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Because the order granting summary judgment to MMAStop does not dispose of all of the claims against all of the parties, and does not make an express determination and direction under § 25-1315, this appeal must be dismissed for lack of jurisdiction.

CONCLUSION

The order granting summary judgment in favor of MMAStop is not a final, appealable order.

APPEAL DISMISSED.

JASON M. CITTA, APPELLANT, V.
TRICIA J. FACKA, APPELLEE.
812 N.W.2d 917

Filed April 10, 2012. No. A-11-549.

1. **Jurisdiction: Appeal and Error.** A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law.
2. **Paternity: Appeal and Error.** In a filiation proceeding, questions concerning child custody determinations are reviewed on appeal de novo on the record to determine whether there has been an abuse of discretion by the trial court, whose judgment will be upheld in the absence of an abuse of discretion. In such de novo review, when the evidence is in conflict, the appellate court considers, and may give weight to, the fact that the trial court heard and observed the witnesses and accepted one version of the facts rather than another.
3. **Actions: Paternity: Child Support: Equity.** While a paternity action is one at law, the award of child support in such an action is equitable in nature.
4. **Paternity: Child Support: Appeal and Error.** A trial court's award of child support in a paternity case will not be disturbed on appeal in the absence of an abuse of discretion by the trial court.
5. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
6. ____: ____. Notwithstanding whether the parties raise the issue of jurisdiction, an appellate court has a duty to raise and determine the issue of jurisdiction sua sponte.
7. **Child Custody.** When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act.
8. **Rules of the Supreme Court: Pretrial Procedure: Evidence.** Under Neb. Ct. R. Disc. § 6-336(a), matters are deemed admitted unless, within 30 days after

service of the request, the party to whom the request is directed serves a written answer or objection.

9. **Rules of the Supreme Court: Pretrial Procedure.** Under Neb. Ct. R. Disc. § 6-336, if the request for admission seeks information that is permissible under Neb. Ct. R. Disc. § 6-326, the request can ask a party to admit facts in dispute, the ultimate facts in a case, or facts as they relate to the law applicable to the case.
10. ____: ____. Neb. Ct. R. Disc. § 6-336 is self-enforcing, without the necessity of judicial action to effect an admission which results from a party's failure to answer or object to a request for admission.
11. **Rules of the Supreme Court: Pretrial Procedure: Evidence: Proof.** A party that seeks to claim another party's admission, as a result of that party's failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request and must also offer the request for admission as evidence.
12. **Rules of the Supreme Court: Pretrial Procedure.** If the necessary foundational requirements are met and no motion is sustained to withdraw an admission, a trial court is obligated to give effect to the provisions of Neb. Ct. R. Disc. § 6-336 which require that the matter be deemed admitted.
13. **Rules of the Supreme Court: Pretrial Procedure: Proof.** Admitted facts under Neb. Ct. R. Disc. § 6-336 serve to limit the proof at trial.
14. **Child Custody.** Child custody is a judicial determination and is never to be regarded as a merely evidentiary matter.
15. ____. The technical rules of civil procedure cannot apply with equal force in a child custody case as in other civil cases, because the sole determining factor in a child custody case must be the best interests of the child.
16. **Child Custody: Courts.** A trial court has an independent responsibility to determine questions of custody of minor children according to their best interests, which responsibility cannot be controlled by an agreement or stipulation of the parties.
17. ____: ____. Admissions made by a party's failure to answer requests for admissions, like agreements made by a party, cannot circumvent the court's duty to independently assess a child's best interests in determining the child's custodial arrangement.
18. **Child Custody.** While an unwed mother is initially entitled to automatic custody of the child, the issue must ultimately be resolved on the basis of the fitness of the parents and the best interests of the child.
19. **Divorce: Child Custody: Public Policy.** It is sound public policy to keep siblings together when a marriage is dissolved, but the ultimate test remains the best interests of the children.
20. **Child Custody.** When deciding custody issues, the court's paramount concern is the child's best interests.
21. **Rules of the Supreme Court: Child Support.** In general, child support payments should be set according to the Nebraska Child Support Guidelines.
22. ____: ____. The Nebraska Child Support Guidelines provide that in calculating child support, a court must consider the total monthly income of both parties.

