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COMMENT

THOMAS V. CASH: HOW OKLAHOMA LAW AND THE INTERNET RELATE IN PROTECTIVE ORDERS AND ADOPTION PROCEEDINGS

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I. INTRODUCTION

Family law is an ever-changing area of law that has grown significantly in law-school curriculums and throughout the overall legal profession.¹ Furthermore, family law has momentously advanced, particularly as American society, values, and technology have evolved. One of the most important influences in the field is constitutional caselaw.² But this caselaw was based heavily on state statutes concerning family privacy and child custody.³ This Comment focuses on two areas of law addressed by these statutes: protective orders and adoption proceedings.⁴

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1. Joanna L. Grossman, *Family Law's Loose Canon*, 93 TEX. L. REV. 681, 681 (2015) (reviewing JILL ELAINE HASDAY, *FAMILY LAW REIMAGINED* (2014)).

2. David D. Meyer, *The Constitutionalization of Family Law*, 42 FAM. L. Q. 529, 557 (2008).

3. *Id.* at 532–33.

4. *See infra* Part IV.

In *Thomas v. Cash*, the Oklahoma Court of Civil Appeals held Facebook postings by biological family members do not “pose[] a threat” or cause adoptive parents to suffer substantial emotional distress when the child is unaware of the Facebook postings and the biological family member is not attempting to contact the child in direct opposition of the adoptive parents’ wishes.⁵ Therefore, the court concluded that “the record lack[ed] evidence to support the . . . entry of protective orders against” a minor child’s biological family members based on harassment.⁶

This Comment begins, in Part II, with the historical background of Oklahoma’s Protection from Domestic Abuse Act⁷ and Oklahoma’s Adoption Code.⁸ Part III describes and examines the facts, procedural history, and analysis of *Thomas*. Part IV discusses why the court was correct in reversing and remanding the trial court’s decision. In analyzing the court’s decision, this section will first discuss the Protection from Domestic Abuse Act’s definition of *harassment* and the court’s application of the statutory text. It will then explain Oklahoma’s Adoption Code and how the court applied it to resolve the postadoption visitation order in *Thomas*. Finally, it will discuss an individual’s privacy rights when using social media and how the court used precedent to determine whether a privacy invasion occurred.

II. HISTORICAL BACKGROUND

A. *Preventing Violence: Oklahoma’s Protection from Domestic Abuse Act*

Domestic violence is a serious issue in Oklahoma that can catastrophically affect the victims, especially children. “Children who are exposed to domestic violence are less likely to succeed in school than children who are not exposed.”⁹ Additionally, “[y]outh who witness domestic violence are at [an] increased risk for suicide and substance

5. *Thomas v. Cash*, 2017 OK CIV APP 11, ¶¶ 20–21, 423 P.3d 670, 677.

6. *Id.* ¶ 23, 423 P.3d at 677.

7. OKLA. STAT. tit. 22, §§ 60–60.20 (2011).

8. OKLA. STAT. tit. 10, §§ 7501-1.1–7510-3.3 (2011).

9. *YW FACTS 2015*, YWCA OKLA. CITY,

http://www.ywcaokc.org/site/c.7oJELRPuFgJYG/b.8784601/k.E7AD/YW_Facts.htm
[https://web.archive.org/web/20170809012756/http://www.ywcaokc.org/site/c.7oJELRPuFgJYG/b.8784601/k.E7AD/YW_Facts.htm].

abuse.”¹⁰ In 1982, the Oklahoma Legislature passed the Protection from Domestic Abuse Act (Act), which states “[a] victim of domestic abuse, a victim of stalking, a victim of harassment, [and] a victim of rape . . . may seek relief under the provisions of the . . . Act.”¹¹ Moreover, the Act allows a parent to file a protective order on behalf of a minor child.¹² While legislative history pertaining to the Act is not available, “it is reasonable to assume the passage of the Act [was] a result of increased public awareness regarding the serious nature of domestic violence.”¹³ In promulgating the Act, the Legislature’s goal was to prevent and protect victims of domestic violence.¹⁴

Although courts understood the Legislature’s objective, the codification of the Act created confusion, specifically regarding the remedies and protections awarded to victims and defendants.¹⁵ The Oklahoma Court of Civil Appeals addressed this issue in *Marquette v. Marquette*.¹⁶ In *Marquette*, a husband appealed the trial court’s order granting his ex-wife’s petition for a protective order.¹⁷ Among other things, the husband argued the Act concerned criminal procedure rather than civil procedure because the Act was codified under title 22; therefore, “he was entitled to the protections allowed in criminal proceedings.”¹⁸ Relying on the Legislature’s goal “to remedy [the domestic violence] problem by providing immediate, as well as long-range, protection for the victims of domestic abuse,”¹⁹ the court found the remedy provided by the Act was civil in nature.²⁰ The court reasoned (1) the State was not a party to the action, which is a requirement for criminal proceedings;²¹ and (2) the Act’s penalty provision did not create a substantive penalty, but instead it added another way the court could exercise its existing power.²²

10. *Id.*

11. OKLA. STAT. tit. 22, § 60.2(A).

12. *See id.* (“[A]ny adult or emancipated minor household member on behalf of any other family or household member who is a minor . . . may seek relief under the provisions of the Protection from Domestic Abuse Act.”).

