

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of
A.H. and N.H.

Dawnielle Royalty (Mother),
Appellant-Petitioner,

v.

William Higgins,
Appellee-Respondent.

March 30, 2022

Court of Appeals Case No.
21A-JP-1995

Appeal from the Morgan Circuit
Court

The Honorable Matthew G.
Hanson, Judge

The Honorable Terry Iacoli,
Magistrate

Trial Court Cause No.
55C01-1812-JP-493

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Petitioner, Dawnielle Royalty (Mother), appeals the trial court's Order modifying custody and parenting time of her minor children, N.H. and A.H. (collectively, Children), in favor of Appellee-Respondent, William S. Higgins (Father).
- [2] We affirm.

ISSUES

- [3] Mother raises two issues on appeal, which we restate as the following:
- (1) Whether the custody modification was supported by a substantial change in circumstances; and
 - (2) Whether the trial court's decision to continue supervised parenting time was supported by the evidence.

FACTS AND PROCEDURAL HISTORY¹

- [4] Father and Mother are the parents of N.H., born on September 16, 2016, and A.H., born on September 12, 2018. On December 18, 2018, Father filed

¹ We note that Father's brief does not contain a statement of issues, a statement of the case, or a statement of facts, all of which are required by Indiana Appellate Rule 46(B) ("The appellee's brief shall conform to Section A of this Rule," which provides that an appellant's brief "shall contain" those sections). Indiana Appellate Rule 46(B)(1) provides that "[t]he appellee's brief may omit . . . the statement of issues, the statement of the case, and the statement of facts if the appellee agrees with the statements in the appellant's brief. If any of these statements is omitted, the brief shall state that the appellee agrees with the appellant's statements." Father's brief does not state that he agrees with Mother's statements.

separate petitions to establish paternity, custody, parenting time and support of N.H. and A.H..² On April 25, 2019, the trial court conducted a hearing.

Father and his counsel were present, but despite having notice, Mother failed to appear. Following that hearing, on May 2, 2019, the trial court entered a preliminary order, establishing paternity and parenting time for Father to be exercised every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. The trial court then scheduled a review hearing to address the other pending issues in Father's petition.

[5] Following several continuances, on October 29, 2019, the trial court held a hearing, but Mother failed to appear. At the close of the hearing, the trial court issued an Order (October 2019 Order), finding that Mother had denied Father parenting time for two weeks, and had failed to comply with prior court orders to appear and show cause. Thus, it awarded Father temporary sole legal and physical custody of Children, and it suspended Mother's parenting time. Between February 2020 and June 2020, the parties filed several motions. On June 16, 2020, the trial court held an emergency hearing and vacated the October 2019 Order, thereby reinstating joint legal and physical custody of Children, and parenting time on alternating weeks.

[6] From June 19 through June 26, 2020, Mother had parenting time. On June 26, 2020, when Father picked up Children and on the way home, N.H. stated that

² These petitions were later consolidated.

she had a secret. Upon arriving at Father's home, N.H. sat on the dining table and began having a conversation with Father's girlfriend, Misty Brooks (Brooks). N.H. exclaimed that her "booty hurt." (Transcript p. 16). Father, who was seated close by, stopped what he was doing and listened. When Brooks asked N.H. to explain what she meant, N.H. stated, "I'll have to show you." (Tr. p. 16). N.H. pulled her dress up, took down her underwear, laid flat on the ground, stuck her legs up, and touched her vaginal area. Upon seeing that, Brooks directed N.H. to stand up and put her underwear back on, and Brooks expressed to Father that something was obviously not right and that they needed to take N.H. to the doctor. Based on N.H.'s complaint, Father told N.H. to get dressed, and Father took N.H. to the emergency room at IU Health Bloomington (IU Health). When the nurse examined N.H. and asked where she was hurting, N.H. pointed to her vagina and stated that "mom" had hurt her. (Tr. p. 19). The report issued by IU Health stated

In this case, multiple high resolution, excellent photographs obtained by forensic nurse are available for review and document no injury. Specifically, the hymen is normal, no evidence of trauma. Please note that a normal examination does not exclude the possibility of sexual abuse.