23. **Attorney Fees: Appeal and Error.** A party may recover attorney fees and expenses in a civil action only when a statute permits recovery or when the Nebraska Supreme Court has recognized and accepted a uniform course of procedure for allowing attorney fees.
24. **Paternity: Child Support: Attorney Fees: Costs.** Attorney fees and costs are statutorily allowed in paternity and child support cases.
25. **Attorney Fees.** The award of attorney fees depends on multiple factors that include the nature of the case, the services performed and results obtained, the earning capacity of the parties, the length of time required for preparation and presentation of the case, customary charges of the bar, and the general equities of the case.

Appeal from the District Court for Lincoln County: JOHN P. MURPHY, Judge. Affirmed.

Terrance O. Waite and Patrick M. Heng, of Waite, McWha & Heng, for appellant.

Kim M. Seacrest, of Seacrest Law Office, P.C., L.L.O., for appellee.

IRWIN, SIEVERS, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

Jason M. Citta appeals from the order awarding Tricia J. Facka custody of the parties' child. Although we conclude that the court erred in not deeming as admitted Citta's requests for admission upon Facka's failure to respond, the issue of child custody cannot be controlled by unanswered requests for admission. We find no abuse of discretion by the court in its award of custody or its calculation of child support. Accordingly, we affirm.

BACKGROUND

The parties, who never married, are the biological parents of a son, born in January 2009. On January 27, Citta filed a complaint to establish paternity, visitation, and child support. Citta alleged that he was a fit and proper person to be awarded permanent custody of the child.

On March 11, 2011, Citta mailed to Facka's counsel requests for admission, interrogatories, and requests for production of

documents. On May 2, Citta filed a motion to deem Facka's requests for admission as admitted pursuant to Neb. Ct. R. Disc. § 6-336 (Rule 36) because Facka had failed to respond to the requests within 30 days. On that same date, Citta filed a motion to compel Facka to fully and completely answer the interrogatories and requests for production of documents. On May 16, the court held a hearing and addressed various motions. The following colloquy ensued:

> [Citta's counsel]: Also pending is a motion to compel and deem requests for admissions admitted.
>
> [Facka's counsel]: And I can have those to [Citta's counsel] by the end of the day.
>
> [Citta's counsel]: That doesn't take care of the request for admissions. I do have affidavits showing that we've served those, there's been no response, no reason to even know what the controversy is despite letters from me saying good faith efforts to resolve this short of a motion to compel.
>
> THE COURT: On the motion for requests for admissions, as long as the party comes forward eventually and says we'll answer them, that's good enough; and they are deemed admitted, so answer them.
>
> [Facka's counsel]: Your Honor, actually I can have them to him by the end of the day.
>
> THE COURT: That would be just great.

The court received an affidavit of Citta's counsel in support of the motion to deem requests for admission as admitted. The attorney stated that the requests were mailed to Facka's counsel on March 11, that Citta's counsel sent an April 26 letter to Facka's counsel inquiring about the status of answers, and that Citta's counsel had received no response as of May 12. Citta's counsel attached to his affidavit the requests for admission—which showed a March 11 certificate of service on Facka's counsel at the correct address—and the April 26 letter to Facka's counsel which stated in part that "[w]e need to have your client's response within the next week in order to avoid the necessity of filing a [m]otion to [c]ompel." The requests for admission asked Facka to admit, among other things, that Citta was a fit and proper parent to the child, that Citta was more

than capable of taking care of the child, and that it was in the best interests of the child for physical custody to be granted to Citta. The record does not contain any written ruling by the court on the motions.

The district court conducted a trial on May 25, 2011. It received Facka's responses to Citta's requests for admission, interrogatories, and requests for production. Facka's responses were signed May 12, but they apparently were not produced to Citta until May 16.

Citta lives in North Platte, Nebraska. Facka moved out of Citta's home in late August or early September 2008. She has lived in Sutherland, Nebraska, since November 2009. Citta testified that he was not consulted prior to Facka's move and that Facka told him that where she was going to be living was none of his business.

Each party had concerns about the other. One of the reasons that Facka believed Citta should not have custody was his past alcohol problem. The evidence established that Citta voluntarily underwent treatment for his alcohol problem 3 years before, and Facka admitted that she had no evidence of any alcohol consumption by Citta since that time. Citta testified that he participates in Alcoholics Anonymous. Facka testified that when she lived with Citta, she experienced other issues of Citta, such as verbal abuse, anger management, and a gambling addiction. She testified, "I would notice when I walk in the office in the middle of the night and he'd be playing poker and drinking . . . ." Citta testified that he had visited a casino twice in the past 3 years and had not played online poker during that time. Facka also testified about her concern that Citta, who is a physician, had given the child a double dose of decongestant. Citta, on the other hand, testified that as a physician, he believed he gave the child an appropriate amount. Citta had concern about Facka's obstructing Citta's relationship with the child. He testified that she told him on several occasions that she wants total control of the decisions in the child's life. Citta also had health concerns about the child. He testified that the child has bronchial spasms, that the child is on daily allergy medicine, that the child may be developing asthma, and that the child may have an allergy to

cats, particularly because Citta is allergic to cats and cats are "one of the most common allergants [sic] to induce bronchial spasm." However, Facka refused to "get rid of" her cat. Citta felt that the child was safe with Facka and that she provided a stable home "until recently."

