SD35239

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

CHRISTINE B. OLSON,
Respondent,

vs.

JACK FREDERICK OLSON,
Appellant.

On Appeal from the Circuit Court of Newton County
Honorable Gregory N. Stremel, Associate Circuit Judge
Case No. 11NW-CV01223-01

REPLY BRIEF OF THE APPELLANT

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Reply as to Point I

A. Father's first point is preserved for appellate review.

In his first point, Appellant Jack Olson ("Father") explained that the trial court abused its discretion in entering its parenting schedule for him, because its profusion of cross-country travel, as many as 29 1,300-mile round-trips in a year between Wisconsin and Missouri, does not provide the children frequent, continuing, and meaningful parenting time with him and so is not in their best interests (Brief of the Appellant ("Aplt.Br.") 27, 31-44).

Respondent Christine Olson's ("Mother's") initially argues in response that Father's first point "has not been preserved and should be denied" or "[d]ismiss[ed]" (Brief of the Respondent ("Resp.Br.") 12-13). She says this is because the well-known standard of review from *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976), which Father invoked for all points in his brief (Aplt.Br. 30), allows reversal "*only* if no substantial evidence supports it, or it is against the weight of the evidence, or it erroneously declares or applies the law" (Resp.Br. 12) (emphasis in the original) (citation omitted). She says Father violated this because he "failed to specify under the standard of *Murphy v. Carron* any basis for relief under his Point I [*sic*]" (Resp.Br. 12) (citing *In re Marriage of Sivils*, 526 S.W.3d 375, 384-85 (Mo. App. 2017)).

Mother's argument is without merit.

First, Father plainly did state the standard of review for whether a trial court errs in entering a parenting plan: abuse of discretion (Aplt.Br. 30-31). And he specified so in his point relied on, too (Aplt.Br. 27, 31) ("The trial court abused its discretion in entering its parenting schedule").

Abuse-of-discretion review is the applicable standard in cases about the legal sufficiency of a custody decision. *See, e.g.*, *In re Paternity of D.A.B.*, 902 S.W.2d 348, 355 (Mo. App. 1995) ("We do not disturb custody awards unless it is clear from the entire record that the trial court abused its discretion ...."); *Lavalle v. Lavalle*, 11 S.W.3d 640, 646 (Mo. App. 1999) ("trial court has broad discretion in deciding visitation and custody issues").

And abuse-of-discretion review is its own subset of the *Murphy v. Carron* standard. *In re Marriage of Scrivens*, 489 S.W.3d 361, 365 (Mo. App. 2016) (arguments "that the trial court's judgment was an abuse of discretion, was against the weight of the evidence, misapplied the law, and was not supported by substantial evidence" were separate standards under *Murphy v. Carron* and so had to be brought in separate points relied on). Under *Murphy*, abuse of discretion is a kind of erroneous application of law, because a "trial court necessarily abuses its discretion where its ruling" incorrectly applies the law. *Bohrn v. Klick*, 276 S.W.3d 863, 865 (Mo. App. 2009).

In his first point, Father explained that the trial court's parenting plan was an abuse of discretion because its profusion of long-distance travel necessarily deprives him and the Children of the "frequent, continuing, and meaningful contact" that the law requires for a parenting plan to be "in the best interests of the child" (Aplt.Br. 32) (quoting § 452.375.4, R.S.Mo.). So, his first point states, "The trial court abused its discretion in entering its parenting schedule for Father because", per § 452.375.4's language, "the schedule does not provide the children frequent, continuing, and meaningful parenting time with Father and is not in the children's best interests", and

then details why this is so (Aplt.Br. 27, 31). His argument then explains how, as a matter of law, requiring this amount of travel is *per se* an abuse of discretion (Aplt.Br. 32-44). His point relied on is amply sufficient.

