

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Paternity of E.B. and
C.B. (Minor Children);

Alissa Penland,

Appellant

v.

Kollin Brugh,

Appellee.

October 31, 2022

Court of Appeals Case No.
22A-JP-734

Appeal from the St. Joseph Probate
Court

The Honorable Graham C.
Polando, Magistrate

Trial Court Cause No.
71J01-2004-JP-96

Pyle, Judge.

Statement of the Case

[1] In this paternity action, Alissa Penland (“Mother”) appeals the trial court’s order that awarded Kollin Brugh (“Father”) (collectively “Parents”) parenting time with the Parents’ two children (“the children”) and granted Father’s request to change the children’s surname from Penland to Brugh. Mother specifically argues that the trial court abused its discretion when it: (1) awarded Father more parenting time with the children than is contemplated by the Indiana Parenting Time Guidelines (“the IPTG”); and (2) granted Father’s request to change the children’s surname from Penland to Brugh. Finding no abuse of the trial court’s discretion, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether the trial court abused its discretion when it awarded Father more parenting time with the children than is contemplated by the IPTG.
2. Whether the trial court abused its discretion when it granted Father’s request to change the children’s surname from Penland to Brugh.

Facts

[3] The facts most favorable to the judgment reveal that Parents began dating when they were first-year students in high school. Over the course of the ensuing fourteen years, Parents, who never married, were involved in a tumultuous on-

again and off-again relationship. When Parents' son, E.P., was born in July 2015, Parents executed a paternity affidavit.

- [4] Following E.P.'s birth, Parents sporadically lived together and shared responsibilities for E.P. During E.P.'s early years, Father's parents and grandparents had a close relationship with the child. Father's grandmother, E.P.'s paternal great-grandmother saw E.P. several times per week and took care of him one day per week while Parents worked.
- [5] In April 2020, Father filed a petition to establish E.P.'s paternity, wherein he asked the trial court to issue an order addressing custody, parenting time, and child support. According to the trial court's Chronological Case Summary, in August 2020, Father advised the trial court that he and Mother had reached an agreement that would be reduced to writing and submitted to the trial court for approval. However, it appears that Father never submitted an agreement to the trial court.
- [6] In the fall of 2020, Mother became pregnant with Parents' second child, daughter C.P., who was subsequently born in July 2021. Parents' relationship ended in March 2021 when Mother married Ryan Starkweather ("Starkweather").
- [7] Following Mother's marriage to Starkweather, Parents' relationship became more contentious, particularly concerning Father's parenting time with E.P. For example, on March 24 at 5:00 p.m., Mother texted Father, "Where the f**k

will you be at 7 moron so i can get him.”¹ (Ex. Vol. at 4) (grammatical errors in the original). When Father responded, “Wow[,]” Mother texted, “Let me know or ill come find him now instead[.]” (Ex. Vol. at 4) (grammatical errors in the original). The following day, Mother texted Father as follows regarding C.P.: “No, i will not keep you updated on [C.P.]. Not at all. None. If you actually cared about her wellbeing like you tried to act out in front of lawyers you would prove that[.] Which leads me to think it is not necessary to involve you. And i will not. I do not have to.” (Ex. Vol. at 6) (grammatical errors in the original).

[8] In April 2021, Mother arrived at Father’s house to pick up E.P. a few minutes before 7:00 p.m. Mother sent Father multiple texts, including “Here[,]” “Send. Him. Out.[.]” and “Do i need to call police to get him[.]” (Ex. Vol. at 16) (grammatical errors in the originals). At 7:03 p.m., Father responded, “No, you need to realize that pickup is at 7:05 and have patience until he’s ready to go.” (Ex. Vol. at 16). Later that month, Mother texted Father about a pick-up time later that day and asked, “RU GOING TO HAVE HIM READY F**KFACE[.]” (Ex. Vol. at 20).

