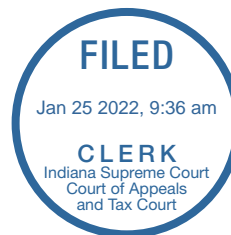


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Randal Wilson,
Appellant-Defendant,

v.

Annika Dowden,
Appellee-Plaintiff

January 25, 2022

Court of Appeals Case No.
21A-JP-1513

Appeal from the
Howard Circuit Court

The Honorable
Brant J. Parry, Special Judge

Trial Court Cause No.
34C01-1407-JP-109

Vaidik, Judge.

Case Summary

- [1] Randal Wilson (“Father”) appeals the denial of his petition to modify custody of his daughter. We affirm.

Facts and Procedural History

- [2] Father and Annika Dowden (“Mother”) are the parents of a daughter, A.W. (“Child”), born in 2011. In January 2015, Mother was granted primary physical custody, and Father was granted parenting time “no less than the Indiana Parenting Time Guidelines,” to include a midweek overnight. Appellant’s App. Vol. II p. 5.
- [3] In August 2020, Father filed a petition to modify custody. The trial court held a hearing in May 2021, receiving testimony from Father, Mother, Mother’s husband, and the court-appointed guardian ad litem (GAL). After taking the matter under advisement, the court issued an order denying Father’s petition. The court’s findings and conclusions included the following:
5. [Mother] is employed at Papa John’s as a manager. [Mother] earns \$440.00 per week in gross income.
 6. [Mother] resides in a home on S. Elizabeth St. [in Kokomo] with her current husband, twin [sons] (age 3), and [Child]. Prior to her current residence, [Mother] lived in [a] mobile home trailer.
 7. Since paternity was established, [Mother] lived with her parents, then in a home for 2 years, the trailer for 3 years, and now her current address.
 8. [Father] is employed at Abbott. He earns \$1,440.00 per week in gross income.

9. [Father] has lived in Sheridan, IN since 2017. [Father] lives in a 5 bedroom home on a dead-end street with his current wife and their three children (ages 5, 3, and 1).
10. Since paternity was established, [Father] has lived in Kokomo, Lafayette, Fishers, and now Sheridan.
11. [Child] has a very good relationship with [Mother's] current husband and her half siblings that live in the household. [Mother's] husband was recently arrested for possession of marijuana. That case is still pending. There is no evidence submitted that [Mother] or her current husband use illegal substances around or in front of [Child].
12. [Child] has a very good relationship with [Father's] current wife and her half-siblings that reside in the residence.
13. [Child] does have contact with [Mother's] brother, Stephen Hilligoss. Mr. Hilligoss has a significant criminal history involving the use of drugs. However, Mr. Hilligoss has been out of jail since July, 2020. He has been compliant with probation and in recovery. He has a full time job and lives with his parents, very near [Mother's] residence.
14. [Father] argues that [Child] has significant dental issues that [Mother] has ignored. [Father] testified to his own personal observations, but presented no evidence in the form of medical records or other testimony that supports his allegations.
15. [Mother] testified that [Child] has had dental issues, but that she has been attentive to those issues. [Mother]

testified that dental issues are genetic in her family and that she has experienced similar issues as [Child]. Further, [Mother] presented a letter and invoice from a dentist indicating that [Child] has been under his care for more than one year and has maintained routine cleanings. There is no pending treatment to be completed.

16. [Father] argues that [Child's] education has suffered while with [Mother], and that [Mother] has allowed [Child] to be unexcused from school for significant periods of time.
17. [Father] submitted no evidence of poor grades other than his own testimony. [Father] indicated [Child's] grades have improved. [Mother] did provide evidence of [Child's] grades indicating [Child] is doing well in school. The improvement in her grades seems to coincide with [Child] being placed on medication for her ADHD.
18. [Child] has been unexcused from school. However, the majority of the unexcused absences coincide with [Child] taking a trip with [Father] to California.
19. [Child] has attended the Eastern School System her entire school career. She knows that school and has developed relationships within that school. [Father] presented no evidence of the school [Child] would attend if in his care.
20. [Father] argues that [Mother] is not [stable] in her living situation evidenced by her moving residences. Evidence does show that [Mother] has moved residences within Kokomo. However, evidence also shows that [Father] has relocated to several counties within north central Indiana since paternity was established.