Citta testified that he accommodated Facka's requests to alter the visitation schedule 99 percent of the time, but that she accommodated his requests about half of the time. Facka testified that she refused Citta's request for an extra day with the child over Father's Day weekend because "he was going to be fishing on a boat all day long with a five-month-old baby." She felt it was in the child's best interests to refuse the request. But Citta testified that he was not going to have the child on the boat with him. Citta testified that he wanted the child to have pictures taken with Citta's newly born child in December 2010, but Facka informed him that she had taken the child to "Urgent Care" and that he would be unavailable. Citta testified that Facka had never before gone to Urgent Care, that Citta's medical clinic was open, and that the child's care is free at the clinic.

A clinical psychologist observed Citta with the parties' child and conducted a psychological evaluation of Citta. The psychologist "did not see any reason that [Citta] was not a competent and caring father who would look out for [the child's] best interest[s]." The psychologist further reported that there was no evidence to suggest that Citta had any significant psychological, behavioral, or parenting difficulties.

The district court entered its order on June 2, 2011. The court awarded Facka custody of the child. It observed that the child had lived with Facka for almost 2½ years without any complaints by Citta regarding Facka's parenting ability. The court stated, "The fact that [Citta] had two minor children out of wedlock does not redound to his benefit in determining where the custody of the minor child in this case should be placed." The court ordered Citta to pay child support of $2,617 per month.

Citta timely appeals. Pursuant to authority granted to this court under Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

ASSIGNMENTS OF ERROR

Citta alleges, consolidated and reordered, that the district court erred in (1) failing to deem admitted the requests for admission based on Facka's failure to timely respond, (2) granting Facka sole physical and legal custody of the child, and (3) determining the amount of child support owed by Facka when there was a lack of evidence offered by Facka.

STANDARD OF REVIEW

[1] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law. *In re Adoption of Amea R.*, 282 Neb. 751, 807 N.W.2d 736 (2011).

[2] In a filiation proceeding, questions concerning child custody determinations are reviewed on appeal de novo on the record to determine whether there has been an abuse of discretion by the trial court, whose judgment will be upheld in the absence of an abuse of discretion. In such de novo review, when the evidence is in conflict, the appellate court considers, and may give weight to, the fact that the trial court heard and observed the witnesses and accepted one version of the facts rather than another. *Cesar C. v. Alicia L.*, 281 Neb. 979, 800 N.W.2d 249 (2011).

[3,4] While a paternity action is one at law, the award of child support in such an action is equitable in nature. *State on behalf of Kayla T. v. Risinger*, 273 Neb. 694, 731 N.W.2d 892 (2007). A trial court's award of child support in a paternity case will not be disturbed on appeal in the absence of an abuse of discretion by the trial court. *Id.*

ANALYSIS

Jurisdiction.

[5,6] We address two jurisdictional issues before considering the merits of the appeal. Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *In re Adoption of Amea R., supra*. Notwithstanding whether the parties raise the issue of jurisdiction, an appellate court has a duty to raise and determine the issue of jurisdiction sua

sponte. *Crawford v. Crawford*, 18 Neb. App. 890, 794 N.W.2d 198 (2011).

First, Facka asserts in her brief on appeal that this court lacks jurisdiction due to the lack of a final order because the district court did not dispose of Citta's motions to compel and to deem Facka's requests for admission as admitted. Indeed, we find no explicit ruling in the record. However, the district court did not enter any sanctions and, by conducting a full trial on all the issues, the district court implicitly denied the motions.