In arguing otherwise, Mother cites *Sivils*, 526 S.W.3d at 384-85. There, the appellant challenged the factual basis for one of a trial court's findings. *Id.* at 384. But he did not state under which of *Murphy v. Carron*'s two "arguments regarding the factual basis for a trial court's judgment" he was proceeding: "that the decision is not supported by substantial evidence" or "is against the weight of the evidence." *Id.* Instead, he lumped both together. *Id.* This Court rightly held that was improper. *Id.*

Sivils is inapposite. Father first point does not challenge the factual basis for the trial court's judgment. He does not bring an against-the-weight-of-the-evidence or lack-of-substantial-evidence challenge.

Instead, unlike in *Sivils*, and echoing what this Court has explained numerous times in the decisions he cites, Father's first point explains that, as a matter of law, a long-distance parenting plan requiring the extreme profusion of lengthy travel that this one does, upward of 29 1,300-mile, 20-hour round trips each year (equaling more than 24 days and 37,000 miles), often for short visitation, is not frequent, continuing, and meaningful contact as the law of Missouri understands it. Accordingly, the trial court's plan cannot be in the children's best interests and is an abuse of discretion. That is exactly what his first point properly states. And as Rule 78.07(c) requires, he further preserved it in his motion to amend the judgment (D20 pp. 2-7).

Father's first point is preserved for appellate review.

B. The trial court's parenting schedule does not provide the children and Father frequent, continuing, and meaningful contact as the law of Missouri understands it and requires.

1. The trial court's parenting plan was a modification.

In his opening brief, Father detailed how, in certain odd years, the trial court's parenting plan makes him face "up to a total of 29 round trips between Lake Geneva and Neosho, for a total of 58 trips equaling 580 hours of driving (more than 24 days and 37,000 miles, nearly one-and-a-half times the circumference of the Earth)" (Aplt.Br. 41-42). This included 20 round trips of 20 hours and 1,300 miles for visits of extremely short durations: 18 round trips for up to two 48-hour periods of visitation per month during the schoolyear, another for a 48-hour period for Father's Day, and one for a mere eight hours around Nathan's birthday (Aplt.Br. 42).

Father explained this was an abuse of discretion (Aplt.Br. 36-42). He cited *In re S.E.P. v. Petry*, 35 S.W.3d 862, 872 (Mo. App. 2001), in which this Court held requiring a child or parent "to travel [between a distant state and Missouri] ten or more times per year" and requiring long-distance travel for a holiday of "one day only" are *per se* abuses of discretion. He also cited *S.E.P.*'s predecessors *Riley v. Riley*, 904 S.W.2d 272, 279 (Mo. App. 1995), *McElroy v. McElroy,* 910 S.W.2d 798, 805 (Mo. App. 1995) (failure to "recognize the valuable opportunities for meaningful visitation presented by" three-day weekends was abuse of discretion), and *Maher v. Maher*, 951 S.W.2d 669, 676 (Mo. App. 1997) (every-other-weekend travel was abuse of discretion when three-day weekend holidays "dispersed throughout the year" were preferable), which concurred.

Mother initially seems to respond that the trial court did not believe there was any change in circumstance (Resp.Br. 15). She recounts that the court "found that there had been no change of circumstance in the condition of the minor children and [her] since the entry of the" dissolution judgment and that Father "essentially testified that the only changed circumstances are that he moved to Wisconsin" (Resp.Br. 15) (citing D19 p. 6).

Father is unsure how this is relevant. The trial court's judgment from which he is appealing plainly did modify the previous parenting plan. And it equally agreed that Father's move to Wisconsin, while perhaps the "only changed circumstances", was a substantial enough change of circumstances to warrant that modification – of both custody and support.

Under the dissolution judgment, Father had parenting time every other weekend, two weekdays each week, and his birthday, and the plan alternated Easter, Memorial Day, Labor Day, Halloween, "pre-Christmas", Christmas, "post-Christmas", New Year's Eve, New Year's Day, and the children's birthdays between the parties (D23 pp. 12-15). Conversely, the modification judgment – which the trial court even titled "Judgment and Decree of Modification" (D19 p. 1) – modifies this to end weekday visitation, not account for Easter, Memorial Day, Labor Day, Halloween, New Year's Eve, or New Year's Day, to create a different Christmastime regimen, to make a different provision for the children's birthdays, and to provide for spring break, which the dissolution judgment had not (D19 pp. 13-17).