13. *Marquette v. Marquette*, 1984 OK CIV APP 25, ¶ 9, 686 P.2d 990, 993.

14. *See Holeman v. White*, 2012 OK CIV APP 107, ¶ 15, 292 P.3d 65, 68.

15. *Marquette*, 1984 OK CIV APP 25, ¶¶ 7–10, 686 P.2d at 993.

16. 1984 OK CIV APP 107, 686 P.3d 990.

17. *Id.* ¶ 1, 686 P.3d at 991.

18. *Id.* ¶ 7, 686 P.3d at 993.

19. *Id.* ¶ 9, 686 P.3d at 993.

20. *Id.* ¶ 10, 686 P.3d at 993.

21. *Id.*

22. *Id.* ¶ 11, 686 P.3d at 994.

Although the Oklahoma Supreme Court acknowledged a protective order can provide a sense of relief and reassurance for a victim, it warned protective orders can negatively affect a defendant.²³ Therefore, courts should only issue protective orders when the legislative requirements are met.²⁴

B. Redefining Family: Oklahoma's Adoption Code

Adoption was unrecognized under the common law and is relatively recent in American law.²⁵ However, early American law followed the English customs of “apprenticeship” and “service” as a form of adoption.²⁶ “The first comprehensive adoption statute was passed in 1851 in Massachusetts.”²⁷ In 1997, the Legislature adopted the Oklahoma Adoption Code (Code), joining other states around the nation.²⁸ In adopting the Code, the Legislature substantially changed the structure of adoption law.²⁹ The Code lists ten purposes,³⁰ including the following:

1. Ensure and promote the best interests of the child in adoptions and to establish an orderly and expeditious process for movement of adoption matters through the courts;
2. Affirm that the parent-child relationship is fundamental and that all adoption laws should be fair to the child and to each parent of the child; [and]
3. Affirm the duty of the biological parents to provide appropriately for the care of the child unless custody of the child has been transferred either voluntarily or involuntarily³¹

It also clearly set out the Legislature’s intent “to balance the privacy rights of all parties to an adoption while clarifying when and to whom

23. *Curry v. Streater*, 2009 OK 5, ¶ 11, 213 P.3d 550, 555.

24. *Id.*

25. Stephen B. Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAM. L. 443, 443 (1972) (discussing the history of adoption law).

26. *See id.* at 456.

27. *Id.* at 465.

28. *See* OKLA. STAT. tit. 10, § 7501-1.1 (2011).

29. 2 R. ROBERT HUFF, OKLA. PRO. L. & PRAC. § 31.1 (3d ed. 1995).

30. In the interest of space, I have omitted subsections (A)(4)–(10). For the entire list, see title 10, section 7501-1.2.

31. tit. 10, § 7501-1.2(A)(1)–(3) (2011).

information may be released.”³² In addition, the Legislature sought “to promote voluntary reunions, provide for confidential intermediaries, and collect and maintain social and medical information relating to the adoption in the recognition that all children should have access to knowledge about their heritage.”³³ Furthermore, the Code essentially created a handbook for courts to follow during an adoption proceeding.³⁴ This handbook consisted of extensive instructions pertaining to various topics such as jurisdiction, venue, and orders.³⁵

The Legislature updated the Code in 1998 to “clarify[] the jurisdiction of the court, refin[e] the matter of consents, authoriz[e] temporary orders of custody, [and] requir[e] counsel in certain situations.”³⁶ Unfortunately, the complexity of the Code coupled with the cost associated with understanding and complying with it has caused the number of attorneys willing to handle adoptions to decline.³⁷

III. THOMAS V. CASH

A. *Facts*

In August 2006, the plaintiffs Damian and Shelena Thomas adopted the minor child (Child) under a closed adoption process.³⁸ The biological mother, Terri Cash, “relinquished her parental rights in January 2006, when Child was two years old.”³⁹ Mr. Thomas was Child’s biological uncle.⁴⁰ The defendants, Terri Cash, Tina Cash, and Dorothy Childers, were Child’s biological mother, aunt, and grandmother.⁴¹

On September 26, 2014, the Thomases filed protective orders “on

32. tit. 10, § 7501-1.2(B) (2011).

