

Approximately six years later in August 2015 Appellant petitioned the lower court for custody of the children based upon her allegations that the Appellee was using alcohol and that his home was not a safe home. However, the lower court denied Appellant's petition for custody of the children. Custody remained with the father until September 2015 when the children were removed from his custody and placed with the mother by Child Protection Program (CPP). Law enforcement and CPP visited the Appellee's home based upon a call from the Appellant stating that the Appellee was intoxicated. Appellee was arrested for intoxication at that time, and CPP placed the children with Appellant. Appellant filed for emergency custody of the children, and the lower court granted her emergency custody until a hearing was held on October 28, 2015.

As a result of the September 2015 incident, a bench trial was scheduled for December 23, 2015 on the Petition alleging child neglect by the Appellee. Prior to Appellee's scheduled trial, Appellee entered a plea of guilty to child neglect admitting the allegations in the petition. Appellee was represented by counsel who was present when Appellee entered his guilty plea.

While the children were in the emergency custody of Appellant one of Appellant's other daughters committed suicide in the home where the children reside with their mother. Appellee, based upon that incident filed for emergency custody of the children. A consolidated hearing was held on December 23, 2015 on Appellee's petition for emergency custody and on Appellant's request for permanent custody. The lower court after hearing testimony from the Appellee, Appellant, CPP employees and based upon an interview of the children by Rhonda Fatland issued an order dated 12th day of January 2016. The January 12, 2016 order awarded joint custody to the parents with visitation. It is this order that Appellee is appealing to this Court.

DISCUSSION

Chapter 38 of the SWO Civil Code is the Juvenile Code and addresses juvenile issues for the SWO Oyate. Chapter 38.03.36 is entitled: "Neglected Child" and within this section there are twelve (12) situations listed that can result in an individual being charged with the neglect of a child. The record is unclear as to which of the twelve situations listed herein that Appellee entered a guilty plea to.

Appellee was charged with neglect of his children which resulted from his arrest for intoxication while the children were in his custody. Appellee did plead guilty to the child neglect charge after discussing the ramifications of entering a guilty plea with his attorney. Based upon this guilty plea the lower court changed the custody of the children to joint custody between Appellee and Appellant. Appellant has custody during the school week with Appellee having custody during the weekends. Further, Appellee has custody eight (8) consecutive weeks during the summer, with Appellant having custody on the weekends during this time. Based upon the child neglect conviction the lower court could have placed sole custody with the Appellant. However, joint custody was awarded which keeps both parents involved in the children's lives.

Appellee has been employed for approximately eighteen (18) years at the same job. He has made great strides to address any problems associated with alcohol by attending and completing an intensive outpatient treatment program with Dakota Pride. This Court is impressed with the commitment, love and dedication that Appellee has shown towards his children. He assumed sole custody of the children for more than six years. It is extremely trying upon a parent when custody of the parent's children is removed from them for a lapse in judgment. However, the best interest and welfare of the children are of the utmost concern, and this Court considers all concerns when children are involved.

Appellant has had life issues also but she is making efforts to address them. She is currently employed and is attempting to obtain housing for herself and the children. The housing situation on most of the reservations is a huge problem. There are not enough homes available for all families and many family members are forced to reside with other family members. This overcrowding is unavoidable at times and should not be used to the detriment of a person, and this Court refuses to do so.

The aftereffects of the suicide of one of Appellant's daughters in the home where the children and their mother reside are of concern to this Court. However, after this incident the lower court requested that the children be interviewed by CPP. It was CPP's determination that CPP had no concerns about keeping the children in the home following this incident, and that the mother was an appropriate care taker. The lower court found that this was not a substantial and material change in circumstances to deny Appellant custody of the children. It was held that the

suicide was not the result of conditions in the home, and further that the children expressed a desire to maintain the current custody arrangements.

The fact that Appellee entered a plea of guilty to the child neglect allegation, however, is a fact that the lower court can rely upon and which can result in the custody of children being changed. It is considered as the lower court stated in its January 12, 2016 order a: "substantial and material change in circumstances" which can be used in considering custody of children. The lower court made the best decision available to it in the circumstances; it awarded the parents joint custody of the children, with visitation on weekends for Appellee and extended custody during the summer for Appellee.

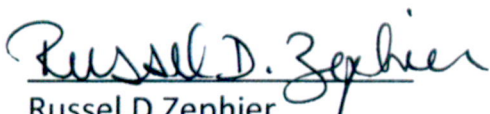
ORDER

It is therefore the order of this Court that the order of the SWO lower court dated 12th day of January 2016 is upheld in its entirety.

IT IS SO ORDERED.

Dated this 12th day of May 2016.

FOR THE COURT



Russel D Zephier
SWO Supreme Court
Associate Judge