Mother makes a great deal of the dissolution judgment's and modification judgment's summer provisions being the same (Resp.Br. 14).

But this itself is problematic because, unlike when Father was living in Missouri, the trial court's failure to change this does not "conside[r] the time spent in the car traveling", "the [20] hours needed to travel back and forth" to exercise it. *McElroy*, 910 S.W.2d at 805. Whereas before Father simply would drive over to Mother's home from his own in Neosho and pick up the children (D23 p. 15), now he must drive 650 miles and 10 hours to do so.

Clearly, the trial court's judgment was a modification. The question before this Court therefore is whether its new parenting plan, taken as a whole, deprives the children and Father of frequent, continuing, and meaningful contact that the law of Missouri requires (Aplt.Br. 36-41). As the law has understood this concept until now, the plan does not, due to its profusion of long-distance travel, often for short periods of visitation (Aplt.Br. 32-35). Accordingly, it is an abuse of discretion, requiring reversal and remand for a new parenting plan that truly provides for frequent, continuing, and meaningful contact between Father and his children (Aplt.Br. 41-44).

2. The trial court's parenting schedule for Father is an abuse of discretion as a whole, not in parts.

Mother takes isolated snippets out of the new parenting plan and argues that, standing alone, they are not abuses of discretion (Resp.Br. 16-21). She devotes separate sections of her argument to the summer schedule (Resp.Br. 22-23), the two weekends per month in Neosho (Resp.Br. 23-29), and Christmas, Spring Break, and Thanksgiving (Resp.Br. 29-32).

Mother's strategy to break up the parenting plan into components and argue each standing alone "isn't so bad" is without merit. First, it ignores Father's point, per the authorities he cites. It is the extreme amount of travel

total, *combining* her snippets and other details she omits, that makes the judgment an abuse of discretion. It requires Father "to travel [between a distant state and Missouri] ten or more times per year", which is "an excessive amount of travel" that *per se* is an abuse of discretion. *S.E.P.*, 35 S.W.3d at 872. For Nathan's birthday, it requires him to travel for not even the "one day only" held to be an equal *per se* abuse of discretion in *S.E.P.*, *id.*, but to travel more than 20 hours for a mere *eight-hour* visit. It awards him 48-hour periods twice a month at his election, but never provides for any three-day weekends "dispersed throughout the year", *Maher*, 951 S.W.2d at 676, which provide far more "valuable opportunities for meaningful visitation" than a fortnightly 48-hour election. *McElroy,* 910 S.W.2d at 805.

For the two 48-hour periods each month from 6:00 p.m. Friday to 6:00 p.m. Sunday, Mother argues this is proper because "distant visitation problems can be ameliorated by allowing the non-custodial parent to exercise visitation in the child's city whenever his schedule permits, limited solely by a requirement of specified notice" (Resp.Br. 24) (quoting *C.H. v. C.W.*, 412 S.W.3d 375, 389 (Mo. App. 2013)).

While that is true, the problem here is that Father must drive 20 hours and 1,300 miles to take advantage of 48 hours of visitation. At trial, even Mother agreed this was "not practical" (Tr. 172). It "does not "conside[r] the time spent in the car traveling", "the [20] hours needed to travel back and forth" to exercise it. *McElroy*, 910 S.W.2d at 805 (48-hour weekend visitation with 200-mile, three-hour drive was abuse of discretion). While it is true that in *McElroy* this was mandated, rather than elective (Resp.Br. 24), the

problem is the same. Occasional three-day weekends are preferable to any 48-hour period that requires long driving. *McElroy*, 210 S.W.2d at 805. And of course, that is what Father's own parenting time requested: elective parenting time over three-day weekends with notice (Res.Ex. A p. 3).

