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IN THE COURT OF APPEALS OF INDIANA

Kelly Lyons,
Appellant-Respondent,

v.

Harold Parker,
Appellee-Petitioner.

September 30, 2022

Court of Appeals Case No. 22A-JP-675

Appeal from the Putnam Superior Court

The Honorable Charles D. Bridges, Judge

The Honorable Melinda Jackman-Hanlin, Magistrate

Trial Court Cause Nos. 67D01-1711-JP-75, 67D01-1711-JP-76

Altice, Judge.

Case Summary

[1] Kelly Lyons (Mother) appeals from the trial court's order granting Harold Parker's (Father) motion to modify custody, parenting time, and child support. Mother presents the following reordered and restated issues for our review:

1. Did the trial court abuse its discretion when it modified custody of the parties' children in favor of Father?

2. Did the trial court improperly calculate Mother's child support arrearage?

3. Did the trial court improperly restrict Mother's midweek parenting time?

[2] We affirm.

Facts & Procedural History

[3] Mother and Father are the parents of twin girls, H.P. and E.P. (collectively, the girls), who were born in April 2014. After Mother and Father's relationship ended, Father initiated this paternity action in 2017 and ultimately obtained joint custody of the girls, sharing equal parenting time with Mother. The distance between the parties' homes made this arrangement untenable as the girls reached school age. Accordingly, following a hearing, the trial court entered an order on August 8, 2019 (the August 2019 Order), granting Mother primary physical custody of the girls, which allowed them to attend school in Whiteland. Father, who lived in Greencastle with his mother, was granted parenting time in accordance with the Indiana Parenting Time Guidelines (the Guidelines) and ordered to pay child support in the amount of $75 per week.

[4] The girls started kindergarten well behind their peers academically. Father attended the parent-teacher conference with both teachers; Mother did not. Father regularly communicated with the girls' teachers and asked what extra

work he could do with the girls on his weekends to try to help them academically. Mother, on the other hand, never communicated with the kindergarten teachers regarding academics. By March 2020, E.P. was still gravely behind and H.P., while behind, was making some gains. The girls regularly came to school in ill-fitting and dirty clothes and were unbathed and had unkempt hair, which the teachers would brush at school. In the winter, they often lacked socks, hats, and gloves.

[5] As a result of the COVID-19 pandemic, the girls' school shut down in March 2020, and they completed kindergarten at home with paper packets of work sent by the school. At the time, there were seven children living in Mother's three-bedroom home, along with Mother and her boyfriend. Mother also began working from home, and Mother and Father agreed to return to equal parenting time with alternating weeks. This shared custody arrangement lasted about five months.

[6] By sometime in August 2020, the parties returned to the custody arrangement set out in the August 2019 Order. The girls went back to in-person school in Whiteland after a few weeks of e-learning at the start of first grade. As reported by H.P.'s teacher in January 2021, the girls started first grade "extremely behind" and had "no support" from Mother. *Exhibits* at 22. The teacher described communication from Mother as "crickets," and indicated that all contact came from Father, who showed concern about the girls' schooling and did extra work with them on his weekends. *Id.* As of January 2021, the teacher opined that the girls were "behind due to environment," not Covid or cognitive

delay, and that they were "at a point of no return," unlikely to be ready for second grade. *Id*. at 23. The teacher also expressed concerns about the girls' appearance and indicated that she did not believe they were being adequately cared for in Mother's home.

[7] In the meantime, Mother and Father filed several petitions following the August 2019 Order, as a dispute arose regarding Father's midweek parenting time. On September 17, 2019, Father filed a petition for rule to show cause, alleging that Mother had not allowed him to exercise such parenting time. While the contempt hearing was pending, on January 9, 2020, Mother filed a petition for modification of parenting time in which she noted the length of the drive between Greencastle and Whiteland and indicated that the parties had been unable to agree on transportation for the midweek parenting time. Shortly thereafter, Father filed a petition to modify custody, parenting time, and child support, seeking primary physical custody of the girls.

[8] On February 6, 2020, the parties filed an agreed entry in which, among other things, they agreed to vacate the contempt hearing and to appoint Robert Reimondo as Guardian ad Litem (the GAL). The trial court approved the agreed entry, and the GAL accepted the appointment later that month.