(Exh. Conf. Vol., p. 19). Notwithstanding an inconclusive sexual abuse finding, IU Health advised Father to take N.H. to Riley Hospital for Children in Indianapolis (Riley) for further examination. In the meantime, the nurse at IU Health contacted Riley, as well as the police and Department of Child Services (DCS). After being questioned by DCS and the police, Father drove

N.H. to Riley. The examination at Riley revealed that N.H.'s "hymen had been pushed to its side" and had "small cracks on the 12 o'clock, 3 o'clock, and 6 o'clock positions" of her hymen, and "a lot of redness" but "no bruising." (Tr. p. 20).

[7] The first few days after the incident, N.H. displayed odd behavior. She would play with her Barbie dolls in the bathtub, pour water over them, and would say that she was erasing "the red off their booty." (Tr. p. 22). At dinner time, N.H. refused to pray with the family. In addition, N.H.'s behavior toward her younger sister, A.H., was "much more aggressive." (Tr. p. 22). N.H. also began wetting her pants despite having been potty trained at one year old, and Father would sometimes change N.H.'s pants six times during the day.

[8] Based on N.H.'s sexual assault examination conducted at Riley, Father denied Mother parenting time. On July 7, 2020, Mother filed a verified petition for rule to show cause, stating that Father was denying her parenting time. A month later, on August 5, 2020, Father filed a petition for rule to show cause and an emergency request for modification of prior parenting time and for permanent modification of custody and parenting time and support, in which he raised allegations that Mother had sexually abused N.H. while N.H. was in her care during the week of June 19-26, 2020. Father, among other things, requested the trial court to suspend Mother's parenting time, or in the alternative, that Mother's parenting time be supervised.

- [9] After several continuances and multiple filings from each party, on December 17, 2020, the trial court conducted a hearing to address Mother’s petition to show cause filed on July 7, 2020, Father’s petition for rule to show cause, his emergency request for modification of prior parenting time, and for permanent modification of custody, parenting time, and support, filed on August 5, 2020.
- [10] On December 17, 2020, the trial conducted a hearing as to the various pending motions. Father testified that when N.H. returned from Mother’s home, N.H. complained that her booty hurt and that it was Mother who had hurt her. Father stated that he took N.H. to IU Health and that she was examined by a nurse and by Doctor Kavitha Murugananthum (Dr. Murugananthum). Dr. Murugananthum testified that while she could not conclude that N.H. had been sexually abused, because N.H. indicated that Mother had touched her “vaginal orifice,” she referred N.H. to Riley for further investigation. (Tr. p. 40). The nurse’s report from IU Health was admitted into evidence. The trial court admitted the report from Riley into evidence, which indicated “vaginal abrasions at the 1, 3, and 9 o’clock positions.” (Appellant’s App. Vol. II, p. 92).
- [11] Also at the hearing, Indiana State Police Trooper Tia Hunt (Officer Hunt) testified that she investigated the alleged sexual assault of N.H. Officer Hunt stated that she questioned Mother regarding the allegations, and that Mother denied the allegations. Officer Hunt testified that Mother had indicated to her that she had “always been very forthcoming with information,” and that she never had an issue with DCS. (Tr. p. 46). Notwithstanding Mother’s claim, Officer Hunt stated that when she spoke with DCS on several different

occasions, DCS stated Mother “was an issue” and uncooperative. (Tr. p. 46). Following Mother’s initial interview with Officer Hunt, Mother never met with Officer Hunt again, and when Officer Hunt tried to contact Mother, Mother was evasive. Mother eventually informed Officer Hunt to contact her lawyer if she needed to obtain further information. Although Mother failed to cooperate, Officer Hunt summed up her investigation, and submitted her probable cause affidavit to the prosecutor with a recommendation that Mother be charged with neglect of a dependent. No charges were ever filed against Mother. At the close of the evidence, the trial court took the matter under advisement.

