA PLATZ,

Appellants.

On Appeal from the Circuit Court of Adair County
Honorable Thomas P. Redington, Circuit Judge
Case No. 22AR-CV00291

REPLY BRIEF OF THE APPELLANTS

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A. Summary of opening argument

Lindsey Nilsson ("Mother") and Joshua Platz ("Father") appeal from a judgment granting Elaine Payne ("Grandmother") third party visitation with their child, W.P. ("Child").

In their first point in their opening brief, Mother and Father explained that the trial court erred in entering judgment for Grandmother because she lacked standing to request third-party visitation under § 452.375.5, R.S.Mo. (Brief of the Appellants ["Aplt.Br."] 26-29). The statute only permits a third party to seek visitation with a child "prior to" issuance of a final custody determination. § 452.375.5. So, a third party only has standing to seek visitation under the statute when there has not yet been a custody determination or the request is made "in conjunction with an ongoing custody hearing." *In re J.D.S.*, 482 S.W.3d 431, 439 (Mo. App. 2016) (Aplt.Br. 27).

Here, Mother and Father settled custody over W.P. ("Child") in 2019 during a paternity suit Father filed. Mother and Father agreed to a parenting plan with a custody schedule the paternity court adopted in full (D29; D32). So, because Grandmother filed this third-party visitation action three years after the court put that parenting plan in place, her request was not "prior to" Child's final custody determination. She therefore had no legal right to request visitation with Child at all and the trial court erred in granting her request (Aplt.Br. 28-29). In *J.D.S.*, this Court reversed a judgment like this for lack of standing for this same reason.

B. This Court reviews Grandmother's standing *de novo*.

Citing no authority, Grandmother first briefly argues that this Court should review whether she had standing to seek third-party visitation "as [*sic*] plain error" (Brief of the Respondent ["Resp.Br."] 11).

Grandmother is wrong. As Mother and Father explained in their opening brief, "[t]his Court determines *de novo* whether a party has standing to sue" (Aplts.Br. 26) (citing *J.D.S.*, 482 S.W.3d at 437). As happened in *J.D.S.*, standing may be raised at any time, even for the first time on appeal. Grandmother's suggestion that the Court should evaluate her standing under the more onerous plain error standard is without merit.

C. Decisions permitting a third party to file an independent action under § 452.375.5 do not obviate the statute's standing requirement.

Beyond that, Grandmother points to decisions holding that § 452.375.5 permits an independent cause of action to seeking third-party visitation, and extrapolates that therefore, Grandmother had standing to bring her claim, because it was an independent action (Resp.Br. 12-14).

Grandmother's argument overlooks the crucial distinction between the decisions she cites and this case. Here, Child's custody *already was determined* well before Grandmother filed her petition. In those cases, there had not yet been any such determination. The third-party actions in those cases remained "prior to" any custody determinations, as § 452.375.5 requires. Grandmother's was not.

For example, Grandmother cites *McGaw v. McGaw*, 468 S.W.3d 435 (Mo. App. 2015), to argue an independent third-party action exists under §

452.375.5. (Resp.Br. 12-13). Mother and Father agree the Court in *McGaw* held an independent action for third-party visitation is permissible. *Id.* at 445. But this does not cure Grandmother's lack of standing. The facts of *McGaw* confirm this.

In *McGaw*, the appellant filed a petition seeking determination of a parent-child relationship and custody over two children born to the appellant's same-sex paramour while the couple was romantically involved. *Id.* at 437. The two women raised the children together for three years before separating. *Id.* The trial court dismissed the appellant's paternity action for failure to state a claim on which relief could be granted. *Id.* at 438. This Court affirmed, noting the appellant was free to seek third-party custody in an independent action under § 452.375.5, which she already had filed. *Id.* at 445, 448.

But in *McGaw*, there plainly had not yet been any prior custody determination over the children. *Id.* at 437. That is exactly why the Court held the appellant could file an independent action under § 452.375.5. The appellant's request for third-party custody was "[p]rior to" any custody award, as § 452.375.5 requires.