21. [Father] also argues that [Petitioner] does not communicate with him concerning [Child], her education, her activities, and her medical care. [Father] argues that he was not informed about [Child's] appointment with Dr. Schiltz regarding ADHD. [Mother] testified that she notified [Father]. [Father] testified that [Child's] ADHD medications were "doubled" without his knowledge. [Father] submitted no medical records indicating this to be true. [Mother] testified that her medication was not "doubled."
22. [Father] testified that [Mother] posts negative comments about him and about court proceedings on social media. [Mother] denied the allegations. [Father] presented no other evidence to support his claims.

* * * *

26. The court finds and concludes based on all evidence submitted, the record, and findings above, that [Father] has not met his burden to show a change in circumstances so decisive as to make a change in custody necessary and in [Child's] best interest.
27. The Court finds it is in [Child's] best interest to remain in the physical custody of [Mother].

Id. at 27-29.

[4] Father now appeals.

Discussion and Decision

[5] Father contends the trial court erred by denying his petition to modify custody. A court may not modify a child-custody order unless (1) modification is in the best interests of the child and (2) there is a substantial change in one or more of the factors the court may consider in originally determining custody. Ind. Code § 31-14-13-6. The party seeking modification bears the burden of making these showings, since permanence and stability are considered best for the welfare and happiness of a child. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). If the trial court denies the requested modification, the party faces an even tougher burden on appeal:

[T]here is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.

Id. (cleaned up). We do not reweigh the evidence or reassess witness credibility, and we must view the evidence most favorably to the judgment. *Id.*

[6] As an initial matter, we agree with Mother that Father waived his appellate arguments by failing to support them with citations to the record. Indiana Appellate Rule 46(A)(8)(a) provides, in part, that each contention in the argument section of the appellant’s brief “must be supported by citations to the authorities, statutes, **and the Appendix or parts of the Record on Appeal**

relied on, in accordance with Rule 22.” (Emphasis added). In the argument section of his opening brief, Father included a few citations to the first page of the GAL’s sixteen-page report, but that page doesn’t reference any relevant evidence. *See* Appellant’s App. Vol. II p. 31. The failure to support contentions with citations to the record constitutes waiver of those contentions. *See Isom v. State*, 170 N.E.3d 623, 637 (Ind. 2021), *reh’g denied*; *Tate v. State*, 161 N.E.3d 1225, 1231 (Ind. 2021).

[7] Waiver notwithstanding, Father’s arguments are merely a request for us to reweigh the evidence, which we may not do. *See Steele-Giri*, 51 N.E.3d at 124. Father asserts Mother “regularly chose not to advise him of the child’s medical appointments” and “failed to properly ensure the child was receiving adequate dental care,” Appellant’s Br. p. 13, but the trial court rejected those claims based on Mother’s testimony to the contrary. He refers to “Mother’s unstable living situation,” *id.*, but he doesn’t offer any specifics. He alleges “drug use in Mother’s home,” *id.*, but he doesn’t acknowledge the trial court’s finding that neither Mother nor her husband uses drugs around or in front of Child. He contends Child “has a much better relationship with her step-mother as opposed to her step-father,” *id.*, but the trial court rejected that claim based on the testimony of Mother and her husband. He says “there were concerns about Mother’s ability to assist the child with her school work,” *id.* at 14, but the trial court accepted Mother’s evidence that Child’s grades have improved and that she is doing well in school.

[8] Father also notes some things the trial court did **not** address in its order. None of them justifies reversal. The court did not mention Father’s claim that with some of Mother’s changes of residence “he was unaware of her location until after the move had taken place.” *Id.* at 15. Even assuming that claim is true, Father did not raise the issue with the court at the time of the moves, and he acknowledges Mother notified him of her most recent move. He complains the court did not address Mother’s “living situation prior to her moving into her current home,” *id.* at 16, but again he offers no specifics. And he says the court “declined to take into account Mother’s work schedule, which keeps her out of the home on Monday and Tuesday, and every weekend,” *id.*, but he does not explain why that schedule supports a modification of custody.

[9] Finally, Father places great weight on the fact that the trial court’s decision was contrary to the recommendation of the GAL, who believed that Father should be granted primary custody. But the trial court rejected that recommendation only after receiving the GAL’s lengthy report and hearing her testify. A GAL’s opinion is an important consideration in any custody dispute, and the trial court could have relied on the GAL’s recommendation to reach a different decision in this case. On appeal, however, it is not enough that the evidence might support a different conclusion. *Steele-Giri*, 51 N.E.3d at 124. The evidence must “positively require” the contrary conclusion before there is a basis for reversal. *Id.* For the reasons discussed above, Father has not crossed that high bar.

[10] Affirmed.

Najam, J., and Weissmann, J., concur.