Mother suggests that the 48-hour periods "could include specific holidays, as there is no prohibition in the judgment stating that Father cannot pick a holiday weekend" except for Mother's Day (Resp.Br. 23-24). She says it even could include "Martin Luther King Day, Presidents Day, Labor Day, and Memorial Day" (Resp.Br. 16).

That is untrue. As Mother states, Father's elective time is for 48 hours "from 6:00 p.m. Friday to 6:00 p.m. Sunday" (Resp.Br. 16, 23). But all those holidays, none of which the judgment mentions, fall on Mondays. 5 U.S.C. § 6103(a); §§ 9.010-9.030, R.S.Mo. The trial court's plan never gives Father any three-day weekend with the children during the schoolyear. But three-day weekends "dispersed throughout the year", *Maher*, 951 S.W.2d at 676, provide far more "valuable opportunities for meaningful visitation" than long-distance travel for 48 hours. *McElroy,* 910 S.W.2d at 805.

Moreover, taking away the children for two days out of a three-day weekend may well "diminish the quality of any time spent together and may well engender deep resentment on the part of the child, the parent or both." *Id.* (quoting *Riley*, 904 S.W.2d at 279). Children look forward to three-day weekends, because they provide an opportunity for extended time with friends, in activities, or traveling. If two days of a three-day weekend are taken up by a noncustodial parent coming into town and taking the children

away from all but one day of that cherished weekend, it easily could engender resentment on the part of the children.

That is exactly why Father's parenting plan only called for schoolyear elective time on three- or four-day weekends (Res.Ex. A p. 3). He proposed being "entitled to have the children for any three or four day weekend [*sic*] they have during the school year. Said visits will take place in the Neosho area. Father shall give Mother at least ten (10) days advance notice of his election to exercise parenting time under this provision" (Res.Ex. A p. 3).

Unlike the trial court's plan, this is far more in line with what this Court advised in *S.E.P.*, *McElroy*, *Maher*, and *Riley*. The trial court's plan calls for upwards of 18 20-hour round trips for 48-hour elective visitation periods. Father's calls for only the few over the children's three- or four-day weekends from school, and then for that extended period. As a matter of law, the trial court's plan is not valuable or meaningful. Father's was. *Maher*, 951 S.W.2d at 676; *McElroy*, 910 S.W.2d at 805.

Even discounting the 18 round trips for the schoolyear 48-hour weekend periods, in certain odd years the judgment still requires Father to travel 20 hours and 1,300 miles 11 further times for visitation during the year (Aplt.Br. 42). This is still "ten or more times" per year that is "an excessive amount of travel" and *per se* is an abuse of discretion. *S.E.P.*, 35 S.W.3d at 872. And it still requires one round trip for eight hours of visitation around Nathan's birthday, which also is an abuse of discretion. *Id.* Mother never once addresses any of that.

3. The trial court's parenting schedule is not in line with Father's proposal.

Mother also suggests that the plan's provisions for summer, Thanksgiving, Christmas, and spring break are in line with what Father requested in his own proposal, and so cannot be an abuse of discretion.

Except for Thanksgiving, this is untrue. (Though Father's ultimate proposed judgment in June 2017 suggested Thanksgiving from 6:00 p.m. Tuesday, not Wednesday.) But that is a distinction without a difference.

For summer, she says this is because "Father's proposed parenting plan also provides for four [round] trips/exchanges of the" children, which is the same as the trial court in even years (Resp.Br. 22-23). But she admits that in odd years, the trial court's plan requires *two extra* round-trips (Resp.Br. 23). That is *40 more hours* and *2,600 more miles* of driving, for a total of 80 hours (or three and one-third days) in odd-year summers, rather than 60 hours. And those two round trips are within a single week (D19 p. 15). That is a vast difference from Father's proposal.

Mother attempts to excuse that by the old canard that this actually "benefit[s] Father, allowing [him] an additional two weeks of time with the children in odd-numbered years" (Resp.Br. 23). This Court roundly rejected Mother's "more trips is automatically good" argument in *S.E.P.*, *Riley*, *Maher*, and *McElroy* (Aplt.Br. 36-41). The point is that, as in those decisions, in total, the amount of travel the trial court requires makes for a lack of frequent, continuing, and meaningful contact as a matter of law (Aplt.Br. 41-44). There are ways to "benefit father" without requiring even more long-distance travel. Father's proposal would have provided it (Aplt.Br. 42-44).