[9] Also in April 2021, when Parents were discussing by text messages the upcoming parenting time schedule, Mother texted Father, “You dont offer me time, i offer you time. F**k off.” (Ex. Vol. at 17) (grammatical errors in the

¹ Parents primarily communicated through AppClose, which is a co-parenting App. We refer to messages sent through this App as text messages.

original). A few days later, Mother texted Father, “Youre not in charge so watch your f**king mouth.” (Ex. Vol. 18). Two days later, Mother texted Father regarding picking up E.P. from school and visiting C.P. at the hospital during her expected summer arrival. Mother specifically texted Father, “You do realize how obnoxious and stupid you look every time you try to act like a parent right[.] Ill get him from school. Do not show up tomorrow. I WILL GET MY SON. NOT YOU. Also, i was going to genuinely think about letting you at least visit the hospital but . . . im saying absolutely not. So. Way to f**k that up for yourself.” (Ex. Vol. at 19) (grammatical errors in the original). In other April 2021 text messages, Mother referred to a woman who Father was dating as a “whore[.]” and to the woman’s son, who was a friend of E.P.’s, as a “moron trash kid[.]” (Ex. Vol. at 10, 13). During one parenting time exchange when this woman and her son were in the car, Mother tried to pepper spray Father, who was also in the car.

[10] In May 2021, Mother began refusing to allow Father to engage in parenting time with E.P. and telling Father that he would not be allowed to see C.P. following her birth. For example, in mid-May 2021, Mother texted Father, “[I]t will be my call you do not see [C.P.] after shes born. Not a g*d d**n chance youre coming near any of us.” (Ex. Vol. at 25-26) (grammatical errors in the original). Two days later, when Father texted Mother to schedule parenting time with E.P., Mother responded, “I told you that you can talk to your attorney. I said you will not get him. That’s how it will be until a court order is issued with guidelines for you. If you’re wanting him fathers day I’d

suggest getting on that. I will not be home.” (Ex. Vol. at 26) (grammatical errors in the original). Later that evening, Mother texted Father, “You will not get him until further notice. Period[.] You will not be getting him from school or at all period until further notice.” (Ex. Vol. at 27). The following day, Mother texted Father, “You dont come near my kids until i say so.” (Ex. Vol. at 27) (grammatical errors in the original).

[11] In June 2021, Mother began allowing Father to again exercise parenting time with E.P. On July 1, the trial court held a hearing on Father’s petition to establish E.P.’s paternity and granted Father’s motion to continue with respect to all issues except child support. The trial court ordered Father to pay \$88 per week in child support for E.P. In addition, Parents agreed that, pending an evidentiary hearing, the IPTG would govern Father’s parenting time with E.P.

[12] In July 2021, Father asked Mother if she would be willing to sign a form so that his employer would grant him parental leave for C.P.’s birth. Father also asked Mother if she would “let [him] feel [their] daughter kick[.]” (Ex. Vol. at 30). Mother refused both of Father’s requests.

[13] In mid-July 2021, Mother texted Father that she would be unable to pick up E.P. at Father’s house that evening because she was at the “hospital checking for true labor[.]” (Ex. Vol. at 30). Father asked Mother if she was at Memorial Hospital and told her that he would like to know if she was going into labor. Mother did not respond to Father’s texts. The following morning, Father again texted Mother and asked her if she was still at the hospital and if she had gone

into labor. Mother did not respond to Father's text until late that night when she texted Father, "I need [E.P.] tomorrow asap." (Ex. Vol. at 30).

[14] On July 29, 2021, Father texted Mother and asked her if anything had happened yet. Mother did not respond to Father's text. The following day, July 30, Father texted Mother and asked her if she had gotten the paperwork for his parental leave and if she had gone into labor yet. Mother responded, "I am not signing that or anything. Don't contact me unless it's about [E.P.] My doctors will not sign anything either. They are my doctors and you are not on any of my documents." (Ex. Vol. at 31). On July 31, Father again texted Mother to see whether she had gone into labor. Mother did not respond to Father's text.

[15] On August 1, Mother texted Father and told him that she had given birth to C.P. Father responded, "When? I've been asking you for days. Why didn't you tell me? How could you not tell me?" (Ex. Vol. at 31). Father subsequently learned that C.P. had been born on July 28, the day before Father had begun sending Mother text messages asking her if she had gone into labor.

[16] The following day, Father filed a petition to establish C.P.'s paternity. Father explained that a genetic test had already confirmed that he was C.P.'s biological Father. Father asked the trial court to establish Father's paternity and to enter an order concerning C.P.'s surname, custody, parenting time, and child support.