[12] In its order issued on December 22, 2020, the trial court denied Mother’s verified petition for rule to show cause filed on July 7, 2020, regarding the denial of her parenting time. Based on the evidence, the trial court found a need for the emergency request and ordered Father to have legal and physical custody of Children, and Mother to have supervised parenting time “for three (3) hours per week under the supervision of Family Solutions in Bloomington, Indiana.” (Appellant’s App. Vol. II, p. 93). Explaining the need for Mother’s supervised visits, the trial court stated that unsupervised visits “would endanger the physical health of [] [C]hildren or significantly impair the emotional development of [] [C]hildren.” (Appellant’s App. Vol. II, p. 93).

[13] On March 17, 2021, Mother filed her motion for rule to show cause, in which she alleged that Father had failed to complete his intake with Family Solutions which was preventing her ability to exercise her supervised parenting time. An initial hearing was held on May 7, 2021, but was continued to August 5, 2021.

The trial court later granted Mother's request to have the August 5, 2021 hearing converted to a final hearing.

[14] At the August 5, 2021, hearing, Father presented evidence on how the sexual abuse impacted N.H.'s physical and emotional health. Father claimed that Mother had parenting time of Children from June 19 through June 26, 2020, and that the sexual abuse occurred during that week. Father testified that following the sexual abuse incident, N.H. began exhibiting unusual behavior. Brooks added that following the incident, N.H.'s behavior altered, and she became aggressive and had more incidents of wetting her pants. Father's mother (Grandmother) also described N.H.'s behavior after the alleged sexual abuse as aggressive. Grandmother stated that N.H. would punch her dogs and squeeze their necks tightly, and that N.H., who was four years old at the time, developed a new obsession with "women's breasts" where she would inappropriately "poke[,] . . . pinch . . . [and] kiss" her breasts several times, and follow it up with "I love you." (Tr. p. 93). According to Grandmother, N.H.'s behavioral changes were "classic tell-tale signs of emotional turmoil." (Tr. p. 93). The Visitation Supervisor testified that she had no concerns or apprehensions regarding Mother's visitations with Children. Visitation Supervisor notes were admitted into evidence.

[15] Regarding Mother's supervised visits with Children, Father testified that at first, N.H. seemed to enjoy the visits since she acquired new toys from Mother during the visits. Father then claimed that Children's behavior was "steady downhill after that." (Tr. pp. 102-03). After the first couple of visits, when

Father asked N.H. how the visits were going, N.H. said that she was “zipping [her] lips” and was not disclosing anything regarding the visits. (Tr. p. 102). Based on his concerns that something was happening during the visits and the lack of recording devices at Family Solutions, the visitation facility, Father sewed recording devices on Children’s clothes. On May 5, 2021, when Father picked up Children, Mother had changed their clothes, and Visitation Supervisor handed Father the bag containing their clothes. When Father opened the bag, he saw that the clothes he had sent Children in for the visit were “ripped to into pieces” and the recording device was missing. (Tr. p. 112). When Father questioned Visitation Supervisor about the missing recording device, Visitation Supervisor at first denied knowing anything about that, but after further questioning which involved yelling, Visitation Supervisor told Father to ask Mother because Mother had taken it. Father stated that the recording device was his property, and he wanted it back. Visitation Supervisor and her supervisor suggested to Father to involve the police. Father called Grandmother to pick up Children because he did not want them present when the police arrived. When the police arrived, they questioned both Father and Mother, and Mother returned the device. Father testified that following that incident, he “totally lost faith in Family Solutions.” (Tr. p. 111).