4. Rejecting Father's proposal does not automatically vindicate the trial court's parenting schedule; the schedule still must provide frequent, continuing, and meaningful contact as the law understands it and requires, and for Father it does not.

Mother argues that for Father's spring break and Christmastime proposals, which would have involved the children staying in a hotel with Father for a period, the trial court was free to find that this snippet "failed to consider the best interests of the children and was likely impossible due to Father's employment" (Resp.Br. 31). Of course it could find that. But this misses the mark: rejecting some provision of Father's proposal does not automatically make the court's ultimate different choice legally appropriate.

Just because the trial court rejected aspects of Father's plan within its discretion did not mean that its contrary plan requiring 11-plus 20-hour round trips even outside of elective parenting time in certain odd years, sometimes for as little as eight hours of visitation, was frequent, continuing and meaningful contact. The law of Missouri is that this is *always* an abuse of discretion. *S.E.P.*, 35 S.W.3d at 872.

The point is that Father was requesting an appropriate amount of travel, and the trial court's ultimate parenting plan's amount of travel is unduly excessive, burdensome, and legally inappropriate. The most Father's plan would have *required* was seven trips:

- four round trips in the summer (Tr. 13-14; Res.Ex. A p. 1);
- one round trip for Christmas (Tr. 14-16; Res.Ex. A p. 2);
- one round trip for spring break (Tr. 17-18; Res.Ex. A p. 3); and
- one round trip for odd-year Thanksgivings (Tr. 18-19; Res. Ex. A p. 3).

Beyond that, Father would have elective parenting time over three- or four-day weekends dispersed throughout the year, with ten days' notice (Tr. 18; Res.Ex. 3). Obviously, that was a far cry from what the trial court entered.

The trial court certainly was free to reject aspects of Father's proposed parenting plan that it found not to be in the children's best interests. But its ultimate plan also had to provide frequent, continuing, and meaningful parenting time with Father as the law of Missouri understands it.

29 1,300-mile, 20-hour round trips in a year, often for as little as 48 hours visitation and even for as little as eight hours, 11 round trips of which was required travel, does not cut it. And while Mother is correct that "'frequent, continuing and meaningful contact' can be accomplished, in part, through telephone or other contact with the non-custodial spouse" (Resp.Br. 32) (quoting *Boling v. Dixon*, 29 S.W.3d 385, 388 (Mo. App. 2000)), which was provided here, the problem is that it was in *addition* to more than 24 days and 37,000 miles of travel. Father's plan also called for electronic and telephone contact, albeit with far less long-distance travel (Res.Ex. A p. 3).

The trial court's conclusion otherwise was an abuse of discretion. This Court should reverse its decision and remand this case with instructions to (a) give the parties a reasonable opportunity to agree on a reasonable visitation schedule and (b) otherwise, present evidence and the trial court adopt a new schedule consistent with the principles in *S.E.P.*, *McElroy*, *Riley*, *Maher*, and *Lavalle*, which truly provides for frequent, continuing, and meaningful contact between Father and his children.

Reply as to Point II

In his second point, Father explained that the trial court misapplied §§ 452.375.9 and 452.310.8(a) and (b), R.S.Mo., as well as the Supreme Court's Parenting Plan Guidelines (i.e., Order re: Parenting Plan Guidelines (Mo. banc Aug. 17, 2009)), when it failed to account for any schoolyear holidays, specifically Martin Luther King Day, Presidents' Day, Memorial Day, or Labor Day (Aplt.Br. 28, 45-47).