[7] Second, we notice a potential issue under the Parenting Act. Because the action was filed after January 1, 2008, and because parenting functions for a child are at issue, the Parenting Act applies. See Neb. Rev. Stat. § 43-2924(1)(b) (Reissue 2008). From the record before us, we see no parenting plan submitted by the parties. Neb. Rev. Stat. § 43-2929(1) (Reissue 2008) states in part that "[w]hen a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act." See, also, *State ex rel. Amanda M. v. Justin T.*, 279 Neb. 273, 777 N.W.2d 565 (2010). And we determined in *Bhuller v. Bhuller*, 17 Neb. App. 607, 767 N.W.2d 813 (2009), that a decree which did not resolve visitation issues as required under § 43-2929 was not a final, appealable order.

Here, the court's order did not attach a parenting plan, but it did award custody to Facka and provide Citta with reasonable visitation comporting with *Wilson v. Wilson*, 224 Neb. 589, 399 N.W.2d 802 (1987), in addition to a telephone call each Wednesday not to exceed 1 hour. *Wilson* visitation is visitation every other weekend and certain holidays. Although the court's order left unaddressed several of the determinations that under § 43-2929(1)(b) should be included in the parenting plan, it did address custody, the day of telephone visitation, and alternating weekend and holiday visitation. We conclude that the court's failure to address all the various items that should be included in a parenting plan would be error, but that such error does not deprive us of jurisdiction and neither party assigns any error in this regard.

Motion to Deem Requests Admitted.

[8] Citta argues that the district court erred by not deeming his requests for admission as admitted. He correctly points out that under Rule 36(a), matters are deemed admitted unless, within 30 days after service of the request, the party to whom the request is directed serves a written answer or objection. In analyzing this assignment of error, we rely upon a recent decision of the Nebraska Supreme Court and look to case law from other states considering unanswered requests for admission in the context of child custody proceedings.

[9-13] *Tymar v. Two Men and a Truck*, 282 Neb. 692, 805 N.W.2d 648 (2011), is instructive with regard to ignored requests for admission. Under Rule 36, if the request for admission seeks information that is permissible under Neb. Ct. R. Disc. § 6-326, the request can ask a party to admit facts in dispute, the ultimate facts in a case, or facts as they relate to the law applicable to the case. *Tymar v. Two Men and a Truck, supra*. Rule 36 is self-enforcing, without the necessity of judicial action to effect an admission which results from a party's failure to answer or object to a request for admission. *Tymar v. Two Men and a Truck, supra*. However, Rule 36 is not self-executing. Thus, a party that seeks to claim another party's admission, as a result of that party's failure to respond properly to a request for admission, must prove service of the request for admission and the served party's failure to answer or object to the request and must also offer the request for admission as evidence. *Tymar v. Two Men and a Truck, supra*. If the necessary foundational requirements are met and no motion is sustained to withdraw an admission, a trial court is obligated to give effect to the provisions of Rule 36 which require that the matter be deemed admitted. *Tymar v. Two Men and a Truck, supra*. Such admitted facts serve to limit the proof at trial. *Id.* During the May 16, 2011, hearing on the motion, the court received an exhibit which contained the requests for admission, established that the requests were served on Facka's counsel on March 11, and established that Facka had not answered the requests or objected to them. Thus, the district court should have deemed the matters admitted. Upon their being deemed

admitted, Facka would have the opportunity to move to have the admissions withdrawn.

[14,15] Courts in other states have determined that child custody determinations should not be made solely on the basis of unanswered requests for admission that would otherwise be deemed admitted. In *Gilcrease v. Gilcrease*, 918 So. 2d 854 (Miss. App. 2005), the mother failed to respond to requests for admission, including one that asked her to admit that the best interests of her son would be served by placement in the father's custody. The appellate court reasoned that while the trial court committed a procedural error by ignoring what had been deemed admitted, "the mistake was made with the proper result in mind" because "[c]hild custody is a judicial determination, and is never to be regarded as a merely evidentiary matter." *Id.* at 859. Thus, the court determined that basing a determination of child custody solely on a Rule 36 admission is improper. Similarly, a Massachusetts court stated:

> "The purpose of [Rule 36] is to assist 'the parties in their preparation for trial by facilitating proof with respect to issues that cannot be eliminated from the case, and by narrowing the issues by eliminating those that can be.'" . . . It is a procedural rule. Child custody, on the other hand, holds a peculiar place in our jurisprudence and implicates a "societal interest." . . . Awards of custody are made upon a determination of the best interests of the child.

