NOT DESIGNATED FOR PUBLICATION

No. 95,423

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

KAREN EILEEN BROWN,
Appellant,

and

PHILLIP EDWIN BROWN,
Appellee.

MEMORANDUM OPINION

Appeal from Douglas District Court; JEAN F. SHEPHERD, judge. Opinion filed November 22, 2006. Affirmed.

Shelley Hickman Clark and *Jody M. Meyer*, of Douglas County Legal Aid, for appellant.

Joan Hawkins, of Hawkins & Singleton, LC, of Lawrence, for appellee.

Before CAPLINGER, P.J., ELLIOTT and JOHNSON, JJ.

Per Curiam: Karen Eileen Brown appeals the decision to grant joint custody and increased parenting time to her former husband, Phillip Edwin Brown. We affirm.

Karen and Phillip were married in 1994; a daughter was born in 1994 and a son was born in 1996. The parties were granted a divorce in December 2002. The parties agreed to joint custody.

Eventually in January 2005, Phillip moved to modify custody and parenting time. After a 3-day hearing in August 2005, the trial court issued its order in September granting Phillip joint custody and additional parenting time.

Karen argues on appeal the trial court erred in awarding Phillip joint custody and increased parenting time. When the custody issue involves only the parents, the primary consideration is the welfare and best interests of the children. The trial court is in the best position to make that inquiry and determination, and absent a clear abuse of judicial discretion, the trial court's determination will not be disturbed on appeal. *In re Marriage of Rayman*, 273 Kan. 996, 999, 47 P.3d 413 (2002).

Initially, Phillip argues the trial court's custody order is not properly before the court because the order is moot since the parties subsequently entered into an agreement

for joint custody. When the parties enter into a parenting plan, it is presumed to be in the best interests of the children. See K.S.A. 60-1610(a)(3)(A).

But there is nothing in the record to demonstrate the parties agreed to joint custody and parenting time after the trial court's decision. Appellate briefs are not a substitute for the record on appeal. Supreme Court Rule 6.02(f) (2005 Kan. Ct. R. Annot. 36). Without an adequate record, Phillip's claim fails. See *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 172, 61 P.3d 687 (2003). We will consider the merits of Karen's arguments.

Essentially, Karen is asking us to reweigh the evidence presented to the trial court. We do not reweigh conflicting evidence, pass on credibilty of witnesses, or redetermine questions of fact. *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 775, 69 P.3d 1087 (2003).

We have carefully reviewed the record on appeal: there is substantial competent evidence to support the trial court's findings.

Additionally, Karen argues the trial court erred in ruling: "Neither parent is to make negative comments about the other parent and neither parent is to discuss custody litigation with these children, nor are the parents' relatives or friends to do so."

The trial court appropriately concluded the children were "very enmeshed in this custody litigation," which had a negative impact on the children. The trial court merely intended to prevent discussion of custody matters with the children. The trial court possessed jurisdiction considering all visitation, custody, and contacts with the children. See K.S.A. 60-1610(a)(3), (4); K.S.A. 60-1616. Accordingly, the trial court's order was not an abuse of discretion.

Finally, Karen argues the trial court abused its discretion in ruling "[n]either parent is to use corporal punishment on these children. In addition, neither parent shall have the children stand on his or her toes for discipline."

On one hand, there is no evidence in the record that either Karen or Phillip actually disciplined their children by requiring them to stand on their toes. But on the other hand, there is no indication either Karen or Phillip was prejudiced by the trial court's order. See *Smith v. Printup*, 262 Kan. 587, 603, 938 P.2d 1261 (1997) (harmless error is disregarded).

And Phillip did admit he employed corporal punishment by spanking T.A.B.; further, prior abuse by Phillip was substantiated. The trial court did not abuse its discretion.

Appellee Phillip filed his motion for attorney fees on appeal on July 14, 2006. The appeal was put on the summary calendar by letter dated June 1, 2006. Supreme Court Rule 7.07(b) (2005 Kan. Ct. R. Annot. 56) requires a motion for attorney fees to be filed within 15 days of the date of the letter assigning the case to a docket.

The motion for attorney fees is denied as not timely filed.

The judgment is affirmed.