Mother first responds that this was not error because Father's proposed parenting plan did not properly provide for those holidays either (Resp.Br. 37-39). She argues that while Father's parenting plan gave him elective parenting time over three- and four-day weekends with ten days' notice, which she acknowledges could include all of those holidays, this also violated § 452.310.8(1) because it did not detail the specific times for the exchange of the children on these weekends (Resp.Br. 36). She also argues that the trial court was free to conclude that Father's plan, which ostensibly entitled him to all three-day weekends throughout the years if he desired, was unfair and not in the children's best interests (Resp.Br. 36).

Mother of course is correct that the trial court was free to reject Father's proposed parenting plan. But as with her response to Father's first point, she fails to understand that the rejection of Father's proposal does not automatically authorize the plan that the court ultimately chose and render it free of error.

The parenting plan that the court ultimately entered still must comply with the law of Missouri. It must provide frequent, continuing, and

meaningful contact between Father and the children. § 452.375.4. And it also specifically must address Martin Luther King Day, Presidents' Day, Memorial Day, and Labor Day. §§ 452.375.9 and 452.310.8; *Wennihan v. Wennihan*, 452 S.W.3d 723, 737 (Mo. App. 2015); *In re Marriage of Murphey*, 207 S.W.3d 679, 686 (Mo. App. 2006); *In re Marriage of Alred*, 291 S.W.3d 328, 335-36 (Mo. App. 2009).

Regardless of what Father's rejected plan provided, the trial court's parenting plan manifestly does not provide for how and with whom contact would occur on any of these holidays, either expressly or (as with Father's plan) by direct implication. And it therefore misapplies the law (Aplt.Br. 45-47).

Mother then briefly suggests that the trial court's 48-hour elective weekends were enough to meet this requirement. But as she acknowledges, those periods were only "from 6:00 p.m. Friday to 6:00 p.m. Sunday" (Resp.Br. 38-39). Martin Luther King Day, Presidents' Day, Memorial Day, and Labor Day all occur on Mondays. 5 U.S.C. § 6103(a); §§ 9.010-9.030, R.S.Mo. Plainly, addressing "6:00 p.m. Friday to 6:00 p.m. Sunday" fails to address any of these holidays, even implicitly.

Mother also argues the trial court's failure is "invited error" because like her deficient proposed parenting plan, Father's did not specifically address these holidays. This is without merit.

First, Father believed that his accounting for all three-day weekends throughout the year, which obviously includes each of these holidays, was

sufficient, as this Court recently suggested. *See Von Holten v. Estes*, 512 S.W.3d 759, 769-70 (Mo. App. 2017).

Second, the law expressly required the trial court to include provisions for these holidays, so it was "not free to disregard the events enumerated in § 452.310.[8]", because "[t]he plain language of § 452.375.9 requires the trial court to include a specific written parenting plan following" it. *D.M.K. v. Mueller*, 152 S.W.3d 922, 930 (Mo. App. 2005) (quoting *Simon-Harris v. Harris*, 138 S.W.3d 170, 182 (Mo. App. 2004)). Whereas Father's parenting plan addressed Martin Luther King Day, Presidents' Day, Memorial Day, and Labor Day at least by direct implication, *Von Holten*, 512 S.W.3d at 769-70, the trial court's ultimate plan does not at all. Father then brought this failure to the trial court's attention in his timely motion to amend the judgment (D20 pp. 7-8), fully preserving it for appeal under Rule 78.07(c).

The Court should reverse the trial court's judgment and remand this case with instructions to follow the requirements of §§ 452.375.9, 452.310.8, and the Supreme Court's Parenting Plan Guidelines, and include parenting time provisions for Martin Luther King Day, Presidents' Day, Memorial Day, and Labor Day.

Reply as to Point III

In his third point, Father explained that the trial court also misapplied the law in awarding Mother child support of $814.00 per month, when it failed to attach its own Form 14 to the judgment or otherwise lay out in its judgment exactly how it calculated that amount, because this violated § 452.340, R.S.Mo. and Rule 88.01 (Aplt.Br. 30, 48-51).

In response, Mother does not dispute that the trial court chose an amount of child support that neither party had provided in their Form 14s (Resp.Br. 42-44). She also does not dispute that the law therefore required the trial court to explain how it reached its child support calculation (Resp.Br. 42-44).