The same was true in *D.S.K. ex rel. J.J.K. v. D.L.T.*, 428 S.W.3d 655 (Mo. App. 2013), which Grandmother also cites (Resp.Br. 13).[1] There, in his dissolution of marriage petition, a husband requested custody of three children he believed were born of the marriage. *Id.* at 656. In her answer, the wife denied the husband was the father of any of the children, and

[1] Undersigned counsel represented the appellant in *D.S.K.*

instead claimed they all were born out of an extramarital affair, which paternity testing then confirmed, and the husband was dismissed from the wife's paternity action under § 210.834.4, R.S.Mo. *Id.* The husband then sought to intervene back into the paternity action to state a claim for custody, claiming he was the only father the children knew despite not being their biological father. *Id.* at 657.

This Court affirmed the trial court's decision denying the husband's motion to intervene, holding that as the wife had not sought a custody determination in the paternity action, the husband could not intervene to create one. *Id.* at 660. But the Court explained the husband was not without any recourse, *because* there had not yet been a custody determination: "although Husband failed to establish that he had an interest in the paternity case entitling him to intervene as a matter of right, nothing prevents him from asserting his third-party custody claim as an independent cause of action." *Id.* So, like the appellant in *McGaw*, the husband could file an independent action for third-party custody because there had not yet been a prior custody determination.

This Court's decision in *J.D.S.* confirms that this distinction matters. As it noted, § 452.375.5 "only allows third-party visitation to be considered in conjunction with an ongoing custody hearing." 482 S.W.3d at 439.

Grandmother briefly says this was dicta in *J.D.S.* (Resp.Br. 14). Grandmother is wrong. This was central to this Court's holding in *J.D.S.* that the grandparents there did not have standing to seek third-party visitation. It noted this was why the adoptive parents in the case argued the

grandparents did not have standing, and simply said, "We agree." *Id.* Moreover, the Court in *J.D.S.* approved of *In re Adoption of E.N.C.*, 458 S.W.3d 387, 402 (Mo. App. 2014), in which the Court held, "Section 452.375.5 provides that a third party may intervene in a case in which custody is at issue[.]" *J.D.S.*, 482 S.W.3d at 440. This language is certainly not dicta.

As a last-ditch argument, again citing no authority, Grandmother argues "custody is always at issue" because a court-ordered parenting plan "is always subject to modification between *a mother and a father* … until emancipation" (Resp.Br. 14) (emphasis added). So, she suggests, "by filing a request for third-party visitation, custody is at issue" (Resp.Br. 14).

This ignores that neither Mother nor Father ever sought modification of their agreed parenting plan. Moreover, if custody was always at issue simply because a third-party files any action for third-party visitation, *J.D.S.* would be wrong, as would *D.S.K.*, *Hanson v. Carroll*, 527 S.W.3d 849 (Mo. banc 2017), and *E.N.C.*, the holdings in all of which depend on that not being so.

The law of Missouri is that when custody has been judicially settled and is no longer at issue, a third party lacks standing to request visitation under § 452.375.5. Grandmother's arguments otherwise are in error. Custody of Child was settled in 2019. Grandmother lacked standing three years later to bring a claim for third party visitation under § 452.375.5.

The Court should reverse the trial court's judgment outright, without remand.

II. Reply as to Point II: Grandmother failed to state a claim on which relief could be granted.

A. Summary of opening argument

In their second point, Mother and Father explained the trial court also erred in granting relief on Grandmother's petition because it failed to state any claim on which relief could be granted (Aplt.Br. 30-38).

As in their first point, Mother and Father explained again that § 452.375.5, R.S.Mo., only allows third parties to seek visitation or custody if no prior custody determination already has been issued (Aplt.Br. 32-34). If one already has, then not only does the third party lack standing to bring a claim under § 452.375.5, but a petition under § 452.375.5 also would fail to state a claim on which relief could be granted, as the Supreme Court held in *Hanson*, 527 S.W.3d at 849.

So, because Grandmother filed her petition more than three years after the paternity court's final custody determination over Child, her petition for third-party visitation with Child under § 452.375.5 obviously failed to state a claim for relief (Aplt.Br. 34-37). While Mother and Father did not argue this below, granting Grandmother third-party custody despite her insufficient petition was plain error, which infringed on Mother's and Father's constitutionally protected parental rights, a manifest injustice still requiring reversal (Aplt.Br. 37-38).

B. *Hanson v. Carroll* fully applies to this case.

Mother and Father rely primarily on the Supreme Court's decision in *Hanson*, in which the Supreme Court held a third-party action under §

452.375.5 brought independently after a prior custody determination fails to state a claim and must be dismissed. 527 S.W.3d at 854.