33. *Id.*

34. See HUFF, *supra* note 29, § 31.1.

35. Adoption–Oklahoma Adoption Code–Renaming From Oklahoma Adoption Act, 1997 Okla. Sess. Law Serv. Ch. 366, 1 (H.B. 1241) (codified as amended OKLA. STAT. tit. 10 §§ 7501-1.1–7510-3.3 (2011)).

36. HUFF, *supra* note 29, § 31.1.

37. See *id.* (“Many attorneys who previously handled adoptions have opted to not process them under the new act because their cost to study and comply with the act is more than they believe they can or should charge their clients.”).

38. *Thomas v. Cash*, 2017 OK CIV APP 11, ¶ 2, 423 P.3d 670, 672.

39. *Id.*

40. *Id.*

41. *Id.*

behalf of Child and themselves” against the defendants for stalking.⁴² The Thomases alleged that on September 17, 2014, Terri Cash and Dorothy Childers sent Facebook friend requests to Mrs. Thomas.⁴³ Later, Mrs. Thomas’s daughter told her that Terri Cash had “picture[s] of Child on Terri Cash’s ‘Facebook’ page.”⁴⁴ Mrs. Thomas looked on Terri Cash’s Facebook page and found several pictures of Child.⁴⁵ Mrs. Thomas noticed that Terri Cash had copied the pictures from Mrs. Thomas’s Facebook page without permission.⁴⁶ One of the photos was taken several years earlier while Child was sitting in the back seat of the Thomases’ car at a store parking lot.⁴⁷ Mrs. Thomas sent the defendants messages on Facebook requesting they remove the photos of Child, but all three women refused.⁴⁸ Tina Cash responded to Mrs. Thomas’s message stating that Child was “family.”⁴⁹ Dorothy Childers and Terri Cash used a photo of Child as their Facebook profile pictures, and Terri Cash told Mrs. Thomas that the Thomases “could kiss her white butt.”⁵⁰ Dorothy Childers posted a comment stating she would see Child when Child turned sixteen, which Terri Cash replied it would be when Child turned eleven.⁵¹

The Thomases claimed that even though Child knew she was adopted, she was not “‘mature or mentally stable enough’ to know the identity of her birth parents.”⁵² The Thomases also alleged that the defendants’ family had been antagonistic and insinuated that the Thomases were prejudiced against the birth mother, Terri Cash.⁵³

B. Procedural History

In November 2014, the court consolidated the Thomases’ individual petitions into one trial.⁵⁴ Mr. and Mrs. Thomas appeared *pro se*; however,

42. *Id.* ¶ 3, 423 P.3d at 672.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* ¶ 3, 423 P.3d at 673.

53. *See id.*

54. *Id.* ¶ 4, 423 P.3d at 673.

Child was not part of the proceedings.⁵⁵ Mr. Thomas testified that after he learned the photographs of Child were posted on the defendants' social media pages, he reviewed their content, including the comments on the pictures.⁵⁶ Mr. Thomas also stated the defendants did not ask for permission to use the photos, but Mr. and Mrs. Thomas's Facebook pages were available for public view.⁵⁷ Furthermore, Mr. Thomas testified that he never interacted with defendants and was not aware of the postings until someone told him about them.⁵⁸ Mr. Thomas said he did not live in fear for Child's safety by having other people "take and post pictures of Child."⁵⁹

Mrs. Thomas also testified at the trial, specifically regarding the defendants' conduct on Facebook and the privacy invasion.⁶⁰ Because she believed they had a closed adoption, Mrs. Thomas felt the defendants did not have the right to disclose that Child was adopted or the biological parentage of Child.⁶¹ She also stated she was not clear on the adoption court-order language regarding the contact prohibitions for Terri Cash or other biological family members.⁶² Moreover, Mrs. Thomas stated that she was not fearful of the social media messages but rather assumed violation of the adoption court order by contacting the family.⁶³

The defendants testified that their intent was not malicious, nor had they actually contacted Child.⁶⁴ They stated the photographs of Child were obtained from Mrs. Thomas's Facebook page, but the page was unrestricted and allowed anyone access to the photographs.⁶⁵ In addition, the defendants never directed comments regarding the posts of Child to Mrs. Thomas.⁶⁶ However, the defendants sent at least one direct message to Mrs. Thomas through Facebook.⁶⁷ Terri Cash and Tina Cash testified they took a picture of Child sitting at a store parking lot.⁶⁸ Terri Cash

55. *Id.*

56. *Id.* ¶ 5, 423 P.3d at 673.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* ¶ 6, 423 P.3d at 673.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* ¶ 7, 423 P.3d at 674.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

testified the adoption order did allow her to have “continued contact with Child.”⁶⁹ Yet, even though she believed contact with Child was allowed, she had not contacted Child to avoid confusion.⁷⁰