Instead, Mother's only argument is that Father did not file a completed Form 14 with the trial court and therefore is not entitled to challenge the trial court's finding of $814 per month child support on appeal (Resp.Br. 43-44).

Mother's argument is without merit.

Mother acknowledges that "Father presented to the trial court two … Form 14's [*sic*]" (Resp.Br. 43) (citing Resp.Ex. B). She merely criticizes them as "conflicting", because one was calculated with an insurance cost for Father of $0, and one was calculated with an insurance cost of $1,209, which Father never proved (Resp.Br. 43) (citing Resp.Ex. B). She implies this was tantamount to not filing any Form 14 at all, but cites no authority holding so.

Father merely provided two alternative Form 14s. As this Court knows well, there is nothing wrong with this. Indeed, doing so is routine. "Nothing

in Rule 88.01 prohibits parties from submitting more than one Form 14. Furthermore, this [C]ourt has considered numerous cases in which a party has submitted more than one Form 14." *Nevins v. Green*, 317 S.W.3d 691, 697 n.4 (Mo. App. 2010) (citing, e.g., *Gerlach v. Adair*, 211 S.W.3d 663, 667 (Mo. App. 2007)).

Here, Father's two Form 14s provided his proposed calculations for two separate alternatives concerning health insurance. In one, there was no provision for the children's health insurance costs because it was automatically paid for by his employment (Tr. 44; Res.Ex. B, p. 1). In the other, it included estimated health insurance costs (Res.Ex. B p. 2). Both were admitted without objection from Mother (Tr. 45).

While the trial court obviously rejected Father's two Form 14s by not adopting the child support amount on them, this does not mean Father failed to file a completed Form 14 as in the authorities Mother cites. In all her authorities, the parent challenging the sufficiency of a specific child support amount had not filed any Form 14 at all. *See State Div. of Family Servs. v. Williams*, 861 S.W.2d 592, 595 n.2 (Mo. App. 1993) (parent challenging support did not attempt to file a Form 14 until in his post-judgment motion); *Hackmann v. Hackmann*, 847 S.W.2d 193, 194 (Mo. App. 1993) (record showed neither party ever filed a Form 14); *Ibrahim v. Ibrahim*, 825 S.W.2d 391, 398 (Mo. App. 1992) (party challenging support did not include any copy of any Form 14 in the record).

Father submitted two alternative Form 14s, as the law allows, which were admitted into evidence without objection from Mother (Tr. 45). But the

trial court did not adopt either his or Mother's Form 14 (Aplt.Br. 50). Mother does not contest this (Resp.Br. 43-44).

Therefore, the law required the trial court either to "complet[e] a Form 14 worksheet and mak[e] it part of the record, or" to "articulat[e] on the record how it calculated its Form 14 amount" (Aplt.Br. 49-51) (quoting *Killian v. Grindstaff*, 987 S.W.2d 497, 499 (Mo. App. 1999)). It did neither, requiring reversal and remand. Mother's only response, untenably suggesting that Father failed to file a Form 14, is without merit.

This Court should reverse the trial court's judgment and remand this case with instructions to re-determine child support and follow § 452.340 and Rule 88.01 in doing so by showing how it calculated any Form 14 presumed child support amount, "by either completing a Form 14 worksheet and making it part of the record, or by articulating on the record how it calculated its Form 14 amount." *Killian*, 987 S.W.2d at 499.

Conclusion

The Court should reverse the trial court's judgment and remand this case for entry of a new parenting plan meeting the requirements of Missouri law and for a redetermination of child support.

Respectfully submitted,

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Certificate of Compliance

I certify that I prepared this brief using Microsoft Word 2016 in Century Schoolbook, size-13 font, which is not smaller than Times New Roman, size-13 font. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b), as this brief contains 5,295 words.

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Certificate of Service

I certify that, on May 29, 2018, I filed a true and accurate Adobe PDF copy of this reply brief of the appellant via the Court's electronic filing system, which notified the following of that filing:

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