Grandmother attempts to distinguish *Hanson*, arguing it only applies to "a situation where a probate division previously has issued letters of guardianship over the child" (Resp.Br. 15). So, according to Grandmother, *Hanson* has no bearing on third-party cases when the subject child's custody was previously settled in a paternity suit, only guardianship.

Grandmother's argument ignores the Supreme Court's logic in *Hanson*. As the Supreme Court explained, "the custody of a child may be adjudicated in at least five types of actions: (1) dissolution; (2) habeas corpus; (3) juvenile; (4) guardianship; and (5) paternity." *Id.* at 853 (quoting *Kelly v. Kelly*, 245 S.W.3d 308, 313 (Mo. App. 2008)). And a trial court "errs when it enters a conflicting judgment or order with respect to a preexisting child custody order or judgment from another court." *Id.* at 853-54.

While Grandmother is correct that *Hanson* concerned a grandparent's request for third-party visitation after letters of guardianship determined a child's custody, that is a distinction without a difference. Rather, because guardianship is just one of the five types of cases in which custody may be put at issue, and paternity cases are another, the same law proscribing "conflicting judgment[s] or order[s]" applies. *Id.* As Grandmother notes, "[a]ny third party visitation ordered when there is an existing custody order … technically would conflict from [*sic*] the underlying custody order" (Resp.Br. 17). Precisely. That is exactly why the grandparents in *Hanson* could not state a valid claim for relief, and why the trial court erred here.

So, regardless of the type of case from which a custody decision arose, when "a custody award as a child already exists, parental custody is not at issue" and no third party can state an independent cause of action for visitation under § 452.375.5. *Id.* at 854. Here, the paternity judgment already settled Child's custody, so Grandmother could not seek third-party visitation more than three years later. *Hanson* controls and Grandmother's argument otherwise is without merit.

C. The trial court's intrusion on Mother's and Father's fundamental rights is a manifest injustice satisfying plain error review.

Grandmother also argues Mother and Father waived this point by not raising it at trial (Resp.Br. 16-17). But they fully acknowledged the point was not preserved for appellate review and so requested plain error review (Aplt.Br. 30); *see also* Rule 84.13(c) (unpreserved claims may be reviewed on appeal for plain error). Mother and Father explained why their point is reviewable for plain error (Aplt.Br. 31), and Grandmother gives no response.

Grandmother argues the extent of her court-ordered visitations with Child are so minor that they do not rise to a manifest injustice, and her visitations do not affect Father's rights (Resp.Br. 17). This misses the mark.

First, Grandmother ignores that the trial court *did* grant her one week of visitation every summer (D6 p. 1), which obviously interrupts Father's weekly custody of Child (D32 p. 1; Tr. 32). More importantly, it misses the broader point: *any* unauthorized visitation with Child interferes with Mother's and Father's fundamental constitutional rights, regardless of duration. Grandmother fails to address this.

The trial court's judgment granted Grandmother a right to Mother's and Father's Child on a patently deficient petition, a manifest injustice to Mother and Father constituting reversible plain error. *Hanson* directly applies to these facts and Grandmother's attempts to distinguish it fail.

This Court should reverse the trial court's judgment outright, without remand.

III. Reply as to Point III: There was no substantial evidence that Child's welfare requires Grandmother's visitation.

A. Summary of opening argument

In their final point, Mother and Father explained that no substantial evidence supported the trial court's conclusion that Child's welfare required third-party visitation with Grandmother (Aplt.Br. 39-46). Section 452.375.5's "welfare" prong requires proof of a significant, parent-like bond between the child and the third party (Aplt.Br. 41-44). And even that is insufficient if there is no evidence the child will be harmed without third-party visitation (Aplt.Br. 44-45).

Grandmother's evidence did not show a significant familial bond between Grandmother and Child, and so could not sustain the trial court's judgment (Aplt.Br. 45-46). Rather, Grandmother's testimony was merely that Child visited her somewhat regularly with Mother for short spells and stayed with her without Mother one time (Aplt.Br. 45-46). At best, the evidence suggested she shared an ordinary grandparent-like bond with Child. The law of Missouri is that this was insufficient to support the trial court's judgment, requiring reversal outright.