[16] Father also testified that after the supervised visits began, N.H. developed anger issues and was aggressive toward A.H. and pushed her several times. N.H., who owned a couple of kittens, would throw the kittens out of the window and would at times squeeze them way too hard. Father added that it was hard

disciplining N.H. since she would have a tantrum like “a little baby, just fall backwards, start squealing and screaming” and if he picked her up and put her in a corner for a timeout, N.H. would say that she did not love Father or that he was being mean to her when he disciplined her. (Tr. p. 103). One time when Father was consoling N.H., he extended a hug to N.H. and N.H. “tried nursing” from Father’s breast. (Tr. p. 104). Father was concerned with N.H.’s obsession with breasts. Grandmother testified that “[o]ne time after a visit, N.H. stated that “mommy can spray her breast milk out and spray somebody in the face with it.” (Tr. p. 104).

[17] Based on his concern that the supervised visits were negatively impacting N.H., Father asked for a suspension of the visits. In the alternative, Father asked that, at the very minimum, that the current Visitation Supervisor be replaced by a licensed therapist. Father claimed that Children, specifically, N.H. who was experiencing behavioral issues, would benefit, if a licensed therapist supervised the visits. Mother, on the other hand, claimed that because there were no criminal charges against her and that she was not subject to a DCS investigation, requested the reinstatement of shared physical custody of Children on a week-to-week basis, or, in the alternative, unsupervised parenting time.

[18] Pursuant to that hearing, on August 20, 2021, the trial court issued an Order, granting Father physical and legal custody of Children, ordering Children’s birth certificates be amended by adding Father’s name, and directing that Mother’s visitations to be supervised by a licensed therapist.

[19] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[20] We begin our analysis by noting that the trial court's order modifying custody and parenting time did not contain any purported conclusions of law. We note that *sua sponte* findings control only the issues they cover, and a general judgment standard of review will control as to the issues upon which there are no findings. *In re Trust Created Under Last Will & Testament of Mitchell*, 788 N.E.2d 433, 435 (Ind. Ct. App. 2003). "A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence." *Id.* In reviewing a judgment, we will neither reweigh the evidence nor judge the credibility of the witnesses. *Id.*

[21] In addition to the standard of review, our supreme court has a well-settled preference for granting significant latitude and deference to trial judges in family law matters because of their "unique, direct interactions with the parties face-to-face." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). As this court has previously opined, "[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.'" *McDaniel v. McDaniel*, 150 N.E.3d 282, 288 (Ind. Ct. App. 2020) (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)), *trans. denied*.

[22] Finally, before we address the merits of Mother’s appeal, we note that Father has chosen to proceed *pro se*. *Pro-se* litigants are held to the same rules and standards as licensed attorneys. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). With that said, Father was expected to follow the Appellate Rules in presenting argument to this court. Father’s brief wholly violates our rules. Indiana Appellate Rule 46(A)(8)(a) and 46(B)(2) direct that an appellee’s brief “shall address contentions raised in appellant’s argument” and the contentions “must be supported by citation to authorities, statutes, and . . . parts of the Record on Appeal.” Father’s brief does neither, and his failure to follow the appellate rules and respond in a meaningful way is akin to failing to file a brief. In such a situation, we do not undertake the burden of developing an argument for the appellee. *Tisdial v. Young*, 925 N.E.2d 783, 784-85 (Ind. Ct. App. 2010). “We will reverse the trial court’s judgment if the appellant presents a case of *prima facie* error.” *Id.*

II. *Modification of Custody*

[23] Mother contends that the trial court abused its discretion in modifying the custody determination by granting Father sole physical custody over Children. Following the establishment of paternity, “[t]he [trial] court may not modify a child custody order unless: (1) the modification is in the best interests of the child; and (2) there is a substantial change in one or more of the factors that the court may consider under [Indiana Code section 31-14-13-2].” Ind. Code § 31-14-13-6. Indiana Code section 31-14-13-2, in turn, sets forth the following factors:

- (1) The age and sex of the child.
- (2) The wishes of the child's parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parents;
 - (B) the child's sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to home, school, and community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

[24] On appeal, Mother claims that while there was medical and investigatory testimony at the emergency hearing in December 2020 regarding the sexual abuse against N.H., at the August 2021 hearing, Father failed to present medical and investigatory testimony proving that N.H. was sexually abused by

Mother. As such, she argues that Father did not present any evidence that there is a substantial change in one or more of the factors under Indiana Code section 31-14-13-2.