Based on the evidence given at trial, the court ordered a five-year protective order against each of the defendants due to harassment.⁷¹ The trial court concluded that

[it] saw “no valid purpose” for [the] [d]efendants to “post [Child’s] photos on social media other than for the purpose of harassment,” that “all three [d]efendants [were] harassing by doing that as to [Mr. and Mrs. Thomas],” and that [d]efendants’ conduct “seriously alarm[ed] [Mr. and Mrs. Thomas] and it serve[d] no legitimate purposes.”⁷²

The trial court also found each defendant to be a threat to the Thomases and Child, so the court prohibited the defendant from having any contact with the Thomases or Child.⁷³ Finally, the trial court found a visitation order already existed, so the court modified the order by adding that “[t]he [d]efendant[s] [are] not to post or display any photograph of the minor child or the child’s parents . . . or make any comments about any of them on any social media or to the petitioners or to any public site.”⁷⁴ The trial court denied the defendants’ motion to reconsider and their motion for a new trial, so they appealed.⁷⁵

C. Opinion

The defendants filed their posttrial motions “within [ten] days of the final protective order[;] [therefore], [the] Court [of Civil Appeals] . . . treat[ed] [their motion] as a motion to vacate or a timely motion for new trial.”⁷⁶ The court reviewed the case for abuse of discretion (i.e. the appellate court only reverses when the trial court’s conclusions were

69. *Id.* ¶ 8, 423 P.3d at 674.

70. *Id.*

71. *Id.* ¶ 10, 423 P.3d at 674.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* ¶ 11, 423 P.3d at 674.

clearly erroneous).⁷⁷

In his analysis, presiding Judge Thornbrugh emphasized the importance of the Act's definition of *harassment*, specifically the portion stating that "[t]he course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress[] and must actually cause substantial [emotional] distress to the person."⁷⁸ Judge Thornbrugh also emphasized the importance of the Act's purpose and the consequences of issuing an unwarranted protective order.⁷⁹

First, the court examined *Holeman v. White*.⁸⁰ In *Holeman*, an ex-husband filed a petition for a protective order against his ex-wife's current husband.⁸¹ The current husband sent insulting emails to the ex-husband because the ex-husband sent unsavory emails to the current husband's wife.⁸² The court held an annoyance did not amount to the substantial emotional distress required for issuing a protective order on grounds of harassment.⁸³ Similar to *Holeman*, the evidence in *Thomas* showed Mr. and Mrs. Thomas were "'annoyed' by [the] [d]efendants' conduct."⁸⁴ The court specifically noted that Mr. and Mrs. Thomas denied feeling fearful or threatened.⁸⁵

Second, the court analyzed Mrs. Thomas's claim that Child's adoption was "closed."⁸⁶ The court noted the Thomases "presented no order from the adoption proceedings."⁸⁷ Further, "Terri Cash testified [she understood] that [postadoption] contact was permitted, and the trial court . . . [concluded] that a visitation order" existed.⁸⁸ The court also addressed Mrs. Thomas's claim that the defendants invaded their privacy.⁸⁹ According to the court, "[Mr. and Mrs. Thomas] likely brought that condition on themselves[] by virtue of the pictures they have posted of Child to their own Facebook accounts and allowing others to post pictures

77. *Id.* ¶¶ 11–12, 423 P.3d at 674–75 (citing *Okla. Tpk. Auth. v. Little*, 1993 OK 116, ¶ 6, 860 P.2d 226, 228).

78. *Id.* ¶ 13, 423 P.3d at 675.

79. *Id.* ¶ 14, 423 P.3d at 675.

80. *Id.* ¶ 16, 423 P.3d at 676; *Holeman v. White*, 2012 OK CIV APP 107, 292 P.3d 65.

81. *Holeman*, 2012 OK CIV APP 107, ¶ 2, 292 P.3d at 66.

82. *Id.* ¶ 4, 292 P.3d at 66.

83. *Id.* ¶¶ 14–15, 292 P.3d at 68.

84. *Thomas*, 2017 OK CIV APP 11, ¶ 18, 423 P.3d at 676.

85. *Id.*

86. *Id.* ¶ 19, 423 P.3d at 676–77.

87. *Id.* ¶ 19, 423 P.3d at 677.

88. *Id.* ¶ 19, 423 P.3d at 676.