B. Neither Father nor Mother made any admissions regarding Grandmother's proposed visitation.

Grandmother first argues Father's testimony constituted a legal admission that Child's welfare necessitated third-party visitation with Grandmother (Resp.Br. 18-20). Father did testify he preferred Child's visits with Grandmother to "start small" and close to home in Kirksville rather than at Grandmother's home three hours away (Tr. 26-27). Grandmother reasons the trial court was free to treat this as an admission that Father

consented to her visitation with Child (Resp.Br. 18-20). This misconstrues Father's testimony and ignores the substance of the parenting plan the trial court ordered.

"'A judicial admission is an act by a party, which in effect concedes a particular proposition to be true for the purposes of the judicial proceeding.' The admission acts as a substitute for the evidence and obviates the need for evidence relative to the subject matter of the admission." *Daugherty v. Allee's Sports Bar & Grill*, 260 S.W.3d 869, 873 n.1 (Mo. App. 2009) (quoting *Sheffield Assembly of God Church v. Am. Ins. Co.*, 870 S.W.2d 926, 931 (Mo. App. 1994)).

Father never testified he consented to the visitation Grandmother requested. Rather, when asked how he wanted *potential* visits between Child and Grandmother to be carried out *if awarded*, he explained the potential visitation with which he was comfortable. This in no way was "an admission by the Appellants that the welfare of [Child] required an ongoing relationship with his Grandmother" (Resp.Br. 19).

Grandmother stretches the meaning of Father's testimony to absurdity. Father clearly opposed Grandmother's requested visitation by hiring an attorney to defend against her request and appearing at the hearing to testify against her. Father's statement is "not specific enough to definitively state that" he agreed Child's welfare required third-party visitation, and so was not an admission. *Daugherty*, 260 S.W.3d at 874.

C. Grandmother waived any consequence of Father's failure to file a responsive pleading.

Next, Grandmother argues for the first time that Mother's and Father's lack of responsive pleadings also were an admission that Child's welfare required visitation with her (Resp.Br. 20-21). She reasons that because Rule 55.09 deems "[s]pecific averments in a pleading … admitted when not denied in" a responsive pleading, Mother and Father admitted to the allegations in Grandmother's petition by not filing an answer (Resp.Br. 20). So, she argues, she did need to prove at all Child's welfare required visitation with Grandmother because "[a] fact which is alleged in a Petition and not denied is deemed admitted and need not be proved" (Resp.Br. 20) (citing *State ex rel. Bank of Skidmore v. Roberts*, 116 S.W.2d 166, 169 (Mo. App. 1938)).

Grandmother waived this argument. As she notes, Rule 55.09 deems all allegations in a petition admitted when a responsive pleading is required but not filed. *See also* § 509.100, R.S.Mo. (identical). But to take advantage of this rule, a plaintiff must object or take some other affirmative step toward enforcing it. "[T]he failure to file an Answer is effective as an admission only if the plaintiff has objected to such failure … although the filing of an Answer is mandatory, this requirement is waived unless the opposing party requests enforcement of the mandate by timely and proper action." *Pulaski Bank v. C.W. Holdings, LLC*, 488 S.W.3d 221, 226 (Mo. App. 2016) (quoting *Blaise v. Ratliff*, 672 S.W.2d 683, 688 (Mo. App. 1984)).

For example, in *Pulaski*, the defendants argued on appeal from a grant of summary judgment that the plaintiff admitted the allegations contained in their counterclaim by failing to file an answer. *Id.* at 225. This Court held

the defendants waived that argument because they never sought a default judgment or judgment on the pleadings, and instead proceeded to summary judgment on the merits. *Id.* at 226. *See also Cooper v. Anschutz Uranium Corp.*, 625 S.W.2d 165, 171 (Mo. App. 1981) (reliance on Rule 55.09 waived where "[t]he record does not show plaintiff objected to defendant's failure to file an answer by seeking a default judgment or otherwise").

Grandmother never sought to hold Father in default or otherwise objected to his failure to file an answer. Therefore, as in *Pulaski* and *Cooper*, she waived that argument. While she did seek to hold *Mother* in default for the same failure, a ruling in Father's favor in this appeal will fully restore Mother's parental rights, too (Aplt.Br. 11-12). So, despite any potential admission on *Mother's* part by failing to file an answer, Grandmother's failure to object to *Father's* lack of an answer precludes her from relying on Rule 55.09 at all.