[25] Because Father filed the petition to modify custody, he carried the burden of establishing circumstances so substantial as to make the terms of the original joint custody determination unreasonable. *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005). Father’s petition to have custody modified was based on his claim that N.H. had been sexually abused while in Mother’s care.

[26] Father testified that N.H. was a happy and cheerful child, but after the alleged sexual abuse in June 2020, N.H.’s mental and physical health were affected and N.H. displayed behavioral issues thereafter. According to Father, N.H. became aggressive toward her sister, A.H., the dogs and the kittens, and had elaborate outbursts and tantrums. Father added that, N.H., who was potty trained at around one years old, would wet her pants and Father would have to change her pants as many as six times a day. Brooks corroborated Father’s testimony by claiming that after the incident occurred, she observed changes in N.H.’s behavior. Brooks stated that N.H.’s cheerful and happy personality changed, and that N.H. began “acting out in like violence,” would not listen, would engage in name calling and yelling, and began hitting A.H. (Tr. p. 95).

Grandmother testified that following the alleged sexual abuse, N.H. seemed to have been going “through a lot of emotional things” and “wasn’t just acting herself. And it took a few months for [N.H.] to settle back into the routine of how things were prior to that incident.” (Tr. pp. 91-92). According to

Grandmother, N.H.'s was "much more emotional," and had more bathroom accidents following the alleged abuse. (Tr. p. 92).

[27] The claims of N.H. being sexually abused by Mother were not substantiated by DCS, it appears that when the DCS employee, who was working on that case quit her job, the case was closed. While the claims of N.H. being sexually abused by Mother were not substantiated by DCS, it appears that when the DCS employee who was working on the case quit her job the case was closed.

[28] In *Hanson v. Spolnik*, 685 N.E.2d 71, 77 (Ind. Ct. App. 1997), *trans. denied*, the trial court modified the custody arrangement of child, giving father sole custody. *Id.* at 76. The trial court awarded sole custody to the father because the mother "engaged in a concerted effort to destroy [child's] relationship with [the father]." *Id.* The actions the mother took in the presence of child included accusing the father of sexually abusing child, accusing the father of disrupting child's class at school and making her cry, telling the father to go to Hell, indicating he was going to get AIDS and informing child she would have to be decontaminated, and repeatedly calling him Satan and accusing him of being homosexual. *Id.* at 74-75. We noted that one parent had made repeated unsubstantiated sexual abuse allegations against the other parent in support of affirming the trial court's modification of custody to the other parent. *Id.* at 78, n. 6. In doing so, we said "we do not intend to suggest that a parent's allegations of sexual abuse will support a change of custody. Rather, the unsubstantiated allegations against" father were "merely mentioned in conjunction with the parties' failure to communicate and [mother's] other

actions,” to further support of the trial court’s determination. *See also Albright*, 736 N.E.2d 790, n. 6.

[29] In this case, unlike *Hanson*, where the sexual abuse allegations were marked as false, N.H. undoubtedly had abrasions to her vagina which the medical personnel at Riley found, and there was no indication that N.H. was coached by Father to make the false accusations. *See also Albright*, 736 N.E.2d at 790 (holding that there is indeed a strong public policy in favor of *good-faith* reporting of suspected child molestation). Further, like in *Hanson*, the sexual abuse allegation was accompanied by other factors. While observing that no charges or DCS case resulted from the allegations, the net result of that was that N.H. had apparently unexplained small cracks on her hymen, her injuries occurred while she was in Mother’s care, and that N.H. displayed odd behavioral issues following the sexual abuse incident.