89. *Id.*

of Child in the same manner.”⁹⁰

Finally, the court addressed Mrs. Thomas’s concern for Child’s “future emotional well-being.”⁹¹ The court distinguished this case from *Muscato ex rel. Butler v. Moore*.⁹² In *Moore*, the court affirmed a protective order filed by a mother on behalf of her teenage daughter against the mother of her daughter’s former friend.⁹³ The former-friend’s mother continued to contact the daughter despite the mother’s request to cease all communication.⁹⁴ The court in *Thomas* believed that “there was no evidence that Child [was] aware of [the] [d]efendants’ postings, or that [the] [d]efendants [had] attempted to contact Child directly over [Mr. and Mrs. Thomas’s] objection.”⁹⁵

Therefore, “given the lack of any evidence that [the] [d]efendants [had] in fact posed a threat of harm or caused [Mr. or Mrs. Thomas or Child] to suffer substantial emotional distress, . . . the trial court abused its discretion in entering protective orders against [the] [d]efendants for harassment.”⁹⁶ The court took note of other conduct by defendants on social media that could constitute stalking or harassment; however, Mr. and Mrs. Thomas did not present any evidence that they suffered emotional distress as required for a protective order under the Act.⁹⁷ Therefore, the court reversed the judgment and remanded the case “with instructions to grant [the] [d]efendants’ motions to vacate” the orders.⁹⁸

IV. ANALYSIS

The Court of Civil Appeals correctly reversed and remanded the trial court’s decision. The trial court only relied on part of the Act’s definition of *harassment*, specifically the portion stating the harassment must “seriously alarm[] or annoy[] the person . . . and . . . serve[] no legitimate purpose.”⁹⁹ The trial court erroneously ignored the rest of the definition, thus making a fatal flaw that affected its entire analysis of the case.

90. *Id.*

91. *Id.* ¶ 20, 423 P.3d at 677.

92. *Id.*; *Muscato ex rel. Butler v. Moore*, 2014 OK CIV APP 93, 383 P.3d 643.

93. *Moore*, 2014 OK CIV APP 93, ¶ 1, 383 P.3d at 644.

94. *Id.* ¶¶ 2–3, 383 P.3d at 645.

95. *Thomas*, 2017 OK CIV APP 11, ¶ 20, 423 P.3d at 677.

96. *Id.* ¶ 21, 423 P.3d at 677.

97. *Id.* ¶ 22, 423 P.3d at 677.

98. *Id.* ¶ 23, 423 P.3d at 677.

99. OKLA. STAT. tit. 22, § 60.1(3) (2011).

Furthermore, the trial court's decision completely disregarded the Legislature's intent when it enacted the Act and Code. As mentioned above, the Act's purpose was preventative in nature.¹⁰⁰ However, there was nothing to prevent in *Thomas*. Similarly, the Code's goal is intended "to promote voluntary reunions";¹⁰¹ however, the trial court's decision discouraged such behavior.

Fortunately, the Court of Civil Appeals swiftly corrected this issue on appeal by (1) implementing one of the most basic principles in statutory interpretation, (2) reading the statute completely, and (3) giving deference to the Legislature's overall purpose in enacting the Act and Code. The court's reversal also served as a perfect illustration of how the judicial branch works to objectively enforce the law while also working to find an equitable solution for all parties involved.

In *Thomas*, the court's reasoning was correct in three ways. First, the court properly applied the Act's definition of *harassment*, and therefore heeded the Oklahoma Supreme Court's warning "that a protective order should not be issued lightly."¹⁰² Second, the court correctly applied the Code's text and the standard of review to resolve the postadoption visitation issue. Third, the court reinforced the current trend regarding an individual's privacy rights with respect to social media.

A. *The Definition of Harassment*

The court correctly applied the definition of *harassment* set forth in the Code. *Harassment* is defined as

a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. *Harassment* shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of

100. See *Holeman v. White*, 2012 OK CIV APP 107, ¶ 15, 292 P.3d 65, 68.

101. tit. 10, § 7501-1.2(B).

102. *Thomas*, 2017 OK CIV APP 11, ¶ 14, 423 P.3d at 675 (citing *Curry v. Streater*, 2009 OK 5, ¶ 11, 213 P.3d 550, 555).

the Oklahoma Statutes and fear of death or bodily injury.¹⁰³

The court concluded that Mr. and Mrs. Thomas failed to satisfy all of the elements required to support grounds of harassment.¹⁰⁴ Specifically, the court stated the evidence did not show that the defendants “in fact posed a threat of harm or caused [The Thomases or Child] to suffer substantial emotional distress.”¹⁰⁵

Further, *Thomas* is comparable to *Horowitz v. Horowitz*.¹⁰⁶ In *Horowitz*, a woman filed a petition for an injunction against her husband for cyberstalking.¹⁰⁷ The husband posted lyrics to a song and a conversation between the woman and a third party on his Facebook page.¹⁰⁸ In support of her harassment claim, the woman “testified that the posts were ‘a matter of concern’ to her.”¹⁰⁹ The court held that the woman “failed to show that the posts caused her ‘substantial emotional distress.’”¹¹⁰ The court noted the woman presented no other evidence to support her claim.¹¹¹