[17] The trial court held a two-day hearing on Father’s petitions regarding both E.P. and C.P. in November and December 2021. At the beginning of the first day of the hearing, the trial court directed its attention to Mother and stated, “Ma’am, if I recall correctly, you are Alissa Penland.” (Tr. Vol. 2 at 4). Mother responded, “Yes, sir, Starkweather now.” (Tr. Vol. 2 at 4). The trial court then asked if the child listed in the court’s system as “unborn Starkweather” had been born. (Tr. Vol. 2 at 5). Mother’s counsel confirmed that C.P. had been born and that Mother had agreed that Father was the biological father of both E.P. and C.P.

[18] During the hearing, the trial court heard the evidence as set forth above. In addition, Father testified that he owned a three-bedroom home, which had separate bedrooms for E.P. and C.P. Father also testified that he exercised parenting time with E.P. on Wednesdays from 5:00 p.m. until 9:00 p.m. and every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. Father further testified that he had recently changed jobs so that he would have a more flexible schedule, which would allow him to take E.P. to school and to pick him up after school. However, according to Father, Mother no longer allowed him to pick E.P. up after school. Rather, Mother required E.P. to attend an after-school program and would only allow Father to pick E.P. up at 5:00 on Wednesdays when his parenting time was scheduled to begin.

[19] Father further testified that Mother had not yet allowed him to meet or spend time with then four-month-old C.P. According to Father, Mother had once

offered him the chance to meet C.P. but had rescinded the offer before the meeting had taken place.

[20] During Father's testimony, the trial court admitted into evidence almost thirty pages of text messages between the Parents, many of which have been set forth above. When Father's counsel asked Father how he had responded to these interactions with Mother, Father explained as follows:

I guess I've spent a lot of time trying to be as accommodating as possible and changing my behavior when I can. Recently, I've just kind of grown to see it as, though it's something that's ultimately out of my control, I can try and be as polite as I possibly can and be as understanding as I possibly can, but I can't control how she feels or what she does and I still have to look out for my son, so I -- I try not to do anything that's going to make things worse, but I don't have any way of knowing what's going to set her off or when.

(Tr. Vol. 2 at 25).

[21] During the hearing, Father proposed a 2/3/2-day parenting time schedule for E.P., which would allow E.P. to spend equal time with each parent. In addition, Father pointed out that neither parent would have to go for a long period of time without seeing E.P. According to Father, Mother had previously mentioned to him that she did not want to go longer than four days without seeing E.P., and Father had kept that in mind when crafting his proposal. Father also asked for the same parenting time schedule for C.P. However, Father explained that because he had not yet had the opportunity to spend time

with C.P, Father was willing to “work [his] way into a relationship with [her].” (Tr. Vol. 2 at 56).

[22] In addition, Father asked the trial court to change the children’s surname to Brugh. Father explained that he wanted the children to have his surname so that they would know that Father cares about them and considers them to be his children. Father also asked the trial court to award him joint legal custody of the children.

[23] Mother testified during the second day of the hearing. She introduced herself as Alissa Penland Starkweather and explained that although her last name was Starkweather, she was keeping the name Penland as well. Mother asked the trial court to restrict Father’s parenting time with C.P. to one time per week because Parents “are too high conflict.” (Tr. Vol. 2 at 145). Mother specifically explained that, in her opinion, limiting Father’s parenting time with C.P. would minimize Parents’ conflict as well as their opportunity for conflict. Mother also testified that she was still breastfeeding C.P. and that she did not want Father to be alone with C.P. until C.P. was one year old.

[24] Mother further acknowledged that she would not allow Father to pick E.P. up from school until 5:00 p.m. on Wednesdays because she did not want Father to have the additional two hours of parenting time that would result if Father picked E.P. up at 3:00 p.m. when the school day ended. Mother also acknowledged that she had sent Father the text messages that Father had offered into evidence during the first day of the hearing. Mother further

explained that Father’s responses to her text messages were just another example of him “looking nice on paper[.]” (Tr. Vol. 2 at 171). According to Mother, in May 2021, Father had sent Starkweather a photograph of Mother in lingerie.

[25] Mother also testified that when E.P. had been born, Father had agreed that E.P.’s last name would be Penland. Mother further testified that even though she had gotten married, she had kept the name Penland. According to Mother, “both children should carry the last name Penland[.]” because she would like for the children to have the same last name. (Tr. Vol. 2 at 113).