Houston v. Houston, 64 Mass. App. 529, 534-35, 834 N.E.2d 297, 301-02 (2005). In *In re Marriage of Zimmerman*, 29 S.W.3d 863 (Mo. App. 2000), the mother failed to respond to requests for admission asking her to admit, among other things, that it was in the children's best interests to be placed in the primary physical custody of the father. The appellate court rejected the father's contention that the children's best interests were not at issue and removed from the trial court's discretion, noting that child custody "is a matter uniquely reserved for the discretion of the trial court." *Id.* at 868. The court reasoned that an admission as to best interests of a child does not "reliev[e] the trial court of its responsibility to make that

determination itself consistent with the statutory mandate" and that it was "well settled in this state that agreements between parents about the custody of children are not binding on the trial court, and are merely advisory." *Id.* The *Zimmerman* court further stated:

> We do not dispute that Mother's failure to respond to the request for admissions was a binding admission on her. We do not believe, however, that the conclusion of the *parties*, whether by agreement or as the result of discovery procedures, alters the duty of the trial court to make the determination as to the best interests of the children in custody matters.

Id. (emphasis in original). "[I]n a custody case the real party at interest is the child rather than the named parties." *Erwin v. Erwin*, 505 S.W.2d 370, 372 (Tex. App. 1974). "The technical rules of civil procedure cannot apply with equal force in a child custody case as in other civil cases, because the sole determining factor in a child custody case must be the best interests of the child." *Id.*

[16] Nebraska statutory and case law already explicitly applies the same principle to parties' agreements addressing child custody. It is well established in Nebraska that a trial court has an independent responsibility to determine questions of custody of minor children according to their best interests, which responsibility cannot be controlled by an agreement or stipulation of the parties. See, e.g., *Zahl v. Zahl*, 273 Neb. 1043, 736 N.W.2d 365 (2007); *Weinand v. Weinand*, 260 Neb. 146, 616 N.W.2d 1 (2000); *Lautenschlager v. Lautenschlager*, 201 Neb. 741, 272 N.W.2d 40 (1978); *Deterding v. Deterding*, 18 Neb. App. 922, 797 N.W.2d 33 (2011); *Walters v. Walters*, 12 Neb. App. 340, 673 N.W.2d 585 (2004); *Zerr v. Zerr*, 7 Neb. App. 885, 586 N.W.2d 465 (1998). This public policy is embodied in Neb. Rev. Stat. § 42-366(2) (Reissue 2008), which specifically excepts agreements as to custody of minor children from being binding upon the court.

It would be inconsistent with this underlying policy to allow a party, by simply failing to answer discovery requests, to accomplish the very result that the party cannot obtain by express agreement. Accordingly, we agree with the courts of

other states that the failure to respond to requests for admission regarding child custody does not control the issue. Just as parties in a proceeding to dissolve a marriage cannot control the disposition of matters pertaining to minor children by agreement, *Deterding v. Deterding, supra*, the operation of Rule 36 cannot take the issue of custody away from the trial court's responsibility to independently determine what is in the best interests of the children.

[17] Accordingly, we hold that admissions made by a party's failure to answer requests for admissions, like agreements made by a party, cannot circumvent the court's duty to independently assess a child's best interests in determining the child's custodial arrangement. While the district court erred in not deeming as admitted Citta's requests for admission upon Facka's failure to timely answer or object to them, the court was not bound by the resulting admissions in deciding the child's custody based upon its assessment of the child's best interests.

Custody.

[18] Citta's chief complaint on appeal is that the court erred in failing to award him custody of the child. While an unwed mother is initially entitled to automatic custody of the child, the issue must ultimately be resolved on the basis of the fitness of the parents and the best interests of the child. *Spence v. Bush*, 13 Neb. App. 890, 703 N.W.2d 606 (2005). Upon our review of the record, we find both parents to be fit.

[19] Citta also argues that it is in the child's best interests to be domiciled with his sibling. It is sound public policy to keep siblings together when a marriage is dissolved, but the ultimate test remains the best interests of the children. *Kay v. Ludwig*, 12 Neb. App. 868, 686 N.W.2d 619 (2004). The child is alleged to be a half sibling of Citta's other child. We note that Facka has raised doubts about whether Citta is really the other child's father because the mother of that child was still married at the time she became pregnant. At the time of trial, the mother had sued Citta for paternity and child support and Citta testified that he had "not heard anything on [the status of the lawsuit] recently."