Like the woman in *Horowitz*, Mr. and Mrs. Thomas failed to show the defendants’ conduct caused them to suffer substantial emotional distress. Mr. and Mrs. Thomas specifically stated they did not feel fearful of the defendants.¹¹² Furthermore, Mr. Thomas testified he “did not ‘as a father live in fear’ for Child.”¹¹³ This evidence clearly shows Mr. and Mrs. Thomas did not meet their burden of proof in claiming harassment.

The evidence pertaining to Child’s actual awareness and safety further substantiated the appellate court’s decision. Mrs. Thomas testified that a protection order was necessary to preserve Child’s “emotional well-being.”¹¹⁴ However, Child was not aware of the defendants’ posts, and the defendants were not in direct physical contact with Child.¹¹⁵ In fact, Terri Cash’s decision to not contact Child because she did not want to confuse

103. tit. 22, § 60.1(3) (emphasis added) (internal quotations omitted).

104. *Thomas*, 2017 OK CIV APP 11, ¶ 23, 423 P.3d at 677.

105. *Id.* ¶ 21, 423 P.3d at 677.

106. 160 So. 3d 530 (Fla. Dist. Ct. App. 2015).

107. *Id.* at 531.

108. *Id.*

109. *Id.* at 532.

110. *Id.*

111. *See id.*

112. *Thomas v. Cash*, 2017 OK CIV APP 11, ¶ 18, 423 P.3d 670, 676.

113. *Id.* ¶ 5, 423 P.3d at 673.

114. *Id.* ¶ 20, 423 P.3d at 677.

115. *Id.*

Child shows Child’s emotional well-being was a priority.¹¹⁶ While a child’s emotional well-being is of great concern, issuing a protective order when the evidence shows the child is not in danger would directly disregard the Oklahoma Supreme Court’s warning. Therefore, the court would be subjecting a defendant to “unjustified, irreversible consequences . . . ,’ including . . . potentially affecting a defendant’s career or restricting the exercise of constitutional rights.”¹¹⁷ By not issuing a protective order, the court correctly used caution and considered the best interests of Child in analyzing and deciding such a sensitive matter. In doing so, the court properly adhered to the statutory definition of *harassment* and the Legislature’s intent.

B. The Postadoption Visitation Order

The court correctly applied the Oklahoma Children and Juvenile Code’s (Children’s Code) provisions regarding postadoption visitation agreements between birth parents, adoptive parents, and the child. In its examination of the adoption, the court acknowledged the Children’s Code “do[es] not contain a wholesale prohibition on [postadoption] contact between birth relatives and adopted children.”¹¹⁸ In fact, the Children’s Code specifically states that “nothing in the adoption laws of this state shall be construed to prevent the petitioners for adoption of the child from voluntarily entering into a written agreement with the birth relatives, including a birth parent, to permit postadoption contact between the birth relatives and the child.”¹¹⁹ Furthermore, the Code states that “[i]f a child has resided with a birth relative before being adopted, the adoptive parents and that birth relative may enter into an agreement . . . regarding communication with; visitation of[;] or contact between the child, adoptive parents[,] and the birth relative.”¹²⁰

Here, the court correctly affirmed the postadoption visitation order between Mr. and Mrs. Thomas, Terri Cash, and Child. “[A]lthough [Mrs.] Thomas . . . characterized Child’s adoption as ‘closed,’ [Mr. and Mrs. Thomas] presented no order from the adoption proceedings.”¹²¹ Such

116. *See id.* ¶ 8, 423 P.3d at 674.

117. *Id.* ¶ 14, 423 P.3d at 675 (quoting *Curry v. Streater*, 2009 OK 5, ¶ 11, 213 P.3d 550, 555).

118. *Id.* ¶ 24 n.9, 423 P.3d at 677 n.9.

119. OKLA. STAT. tit. 10A, § 1-4-813(A)(1) (2011).

120. tit. 10, § 7505-1.5(A).

121. *Thomas*, 2017 OK CIV APP 11, ¶ 19, 423 P.3d at 676–77.

evidence does not clearly justify setting aside the visitation order. Setting aside the visitation order without supporting evidence would directly contradict the general public policy behind adoption statutes.¹²² The Legislature clearly understood the important role a biological family plays in a child's life.¹²³ Separating a child from his or her family, especially if the environment fosters growth and stability, would clearly not be in the child's best interests, which, in turn, negates the Legislature's goal "to promote voluntary reunions" and give "all children . . . access to . . . their heritage."¹²⁴ Therefore, the court's decision is in line with the Children's Code's provisions pertaining to postadoption visitation.