D. Mother's and Father's lack-of-substantial-evidence claim is preserved for appeal.

Grandmother also suggests Mother's and Father's third point is not preserved for appellate review because they did not raise "the issues … with the trial court" and they "cannot rely on a different theory then [*sic*] presented to the trial court" (Resp.Br. 24). Grandmother bases this argument in part on her false premise that Mother and Father "did not contest [Grandmother] would receive visitation only how much" (Resp.Br. 24). As explained above at pp. 15-16, neither parent made any such admission.

As for the failure to make this argument to the trial court, a point on appeal arguing a lack of substantial evidence is preserved regardless. "The

question of the sufficiency of the evidence to support the judgment may be raised whether or not the question was raised in the trial court" (Aplt.Br. 39) (quoting § 510.310.4, R.S.Mo.)). The Rules of Civil Procedure requiring a party to raise an argument in a post-judgment motion to preserve it for appeal also do not apply to claims challenging a lack of substantial evidence to support the judgment. *In re Marriage of Harris*, 446 S.W.3d 320, 330-31 (Mo. App. 2014) (Rahmeyer, J., joined by Sheffield, J.).

Tellingly, none of the decisions Grandmother cites are relevant here because they do not concern preservation of lack-of-substantial-evidence claims. *See In re S.H.P.*, 638 S.W.3d 524, 530-31 (Mo. App. 2021) (point challenging trial court's misapplication of law was unpreserved without a post-judgment motion); *Matthews v. Moore*, 911 S.W.2d 664, 669 (Mo. App. 1995) (denying appellant's claim for damages from a breach of contract when the theory supporting damages was never raised in the trial court).

Under § 510.310.4, and as the Court explained in *Harris*, Mother's and Father's third point is preserved for appellate review.

E. Mother's and Father's third point challenges the lack of substantial evidence to support the judgment, not that the judgment is against the weight of the evidence.

Grandmother also suggests Mother's and Father's third point challenges both the weight of the evidence supporting the judgment and its lack of substantial evidence (Resp.Br. 20-21). But these are different grounds of error with different standards. *See S.F.G. v. A.M.G.*, 591 S.W.3d 907, 913 (Mo. App. 2019) (arguments challenging a judgment's lack of substantial

evidence or that it was against the weight of the evidence "are distinct claims and must appear in separate points relied on").

"Substantial evidence is evidence that, if believed, has some probative force on each fact that is necessary to sustain the circuit court's judgment." *Ivie v. Smith*, 439 S.W.3d 189, 199 (Mo. banc 2014). A lack-of-substantial-evidence challenge argues there is "no evidence in the record tending to prove a fact that is necessary to sustain the circuit court's judgment as a matter of law." *Id.* at 200.

On the other hand, an against-the-weight challenge "presupposes that there is sufficient evidence to support the judgment." *Id.* at 205-06 (quoting *In re J.A.R.*, 426 S.W.3d 624, 630 (Mo. banc 2014)). An appellate court evaluating that claim asks "how much persuasive value evidence has, not just whether sufficient evidence exists that tends to prove a necessary fact." *Id.* at 206. This more exacting standard "serves only as a check on a circuit court's potential abuse of power in weighing the evidence …" *Id.*

Mother's and Father's third point does not argue the trial court's judgment was against the weight of the evidence. Rather, as they explained in their opening brief, the trial court's conclusion that Child's welfare required third-party visitation with Grandmother lacked any substantial evidence in its support because *nothing* presented at trial suggested Grandmother's and Child's bond was anything beyond that of a normal grandparent and grandchild.

F. Third-party visitation claims require the third party to show a significant familial bond between herself and the child, and Grandmother failed to meet that burden.

Finally, Grandmother argues her testimony was substantial evidence supporting the trial court's conclusion she has a significant familial bond with Child (Resp.Br. 22-23). She argues the broadest inferences favoring the judgment show Child had contact with her "at least three (3) to four (4) days every three (3) or four (4) weeks" until he was four years old (Resp.Br. 23). So, "extrapolating this information," Grandmother argues she had contact with Child "at least forty-eight (48) days a year and then probably more given there were extended visits in St. Louis" (Resp.Br. 23).