[26] At the end of the second day of the hearing, the trial court stated that it was going to take the matter under advisement so that it could thoroughly review its notes from the first day of the hearing in conjunction with the testimony from the second day of the hearing. However, the trial court further stated that it was “untenable, based on what [it had] heard, to have someone who has agreed to be the father, who[m] [the trial court could not] find would endanger [C.P.]’s physical health and wellbeing, and significantly impair emotional development, having no parenting time.” (Tr. Vol. 2 at 182). The trial court, therefore, ordered the Parents to each submit within seven days a parenting time proposal for Father’s parenting time with C.P.

[27] Father submitted a parenting time proposal requesting parenting time with C.P. every Monday, Wednesday, and Friday from 4:00 p.m. until 7:00 p.m. Father also requested a specific order regarding Christmas Day parenting time for C.P.

Mother submitted a parenting time proposal requesting that Father have parenting time for two hours each Wednesday to coincide with Father's parenting time with E.P. On December 13, 2021, the trial court issued an order awarding Father parenting time as he had requested every Monday, Wednesday, and Friday from 4:00 p.m. until 7:00 p.m. The trial court also awarded Father parenting time on Christmas Day from 12:00 p.m. until 3:00 p.m.

[28] One month later, on January 12, 2022, the trial court issued an order on custody, parenting time, child support, and surnames for both E.P. and C.P. Relevant to this appeal, the trial court awarded Mother custody of the children. In addition, the trial court found that Parents could be fairly characterized as “high-conflict[,]” and that Mother bore primary blame for the discord. (App. Vol. 2 at 12). Thereafter, the trial court issued the following parenting time order:

Father proposed an alternating “2-3-2” arrangement, with the Parents[] alternating the “2” and “3” days per week. The Court finds that this proposal adequately addresses the Court's finding that both Parents' time and relationship with the Children should be maximized. While this arrangement is suboptimal for C.[P.], as it goes against the Commentary to the Guidelines' recommendation for “frequent” time with both parents for infants, *see* Ind. Parenting Time Guideline II(C), cmt. 2, the Court finds two separate schedules for each of the two children unworkable, particularly for these parents.

(App. Vol. 2 at 12).

[29] Regarding Father's request to change the children's surname to Brugh, the trial court noted that Father had the burden of persuading the trial court that the name change was in the children's best interests. The trial court further explained that it had considered the list of factors relevant to the children's best interests, which are set forth in *C.B. v. B.W.*, 985 NE.2d 340, 343 (Ind. Ct. App. 2013). For example, the trial court found that although Mother had testified that she identified herself by her married name of Starkweather, Mother still occasionally used her maiden name, which was the children's current surname. However, the trial court found that "given this apparent switching between the names, however occasional . . . the degree of confusion likely to be occasioned by the name change" weighed in favor of granting Father's request. (App. Vol. 2 at 14). The trial court specifically explained that it was the granting of the name change that would avoid confusion for the children and others. In addition, the trial court found that it was likely that Father would play a significant role in both children's lives. After citing *C.B.*, 985 N.E.2d at 348, for the proposition that Father's surname would connect the children with their non-custodial parent and remind them that they had two parents who cared for them, which was in their best interests, the trial court granted Father's request to change the children's surname to Brugh.

[30] One month later, on February 11, 2021, Mother filed a motion to correct error. In her motion, Mother stated that the trial court's order awarding Father more parenting time with C.P. than contemplated by the IPTG was not amenable to a mother who was still breastfeeding. However, Father pointed out in his

response that C.P.'s medical records revealed that Mother had stopped breastfeeding C.P. on or before January 14, 2021, one month before she had filed the motion to correct error. Father further stated that Mother's motion did not clearly state any error and read more like a motion to reconsider. In its March 4, 2021, order denying Mother's motion to correct error, the trial court pointed out that "Mother [was] essentially challenging the Court[']s exercise of its discretion, the thought process behind which was explained in the Court[']s Order of January 12, 2022." (App. Vol. 2 at 16).

[31] Mother filed a notice of appeal. Shortly thereafter, she filed a motion in the trial court to stay the trial court's order pending her appeal. In its order denying Mother's motion to stay its order, the trial court explained as follows:

Mother's primary issue appeared to be the presently-impending summer parenting time between Father and the younger child, C.B[.] [A]s Mother pointed out in her Motion, it is clear that, all things being equal, it would be better for both parents to have the frequent, shorter duration with the ten-month-old child.