[30] As a court of review, we have held that we 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, or that he should have found its preponderance or the inferences therefrom to be different from what he did. *See Kirk*, 770 N.E.2d at 307. While claims of N.H. being sexually abused by Mother were not substantiated by DCS, nor have criminal charges been filed against Mother, we reiterate there is no suggestion from the record that Father was perpetuating false allegations or that N.H. was disingenuous regarding her claim or being forced to lie that

Mother had sexually abused her. Moreover, Father, with the testimony of others, presented evidence that N.H. was a happy and healthy child prior to June 2020. Following the incident, N.H. displayed odd behavior, *i.e.*, she began wetting her pants, had anger issues, and became more aggressive toward everyone, including her sister A.H. The evidence indicates that N.H.'s behavioral issues began after the alleged sexual abuse incident, and that her behavior was more cheerful and happy at time of the original custody order. The evidence establishes that N.H. endured emotional and mental damage and this arose after the alleged sexual abuse occurred while in Mother's care.

[31] In order to reverse a custody modification, the evidence must *positively require* reversal, even if the evidence might have supported another conclusion. *See Best*, 941 N.E.2d at 503. That is not the case here. In as much as the medical evidence was not admitted into evidence at the final hearing, it was part of the record, and because there was evidence that a substantial change in one or more of the factors under Indiana Code section 31-14-13-2 existed, *i.e.*, the mental and physical health of N.H. based on the alleged sexual abuse, the trial court did not abuse its discretion in granting Father sole legal and physical custody of Children.

II. *Supervised Parenting Time*

[32] A trial court may modify parenting time rights whenever modification would serve the best interests of the child. I.C. § 31-14-14-2. However, Indiana Code section 31-14-14-1 provides that “[a] noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that

parenting time might: (1) endanger the child's physical health and well-being; or (2) significantly impair the child's emotional development." "Even though section 31-14-14-1 uses the term 'might,' this court interprets the statute to mean that a court may not restrict visitation unless that visitation would endanger the child's physical health or well-being or significantly impair the child's emotional development." *Farrell v. Littell*, 790 N.E.2d 612, 616 (Ind. Ct. App. 2003).

[33] Father's petition to modify parenting time requested the termination of Mother's parenting time based on the fact that N.H. was displaying behavioral issues after supervised visits were implemented in December 2020. In the alternative, Father sought to have Mother's parenting time supervised by a licensed therapist based on his plea that Children needed therapy due to the sexual abuse allegation. Mother argues that there is no evidence of physical endangerment or emotional impairment to Children to not revert to unsupervised parenting time. Mother draws her argument from the fact that she has not been criminally charged, and DCS has not investigated her for the alleged sexual abuse. In addition, she argues that the notes from Visitation Supervisor, coupled with her testimony, indicated there were no issues observed during the visitations.

[34] At the August 5, 2021, hearing, Visitation Supervisor testified that she had no concerns or apprehension regarding Mother's visitations with Children. Her notes from the visits were admitted into evidence. The notes indicate that Mother's visitation with Children went extremely well. Visitation Supervisor

noted that Mother brought necessary items to the visits, she interacted with Children and gave them a lot of affection, changed A.H.'s diapers, and brought games and art. The only concern was when Mother ripped Children's clothes and removed Father's recording devices. Another concern was noted during a visit in April 2021 when almost five-year-old N.H. wanted to nurse from Mother and Mother told N.H. she did not have any more milk. N.H. then started acting like a baby, doing baby talk, and tried to bite and hit Mother. N.H. would laugh while engaging in these behaviors.

[35] Notwithstanding the fact that Visitation Supervisor portrayed the visits in the best light as having a positive effect on Children, Father conveyed a different picture. Father testified that after the supervised visits began in December 2020, the first two visits were okay, but N.H.'s behavior went "steady downhill after that." (Tr. pp. 102-03). Whenever Father asked N.H. how the visits were going, N.H. said that she was "zipping [her] lips" and was not disclosing anything. (Tr. p. 102). Based on his concerns, and the lack of recording devices at the visitation location, Father sewed recording devices in Children's clothes to secretly record the visits. In May 2021, when Father picked up Children, Mother had changed their clothes, and Visitation Supervisor handed Father the bag containing their clothes. When Father opened the bag, he saw that the clothes he had sent Children with for the visit were "ripped to into pieces" and the recording device was missing. (Tr. p. 112). When Father questioned Visitation Supervisor about the missing recording device, Visitation Supervisor at first denied knowing anything about that, but after further

questioning, Visitation Supervisor told Father to ask Mother because Mother had taken it. After the police were involved, Mother returned the device to Father. Father testified that following that incident, he “totally lost faith in Family Solutions.” (Tr. p. 111).