[9] On August 6, 2020, Father filed a motion to set a hearing on all contested issues. That same day, the trial court set a hearing for February 5, 2021. The GAL filed his detailed report with the trial court on January 26, 2021. Three days later, Mother filed for a continuance of the modification hearing alleging a

recent breakdown in the attorney-client relationship and indicating that she required additional time to hire new counsel. The trial court denied Mother's motion for a continuance and, on February 3, permitted her counsel to withdraw.

[10] On February 5, 2021, the hearing on Father's petition to modify custody was held, at which Mother appeared pro se. The GAL testified and recommended that Father have primary custody of the girls. In his report, the GAL summarized, in part, that the girls were "tragically behind" in school, that "Mother either has no interest in parenting these girls or she is overwhelmed by all of her responsibilities," and that the girls "need a change." *Exhibits* at 30.

[11] Shortly after the hearing, the trial court issued an order modifying custody (the February 2021 Order). Pursuant to the February 2021 Order, Father received primary physical custody of the girls, Mother and Father continued to share legal custody, Mother was granted parenting time consistent with the Guidelines, and Mother was ordered to pay child support of $83 per week.

[12] Thereafter, the girls moved in with Father and completed the last few months of first grade in Greencastle. Their paternal grandmother, who owns the home, also lives with them. The girls have their own bedroom, and no other children live in the home.

[13] Mother appealed from the February 2021 Order. In a memorandum decision issued on August 12, 2021, another panel of this court reversed and remanded for a new modification hearing, concluding that the trial court had abused its

discretion in denying Mother's request for a continuance. *Lyons v. Parker*, No. 21A-JP-386 (Ind. Ct. App. August 12, 2021).

[14] Following remand, the parties entered into an agreement to certify the Court of Appeals decision and to a change of judge, selecting the Honorable Melinda Jackman-Hanlin. They also agreed that the girls "shall remain living with Father pending the change of custody hearing" and that "Mother shall continue to receive parenting time under the [February 2021 Order]." *Appellant's Appendix* at 170. The trial court approved the agreed entry, and Judge Jackman-Hanlin assumed jurisdiction in November 2021. The GAL filed a supplemental report on February 1, 2022.

[15] The modification hearing took place on February 11, 2022. At the time, the girls had been living with Father as their primary custodial parent for about a year and were retaking first grade in Greencastle. H.P.'s current teacher testified that H.P. was a great student with perfect attendance during the spring semester, she had no concerns regarding H.P.'s grooming or appearance, and Father communicated with her "quite a bit threw (sic) class Dojo." *Transcript* at 10. Similarly, E.P.'s current teacher testified that E.P. had a great attitude, worked hard, completed extra work at home, was nicely dressed, and had shown "large growth in a semester" with respect to reading. *Id*. at 15.

[16] The GAL testified and recommended that Father have primary physical custody of the girls. The GAL explained that a year ago, when Mother had primary physical custody, the girls were "clearly not thriving." *Id*. at 24. On

his visit to Mother's home in January 2021, the GAL found the home to be unclean, disorderly, and chaotic. The girls were also "desperately behind" at school. *Id*. at 25. The GAL opined that, while Mother clearly loved her children, she seemed "overwhelmed" with "a lot of kids to deal with and life issues," and the girls were "falling through the cracks for Mom." *Id*. at 27-28.

[17] The GAL explained that, in the year following the February 2021 Order, Father had "turned it around." *Id*. at 30. The descriptions being given by the current teachers were "[s]hockingly different" than those given by the previous teachers, and the girls were "doing so well." *Id*. The GAL also indicated that the girls "both are clear they want to live with Father." *Id*. at 31. The GAL attributed this to "the circus at Mom's house" being too much for the girls and them valuing "the relative peace at Dad's house" and the time he has for them. *Id*. While Father's home remained "too cluttered," the GAL indicated that it is "[v]astly better than what it was a year ago" and is "appropriate and suitable" for the girls. *Id*. at 46; *Exhibits* at 69.