The court also correctly applied the standard of review, which was an abuse of discretion.¹²⁵ In determining the correct standard of review, the court stated, "A protection order under the . . . Act is analogous to an injunction."¹²⁶ Since courts review cases requesting "the grant or denial of an injunction . . . for an abuse of discretion," the court concluded that the same standard should apply to proceedings requesting a protective order.¹²⁷ "Under an abuse of discretion standard, the appellate court examines the evidence in the record and reverses only if the trial court's decision is clearly against the evidence or is contrary to a governing principle of law."¹²⁸ Under this standard, the court must uphold the trial court's decision unless the record clearly establishes a reversal is required.¹²⁹ A reversal is required when the "appellate court . . . find[s] the trial court's conclusions and judgment were clearly erroneous, against reason and evidence."¹³⁰

Here, Mr. and Mrs. Thomas failed to proffer an order from the adoption proceeding. "Terri Cash testified to her understanding that

122. See tit. 10, § 7501-1.2(A)-(B).

123. Arielle Bardzell & Nicholas Bernard, *Adoption and Foster Care*, 16 GEO. J. GENDER & L. 3, 15 (2015).

124. tit. 10, § 7501-1.2(B).

125. *Thomas*, 2017 OK CIV APP 11, ¶ 12, 423 P.3d at 675.

126. *Id.* (citation omitted) (quoting *Curry v. Streater*, 2009 OK 5, ¶ 8, 213 P.3d 550, 554).

127. *Id.* (quoting *Curry*, 2009 OK 5, ¶ 8, 213 P.3d at 554).

128. *Id.* (quoting *Curry*, 2009 OK 5, ¶ 8, 213 P.3d at 554).

129. See *id.* ¶ 17, 423 P.3d at 676. See also *Enochs v. Martin Props., Inc.*, 1997 OK 132, ¶ 6, 954 P.2d 124, 127 ("When the record presented fails to support the error alleged in the brief of the party who lost below, the decision to be reviewed cannot be disturbed. It is presumed correct until the contrary is shown by the record.")

130. *Thomas*, 2017 OK CIV APP 11, ¶ 12, 423 P.3d at 675 (quoting *Curry*, 2009 OK 5, ¶ 8, 213 P.3d at 554).

[postadoption] contact was permitted, and the trial court . . . found that a visitation order [was] in place.”¹³¹ Since the court received no evidence contradicting the trial court’s findings regarding postadoption visitation, the court was correct in upholding the existence of a visitation order.

C. Privacy Rights and Social Media

The court’s stance regarding an individual’s privacy rights with respect to social media accounts, especially concerning adoption proceedings, was consistent with other authority.¹³² In addressing the issue, the court acknowledged that “[w]hether a party may legitimately have an expectation of privacy in his or her Facebook postings or other communications is a developing area of law.”¹³³ Society’s viewpoint toward adoption has significantly changed since technology and social media have become an integral part of daily life.¹³⁴

Privacy-right issues have increased with the widespread use of social media.¹³⁵ While social media websites allow their members to control what information they share with others, many people do not customize their settings, which ultimately allows the public to access information such as photos, posts, and comments.¹³⁶ Most people believe they have privacy rights against social media companies and other social media users,¹³⁷ however, “constitutional rights . . . [typically do not protect] against companies or individual social media users.”¹³⁸ “Merely ‘lurking’ on someone’s social media profile and monitoring the postings, without more, is unlikely to rise to the level of a crime.”¹³⁹ Furthermore, courts

131. *Id.* ¶ 19, 423 P.3d at 677.

132. *See id.* ¶ 19 n.8, 423 P.3d at 676–77 n.8 (citing cases involving expectation of privacy in information voluntarily published on social media or voluntarily produced to third parties).

133. *Id.* ¶ 19 n.8, 423 P.3d at 676–77 n.8.

134. *See* Ann M. Haralambie, *Use of Social Media in Post-Adoption Search and Reunion*, 41 *CAP. U. L. REV.* 177, 178–80 (2013) (discussing how social media is used in postadoption searches).

135. *See* Hakeem Rizk, Case Comment, *Fundamental Right or Liberty?: Online Privacy’s Theory for Co-Existence with Social Media*, 56 *HOW. L. J.* 951, 958–60 (2013).

136. *See* Haralambie, *supra* note 134, at 192–96.

137. *See* Lothar Determann, *Social Media Privacy: A Dozen Myths and Facts*, 2012 *STAN. TECH. L. REV.* 7, 1–2 (2012), <http://stlr.stanford.edu/pdf/determann-socialmediaprivacy.pdf> (“Expectations of data privacy and privacy rights tend to be grossly exaggerated these days.”).