[36] In addition, Father testified that after the supervised visits began, N.H. developed anger issues and was aggressive toward A.H. N.H., would throw her kittens out of the window, and sometimes squeeze them too hard. N.H. had terrible tantrums like a baby, and Father stated that it was hard disciplining her. Brooks described N.H.’s personality before the supervised visits as “happy” and “fun” but violent and angry thereafter. (Tr. p. 95). Grandmother also testified that after the supervised visits began, N.H. became more “whiney” and at times N.H. would blubber incoherent words to the point where she would not be understood. (Tr. p. 92). According to Grandmother, N.H. was “overly emotional” and despite being fully potty trained, she had daily accidents. (Tr. p. 92). At Grandmother’s house, N.H. continued to display odd behaviors, and N.H. would punch her dogs and tightly squeeze their necks. Grandmother also noted that N.H. developed a new obsession with “women’s breasts” where she would inappropriately “poke[,] . . . pinch . . . [and] kiss” her breasts several times, and follow it up with “I love you.” (Tr. p. 93).

[37] The trial court in the instance found that

14. With regard to the parenting time concerns of the parties, the [c]ourt finds that criminal charges have never been filed against Mother related to the alleged molest of [N.H.] in June of 2020,

and there is no active DCS investigation of Mother for alleged abuse or neglect. In light of this, the [c]ourt finds that it is not appropriate to terminate Mother's parenting time as Father requests.

15. However, the same concerns for the physical health and emotional development of the children that were expressed by the [c]ourt in its December 22, 2020 Order remain: the [c]ourt still finds that supervised parenting time is necessary to ensure the physical health and emotional development of [] [C]hildren. The [c]ourt finds that an increase in Mother's supervised parenting time is appropriate, as the goal is to progress to unsupervised parenting time at some point in the future.

(Appellant's App. Vol. II, p. 20). After considering the evidence, the trial court in this case, while noting that Mother had not been criminally charged, nor was she the subject to an open DCS investigation, found that the evidence Father presented supported a finding of physical health and emotional impairment of N.H. In this case, there was physical evidence that N.H. had injuries to her hymen, and medical evidence substantiated those claims. N.H. claimed that Mother had touched and hurt her vagina, and while Mother adamantly denied these claims, Officer Hunt testified at the December 2020 hearing that after she completed her investigation, she recommended Mother be charged with neglect of a dependent. While there was no forensic testimony from N.H., there is no indication that N.H. fabricated the allegations, or that Father coached N.H. into making these claims. Father, Grandmother, and Brooks consistently testified that N.H. began displaying behavioral problems after the visits resumed despite being supervised. Based on the evidence, we are satisfied that

Father presented sufficient evidence to support the trial court's finding that unsupervised visitation, in the midst of an allegation of sexual abuse which occurred in Mother's care, would endanger Children's physical health or significantly impair their emotional development. That finding, in turn, supports the conclusion that the supervised parenting time order is necessary at this point in time. Addressing any arguments to the contrary would involve reweighing the evidence or assessing witness credibility, which we will not do. *Walker v. Nelson*, 911 N.E.2d 124, 130 (Ind. Ct. App. 2009).

CONCLUSION

- [38] Based on the foregoing, we hold that the trial court did not abuse its discretion when it modified custody in favor of Father or ordered supervised parenting time for Mother.
- [39] Affirmed.
- [40] Robb, J. and Molter, J. concur