[18] The trial court took the matter under advisement and, on February 24, 2022, issued its order modifying custody in favor of Father. The order was amended in minor part the following day. The court concluded that there had been a continued and substantial change in circumstances since the August 2019 Order and that modification was in the girls' bests interests. The court awarded Father primary legal and physical custody, with Mother to exercise parenting time pursuant to the Guidelines. Regarding midweek parenting time, the order provided:

> If Mother chooses to exercise mid-week parenting time, Mother may pick the girls up from school and return the girls to Father no later than 7:00 p.m. Mother's midweek parenting time shall take place in Greencastle. Mother shall make sure the girls' homework is completed prior to returning the girls to Father.

Appellant's Appendix at 51. Further, the court ordered Mother to pay child support retroactively to February 2021 in the amount of $85 per week through July 2021, and thereafter in the amount of $75 per week. The court calculated Mother's support arrearage to be $1386 and ordered her to pay an additional $25 per week toward that balance.

[19] Mother now appeals the modification order. Specifically, she challenges the grant of custody to Father, the retroactive child support determination, and the provision regarding midweek parenting time. Additional information will be provided below as needed.

Standard of Review

[20] It is a well-established in Indiana that we grant latitude and deference to our trial courts in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). This is because "[a]ppellate 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*. (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)). On appeal, it is not enough that the evidence might support some other conclusion;

it must positively require the conclusion advanced by the appellant before there is a basis for reversal. *Id*. Accordingly, on appeal, we must view the evidence most favorably to the judgment without reweighing the evidence or assessing witness credibility. *Id*.

[21] Where, as in this case, a trial court enters special findings and conclusions sua sponte, we apply a two-tiered standard of review to any issue covered by the findings. *G. S. v. H. L.*, 181 N.E.3d 1040, 1043 (Ind. Ct. App. 2022). That is, we consider whether the evidence supports the findings and whether the findings support the judgment. *Id*. A trial court's findings will be found to be clearly erroneous only when the record contains no facts to support them either directly or by inference; a judgment will be found to be clearly erroneous if it applies the wrong legal standard to properly found facts. *Id*. "Ultimately, we will reverse only upon a showing of clear error: 'that which leaves us with a definite and firm conviction that a mistake has been made.'" *Id*. (quoting *Egly v. Blackford Cty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). Further, for issues not covered by the trial court's special findings, we will apply the general judgment standard and affirm based on any legal theory supported by the evidence. *Id*.

Discussion & Decision

1. Modification of Custody

[22] Mother asserts that the trial court erred in modifying custody because Father failed to show that there had been a substantial change in circumstances since

the August 2019 Order and that modification was in the girls' best interests, both of which are required by Ind. Code § 31-17-2-21(a). Mother does not directly challenge any of the trial court's findings of fact. She simply asserts that the girls made academic improvements in kindergarten while in her custody and that Father was equally responsible for their lack of academic preparedness going into kindergarten, as he and Mother had shared equal time with them until that time. In sum, she contends that the GAL and the trial court should not have attributed the girls' academic status to her parenting. Mother's argument in this regard, however, ignores much of the evidence.

[23] The trial court's findings, which are amply supported by the record, establish that while in Mother's primary custody, the girls struggled academically in both kindergarten and first grade.[1] Despite being the local parent, Mother had little to no contact with the teachers in Whiteland. Father, on the other hand, maintained regular contact with the teachers and attempted to assist the girls with their learning during his limited time with them. Additionally, Mother commonly sent the girls to school dirty, with unkempt and ratty hair, and in clothing that was dirty and/or too small. The teachers had great concerns for the girls, which they attributed to environmental factors, not cognitive delay or COVID. In January 2021, H.P.'s first grade teacher informed the GAL that the

[1] Mother had primary custody of the girls during their kindergarten year from August 2019 to March 2020 and during their first-grade year from August 2020 until Father was granted custody in February 2021. In other words, the girls were in Mother's primary custody the vast majority of the time they were attending school in Whiteland.

girls were "at a point of no return," with no academic support from Mother's home, and not likely to be ready for second grade. *Exhibits* at 23.

[24] In February 2021, after the court initially modified custody, the girls moved to Greencastle and completed the last few months of first grade at a new school while in Father's custody. They returned to this same school, repeating first grade, during the 2021-2022 school year. Under Father's roof, the girls' academic performance vastly improved. Their teachers now described them as good students who turned in bonus work each week. E.P. had made significant strides in her reading during the first semester and was receiving extra assistance at school and at home. H.P. was at grade level in all subjects. Father, unlike Mother, stayed in regular communication with the teachers and sent the girls to school appropriately dressed and clean and ready to learn. Father had also started the girls in gymnastics and was looking to start them in competitive cheer, which Mother did not support.