Even taking all this as true, the law of Missouri is that this simply is not enough to support the conclusion that Child's welfare required court-ordered visitation with Grandmother.

Section 452.375.5(5)(a)'s "welfare of the child" prong requires evidence the third party seeking visitation has a "significant bonding familial custody relationship" with the child. *McGaw*, 468 S.W.3d at 443 (quoting *Flathers v. Flathers*, 948 S.W.2d 463, 470 (Mo. App. 1997)).

Grandmother only mentions this standard once, and argues it only applies to petitioners seeking third-party *custody* rather than *visitation* (Resp.Br. 22-23). She claims, "the level of specialness or extraordinariness would be at a lower level in instances where a third party is merely seeking visitation compared to a case where the third party is attempting to take custody away from a natural parent" (Resp.Br. 22-23).

The statute's plain language belies Grandmother's argument. On its face, § 452.375.5(5) applies to petitions seeking "[t]hird party custody *or visitation*" (emphasis added). It goes on to list the "welfare of the child" element as applicable to any type of third-party claim under the subsection, custody *or* visitation. § 452.375.5(5)(a). In other words, there is no separate standard for visitation requests, because the same standard plainly applies to either claim.

Grandmother cites no authority in support of her novel interpretation of the statute's "welfare" prong as applied to third-party visitation requests. This Court's decision in *T.W. ex rel. R.W. v. T.H.*, 393 S.W.3d 144 (Mo. App. 2013), confirms Grandmother is wrong. There, a father sought a paternity declaration and sole custody over a child. *Id.* at 146. Shortly thereafter, the child's maternal grandmother filed a petition for guardianship with the father's consent. *Id.* The trial court awarded the mother sole custody over the child and denied the grandmother's guardianship petition, but also awarded the grandmother third-party visitation under § 452.375.5(5). *Id.* at 147.

This Court ultimately reversed the visitation award both because the amount was "more than minimally intrusive" and because the grandmother never pleaded a claim for third-party visitation. *Id.* at 149, 152. But the Court also noted the trial court "erroneously declare[d] the law" by only requiring the grandmother to prove the child's best interests required visitation, as the statute also requires a trial court to find either that the child's parents are unfit *or* "that the child's welfare requires custody *or*

visitation with the third party." *Id.* at 150 (emphasis added). The Court further explained the "welfare" prong "implicates pleading and proving special or extraordinary circumstances that make third-party custody *or visitation*" necessary. *Id.* (emphasis added).

So, the statute's plain language applies the heightened "welfare" standard to cases involving *either* custody *or* visitation requests. This Court confirmed so in *T.W.* Grandmother's argument that some unspecified lower standard applies to visitation requests, rather than custody requests, is without merit.

Grandmother also argues testimony about Mother's and Grandmother's soured relationship is somehow substantial evidence supporting her extraordinary relationship with Child (Resp.Br. 22-23). While it may shed light on how this case came about, it has no "tendency to make a material fact more or less likely." *Ivie*, 439 S.W.3d at 200.

The material fact at issue here is the nature of Grandmother's relationship *with Child*, not with Mother. Whatever dispute she and Mother may have is not probative of Child's welfare, and so is not substantial evidence supporting the trial court's judgment.

Even taking every piece of Grandmother's testimony as true and according her the benefit of all reasonable inferences, her evidence simply does not rise to the level of a "significant bonding familial custody relationship," *Flathers*, 948 S.W.2d at 470, which § 452.375.5's "welfare" prong and the Constitution require. This Court should reverse the trial court's judgment outright, without remand.

Conclusion

This Court should reverse the trial court's judgment outright, without remand.

Respectfully submitted,

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Certificate of Compliance

I certify that I prepared this brief using Microsoft Word for Office 365 in 13-point, Century Schoolbook font, which is not smaller than 13-point, Times New Roman font. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b) and this Court's Rule 41, as this brief contains 4,408 words.

/s/Jonathan Sternberg
Attorney

Certificate of Service

I certify that I signed the original of this reply brief of the appellants, which is being maintained by Jonathan Sternberg, Attorney, P.C. per Rule 55.03(a), and that on August 15, 2023, I filed a true and accurate Adobe PDF copy of this reply brief of the appellants via the Court's electronic filing system, which notified the following of that filing:

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