

## COURT OF APPEALS

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MEGAN M. WHITE,

Appellant,

Case No.: 22-AC-001

v.

Date: February 9, 2022

DOMINIC S. WHITE,

Respondent.

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### INITIAL REVIEW DECISION

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This matter has come before Appellate Judges Michele Doxtator, Chad Hendricks, and Diane House.

#### BACKGROUND

On December 7, 2021, the Oneida Family Court (hereinafter “OFC”) held a hearing in the matter of Case No. 08-CS-006, to review the physical placement and legal custody of minors BLVW, CNJW, and QW, along with related issues including the current and future school enrollment for said minors.

On December 10, 2021, the OFC issued an order (hereinafter “OFC Order”) determining the issues surrounding the above matters which include continued joint legal custody, shared equal placement of said minors, and homeschooling for minors for the remainder of the current school year, to be followed by enrollment in public school for the 2022-2023 school year.

On January 10, 2022, the Appellant, Megan M. White (hereinafter “White”), filed a Notice of Appeal of the OFC Order issued on December 10, 2021. White alleges this was an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law.

## ANALYSIS

We must answer the questions of whether the OFC made a decision that was arbitrary and capricious or abused its discretion when it ordered that both parties shall continue to exercise joint legal custody of the children and that the children be enrolled in public schools for the 2022-2023 school year.

### Whether the Decision of the OFC was Arbitrary and Capricious?

Under the Arbitrary and Capricious Standard of Review, the reviewing court:

*[M]ust consider whether an original hearing body's decision was based on consideration of relevant facts and evidence and whether there had been a clear error of judgment. The court may reverse only when the original hearing body offers a decision so implausible that it could not be attributed to evidence and facts presented. Thus, the scope of review under the standard is narrow, and a court may not substitute its judgment for that of the original hearing body.*

*O-Tech Solutions v. Oneida Bingo & Casino*, Docket No. 10-AC-017, December 10, 2010.

What this means is that the Appellate Court must determine whether there is evidence that supports the OFC's findings, and should overturn only if the decision is contrary to the evidence and facts presented.

It is not difficult to see in its December 10, 2021 Order, the OFC based its decision to award joint legal custody on the arguments and wishes of the parties and the recommendation of the guardian ad litem (hereinafter "GAL"). The OFC judge then listed all of the factors of 7 O.C. 705.10-4 that he found were the most compelling in making his decision. White does state in her appeal she doesn't feel it is in the best interest of the children to have equal placement. However, she offered no reason why the OFC was wrong to award joint legal custody based off the evidence that was presented at the hearing on December 7, 2021. Therefore, we find the OFC considered the relevant facts and evidence at the hearing. We also find the OFC considered the factors contained within 7 O.C. 705.10-4, *Factors in Legal Custody and Physical Placement Determinations*, along with the recommendations contained in the Guardian ad Litem report.

### Whether the OFC Abused its Discretion?

Under the Abuse of Discretion Standard of Review, we review for legal error under a de novo standard. This means we independently determine whether the correct standard of law was applied, but uphold the OFC's findings of fact unless they are clearly erroneous. *See Koon v. United States*, 518 U.S. 81, 100 (1996). Failure of a lower court to apply the law correctly in reaching its decision is an abuse of discretion. A lower court's decision will not be reversed for coming to a conclusion which another court might not reach if the decision is one that a reasonable judge could reach after considering the law and facts through a reasoned process. *Filppula-McArthur v. Halloin*, 234 Wis.2d 245, 257-58 (Wis. App. 2000).

The OFC judge thoroughly listed all of the factors of 7 O.C. 705.10-4 that he found were the most compelling in making his decision. Pursuant to 7 O.C. 705.10-2(a) – *Legal Custody and Physical Placement*, the court shall presume that joint legal custody is in the best interest of the children. In his Order, the OFC judge considered the arguments of the parties and then explained his reasoning that the arguments of the parties were not enough to overcome the presumption that joint custody is in the best interests of the children. Therefore, we hold that the OFC did not abuse its discretion when it ordered joint legal custody of the children

### DECISION

After reviewing the information contained in the Notice of Appeal, and the OFC's Order, it is determined that White has not sufficiently alleged that the OFC's decision:

1. Violates applicable provisions of the Constitution;
2. Violates provisions, substantive or procedural, of applicable Oneida law or applicable federal law;
3. Is an administrative decision that was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is not supported by substantial evidence on the record taken as a whole.

For the reasons set forth above, this appeal is DENIED for appellate review.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this appeal is denied for review. Dated this 9th day of February 2022, in the matter of Case No. 22-AC-001, *Megan M. White v. Dominic S White*.

***It is so ordered.***