138. *Id.*

139. Haralambie, *supra* note 134, at 205.

generally find “[c]ommunication freedoms . . . trump privacy rights because the rights to free speech and information have been explicitly acknowledged in constitutions.”¹⁴⁰

Here, the court correctly concluded that the defendants’ conduct did not amount to a privacy invasion.¹⁴¹ The court stated that even if a privacy invasion existed, Mr. and Mrs. Thomas “likely brought that condition [up]on themselves[] by virtue of the pictures [they] posted of Child to their own Facebook accounts and allowing others to post pictures of Child in the same manner.”¹⁴² Coming to this conclusion, the court noted Mr. and Mrs. Thomas “posted unrestricted pictures of Child.”¹⁴³ In other words, the court rightfully refused to reward a protective order to Mr. and Mrs. Thomas when they did not make any attempt to protect the information they deemed private. Furthermore, the court’s conclusion aligns with the Supreme Court of the United States’ conclusion “that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties,” such as Facebook.¹⁴⁴ The individual essentially waives his or her privacy rights in that information. Additionally, this conclusion clearly confirms that courts give great deference to the right of free speech as set out in the First Amendment. Therefore, the court correctly considered the evidence and binding authority while discussing an individual’s privacy rights when using social media.

V. CONCLUSION

In *Thomas*, the court concluded that “[t]he record lack[ed] evidence to support the trial court’s entry of protective orders . . . based on harassment.”¹⁴⁵ In reaching this conclusion, the court correctly applied the definition of *harassment* as set out in the Act. The court based its conclusion on the fact Mr. and Mrs. Thomas did not feel threatened by the defendants’ conduct, and they had not “suffer[ed] substantial emotional distress” from the defendants’ conduct.¹⁴⁶ The court also considered

140. Determann, *supra* note 137, at 2.

141. *See* *Thomas v. Cash*, 2017 OK CIV APP 11, ¶ 21, 423 P.3d 670, 677.

142. *Id.* ¶ 19, 423 P.3d at 676.

143. *Id.* ¶ 15, 423 P.3d at 675.

144. *Id.* ¶ 19 n.8, 423 P.3d at 677 (quoting *Smith v. Maryland*, 442 U.S. 735, 743–44 (1979)).

145. *Id.* ¶ 23, 423 P.3d at 677.

146. *Id.* ¶ 21, 423 P.3d at 677.

Child's emotional well-being¹⁴⁷ and concluded that the defendants' conduct did not jeopardize Child's well-being because they were never in direct physical contact with Child.¹⁴⁸ By reaching this conclusion, the court considered the overarching purpose of the Act, as well as the Legislature's intent in enacting it.¹⁴⁹ It also properly considered the ramifications and impact that issuing a protective order could have on the defendants.¹⁵⁰

Moreover, the court properly applied the Children's Code and the standard of review in resolving the postadoption visitation.¹⁵¹ It upheld the trial court's finding that a visitation order between the parties was in place since Mr. and Mrs. Thomas did not present any evidence to the contrary.¹⁵² Furthermore, the court's actions aligned with the Legislature's goal to encourage peaceful relations between birth parents, adoptive parents, and the child.¹⁵³

Lastly, the court's opinion pertaining to privacy rights and expectations in social media was correct because it was consistent with other authorities.¹⁵⁴ First, the court held Mr. and Mrs. Thomas accountable for allowing unfettered access to their personal information; thus, reminding individuals to do their due diligence in reading the privacy terms for social media websites.¹⁵⁵ Second, the court's opinion followed precedent regarding information voluntarily given to third-parties, such as Facebook.¹⁵⁶ Finally, the court's opinion upheld one of the rights that society values the most: the freedom of speech.

Ultimately, the court's overall decision strengthened the statutory authority and caselaw regarding domestic disputes and provided a clear illustration of the values that American society strives to protect: safety, family, and freedom.

147. *Id.* ¶ 20, 423 P.3d at 677.

148. *Id.*

149. *Id.* ¶ 14, 423 P.3d at 675.

150. *Id.*

151. *Id.* ¶¶ 17–21, 423 P.3d 676–77.

152. *Id.* ¶¶ 17, 23, 423 P.3d at 676, 677.

153. *See* OKLA. STAT. tit. 10, § 7501-1.2(B) (2011).

154. *See Thomas*, 2017 OK CIV APP 11, ¶ 19 n.8, 423 P.3d 676–77 n.8 (referencing authority supporting the court's analysis).

155. *Id.* ¶ 19, 423 P.3d 676–77.

156. *See id.* ¶ 19 n.8, 423 P.3d 676–77 n.8.