[20] When deciding custody issues, the court's paramount concern is the child's best interests. See *Mann v. Rich*, 18 Neb. App. 849, 794 N.W.2d 183 (2011). Neb. Rev. Stat. § 43-2923(6) (Cum. Supp. 2010) states:

> In determining custody and parenting arrangements, the court shall consider the best interests of the minor child, which shall include, but not be limited to, consideration of the foregoing factors and:
>
> (a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing;
>
> (b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning;
>
> (c) The general health, welfare, and social behavior of the minor child;
>
> (d) Credible evidence of abuse inflicted on any family or household member[;] and
>
> (e) Credible evidence of child abuse or neglect or domestic intimate partner abuse.

The parties were not living together at the time of the child's birth, and the child has remained in Facka's care since birth. But there is no dispute that Citta has taken an active role in the child's life since the child's birth. Both parties care for the child and have a good relationship with the child, and the child has done well in Facka's custody. It appears that either party would be a suitable custodial parent. We cannot say that the court abused its discretion in awarding custody to Facka.

Child Support.

Citta assigns two errors with respect to child support: (1) that the evidence was insufficient to support the award and (2) that the court erred in failing to take into consideration Facka's current income.

At the time of trial, Facka was working in an office of a powerplant in Sutherland. She worked 40 hours a week, earning $18 an hour, but she had no benefits. She had just begun the job on May 16, 2011, and testified that it was a "contract

work" position for 90 days, after which time she would be reevaluated and could apply for the job. If she got the job, the starting pay would be $14 an hour. From October 2009 to May 2010, she earned $12.74 an hour as a surgical assistant. She testified that while at the surgery center, she earned less in 2010 and in 2011 than she did in 2009. The child support calculation that she offered was based on her 2009 income. Citta is a physician, and his 2009 income tax return showed that his adjusted gross income was $335,825. He testified that he had received an extension for the filing of his 2010 tax return and did not have the return prepared at the time of trial.

[21,22] In general, child support payments should be set according to the Nebraska Child Support Guidelines. *Incontro v. Jacobs*, 277 Neb. 275, 761 N.W.2d 551 (2009). The guidelines provide that in calculating child support, a court must consider the total monthly income of both parties. See Neb. Ct. R. § 4-204. Citta complains that Facka offered only her 2009 tax return. He points out that § 4-204 states in part that "[c]opies of at least 2 years' tax returns, financial statements, and current wage stubs should be furnished . . . ." Here, we have only the 2009 tax return of each party. Although more information about income from each party would have been desirable, the court did not abuse its discretion in calculating child support upon the only tax returns offered into evidence. We also conclude that the court did not abuse its discretion in calculating child support using Facka's 2009 earnings. At the time of the 2011 trial, Facka had been in the position which paid her $18 an hour for 9 days and the position was for 90 days. Further, she testified that her 2010 and 2011 earnings were less than what she earned in 2009. Under these circumstances, we find no abuse of discretion by the district court in its calculation of child support.

Attorney Fees.

Facka filed a motion with this court seeking an award of attorney fees on appeal. According to the affidavit of her counsel, Facka had incurred attorney fees of $4,752.57 since Citta's filing of the notice of appeal.

[23,24] A party may recover attorney fees and expenses in a civil action only when a statute permits recovery or when the Nebraska Supreme Court has recognized and accepted a uniform course of procedure for allowing attorney fees. *Eikmeier v. City of Omaha*, 280 Neb. 173, 783 N.W.2d 795 (2010). Attorney fees and costs are statutorily allowed in paternity and child support cases. See, Neb. Rev. Stat. § 43-1412(3) (Reissue 2008); *Cross v. Perreten*, 257 Neb. 776, 600 N.W.2d 780 (1999); *Coleman v. Kahler*, 17 Neb. App. 518, 766 N.W.2d 142 (2009). Customarily, attorney fees and costs are awarded only to the prevailing party or assessed against those who file frivolous suits. *Coleman v. Kahler, supra*. Facka was the prevailing party in this appeal.

[25] The award of attorney fees depends on multiple factors that include the nature of the case, the services performed and results obtained, the earning capacity of the parties, the length of time required for preparation and presentation of the case, customary charges of the bar, and the general equities of the case. *Id.* We award Facka attorney fees of $2,500 for the services of her attorney on appeal.

CONCLUSION

We conclude that the district court erred in not deeming as admitted Citta's requests for admission upon Facka's failure to timely answer or object to them. However, we hold that a court is not bound by such admissions as to child custody or best interests. Upon our de novo review of the record, we find no abuse of discretion by the district court in its award of custody to Facka or in its calculation of child support. We award Facka attorney fees of $2,500 for her attorney's services on appeal.

AFFIRMED.