[25] The GAL testified that the difference in the girls since living with Father was "night and day." *Transcript* at 30. He explained that his discussions with their teachers were "[s]hockingly different" than a year ago and that he "felt great honestly that they were doing so well." *Id*. While he described them as not thriving in February 2021, that was no longer true. Further, the GAL testified that the girls were both clear that they wanted to continue living with Father.

[26] The trial court rejected Mother's argument that the girls' academic struggles in kindergarten and first grade in Whiteland were attributable to fifty-fifty

parenting and the pandemic, not her, and that the girls were making academic progress in her care. The evidence supports the trial court's contrary determination, and we decline Mother's invitation to reweigh the evidence. Mother has failed to establish that the trial court abused its discretion. The trial court's conclusions that there had been a substantial change in circumstances since the August 2019 Order and that modification was in the girls' best interests were not clearly erroneous.

2. Child Support

[27] Mother also challenges the trial court's calculation of her support arrearage. Specifically, she contends that the time between the certification of the prior appellate decision and the current modification order (approximately five months) should not have been included because she was no longer under a support order once the February 2021 Order was reversed. Mother acknowledges that the parties entered into an agreement by which Father retained primary physical custody of the girls after remand, but she notes that this interim agreement made no mention of child support.

[28] We initially observe that it does not appear Mother raised this argument below. Moreover, it is well established that "[a] trial court has discretion to make a modification of child support relate back to the date the petition to modify is filed, or any date thereafter." *Becker v. Becker*, 902 N.E.2d 818, 820 (Ind. 2009). Here, the five-month period challenged by Mother fell after Father filed for modification and covered a period when Father was exercising primary custody

of the girls. The trial court did not abuse its discretion by including this period in Mother's support obligation.

3. Parenting Time

[29] Finally, Mother contends that the trial court abused its discretion by requiring that her midweek parenting time take place in Greencastle. Reasoning that the Guidelines set forth no restrictions on the location of midweek parenting time, Mother claims that the trial court could not include such a provision without finding that parenting time might endanger the girls' health or significantly impair their emotional development.

[30] Subject to certain exceptions not relevant here, Ind. Code § 31-17-4-1(a) provides that "a parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development." Similarly, I.C. § 31-17-4-2 provides that "the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development." Although the statutes use the word "might," we have interpreted the language to mean that a court may not restrict parenting time unless that parenting time "would" endanger the child's physical health or emotional development. *See Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013); *D.B. v. M.B.V.*, 913 N.E.2d 1271, 1274 (Ind. Ct. App. 2009).

[31] Here, Mother failed to show that the trial court did not grant her reasonable parenting time or that the trial court restricted her parenting time. In fact, she was granted slightly more than four hours per week of midweek parenting time – Section II(D)(1)(b) of the Guidelines provides for *up to* four hours – and her parenting time was not ordered to be supervised. *See Hatmaker*, 998 N.E.2d at 761 (holding that an order for supervision constitutes a restriction on parenting time). The trial court conditioned midweek parenting time on it taking place in Greencastle – where the girls live and go to school – but such does not run afoul of the statutes or require a showing of endangerment. *See Tamasy v. Kovacs*, 929 N.E.2d 820, 838 n.6 (Ind. Ct. App. 2010) (observing that I.C. § 31-17-4-1 "does not mandate that said parenting time be exercised in the locale preferred by the noncustodial parent" and concluding, therefore, that the trial court's requirement that parenting time be exercised in Indianapolis was not improper).

[32] Parenting time and travel limitations are two separate issues, erroneously commingled here by Mother. And the record establishes that the distance between the parents had been an ongoing issue in this case regarding midweek parenting time, causing Mother to seek modification of Father's midweek parenting time in January 2020. Mother has failed to establish that the trial court abused its discretion by requiring her to exercise her midweek parenting time in Greencastle.

[33] Judgment affirmed.

Vaidik, J. and Crone, J., concur.