But all things are not equal here: it would also be better if the Children had parents who could accommodate two different schedules: one for the younger C.B., and the other for the older E.B. But these parents do not, and the Court has made a factual finding that, as the Order being appealed puts it, Mother bears primary blame for the discord. Mother cannot cause discord and then decry the accommodations the Court has made to determine the Children's best interests in light of that discord[.]

[A]nd the Court notes that Mother has offered no solution other than the one she has long sought; a reduction of Father's parenting time.

(App. Vol. 2 at 48-49). This Court’s motions panel granted Mother’s motion for a stay.²

Decision

[32] At the outset, we note that there is a well-established preference in Indiana for granting latitude and deference to the trial court in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). 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). “On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.” *Id.* (cleaned up). “Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Id.* (cleaned up). We now turn to the issues in this case.

[33] Mother argues that the trial court abused its discretion when it: (1) awarded Father more parenting time with E.P. and C.P. than is contemplated by the

² We lift that stay by separate order entered contemporaneously with the handdown of this opinion.

IPTG; and (2) granted Father’s request to change the children’s surname from Penland to Brugh. We address each of her contentions in turn.

1. Parenting Time

[34] Mother first challenges the parenting time schedule that the trial court ordered. Specifically, Mother argues that the trial court abused its discretion when it awarded Father more parenting time with E.P. and C.P. than is contemplated by the IPTG. We disagree.

[35] We initially observe that in all parenting time controversies, trial courts are required to give foremost consideration to the best interests of the child. *In re Paternity of C.H.*, 936 N.E.2d 1270, 1273 (Ind. Ct. App. 2010), *trans. denied*. When reviewing a trial court’s determination of a parenting time issue, we grant latitude and deference to the trial court and will reverse only when the trial court abuses its discretion. *Id.* An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* If there is a rational basis for the trial court’s determination, then no abuse of discretion will be found. *Id.* Therefore, on appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal. *Id.* Further, we may not reweigh the evidence or judge the credibility of the witnesses. *Id.*

[36] The IPTG “are applicable to all child custody situations, including paternity cases[.]” Indiana Parenting Time Guidelines, Preamble (C)(1). Although the

IPTG provide courts with specific parenting times for a child of a given age, the IPTG clearly state that “the purpose of these guidelines is to provide a model which may be adjusted depending upon the unique needs and circumstances of each family.” Indiana Parenting Time Guidelines, Preamble. Thus, the IPTG “should not be interpreted as a limitation of time imposed by the court.”

Indiana Parenting Time Guidelines, Preamble, Cmt. 2. Further, the IPTG are not meant to foreclose the court from granting additional parenting time in any given case. Indiana Parenting Time Guidelines, Preamble, Cmt. 2.

[37] Here, our review of the evidence reveals that Father wants to be active in the children’s lives. He has a house where each child has a bedroom and has changed jobs to have more flexibility in parenting time. However, Parents have an extremely contentious relationship, and Mother is primarily responsible for the discord.

[38] Based on these facts and circumstances, the trial court crafted an order that maximized each parent’s parenting time while considering Parents’ contentious relationship, particularly during parenting time exchanges. Although the evidence might have supported another conclusion, the evidence neither positively requires the conclusion contended for by Mother nor provides a basis for reversal. *See id.* Rather, this evidence provides a rational basis for the trial court’s parenting time order, and we are not in a position to second-guess the trial court’s assessment in this regard.

[39] We further note, as did the trial court in its denial of Mother’s motion to stay, that Mother cannot cause discord and then complain about the accommodations that the trial court has made to determine the children’s best interests in light of that discord. *See e.g. Pierce v. Pierce*, 620 N.E.2d 726, 731 (Ind. Ct. App. 1993) (explaining that “[a] parent may not sow seeds of discord and reap improved custody rights.”), *trans. denied*. The trial court did not abuse its discretion when it awarded Father more parenting time with E.P. and C.P. than is contemplated by the IPTG.

2. Change of Children’s Surname

[40] Mother also argues that the trial court abused its discretion when it granted Father’s request to change the children’s surname from Penland to Brugh. Again, we disagree.

[41] A biological father seeking to obtain a name change for his non-marital children bears the burden of persuading the trial court that the change is in the children’s best interests. *C.B. v. B.W.*, 985 N.E.2d 340, 343 (Ind. Ct. App. 2013), *trans. denied*. Absent evidence of the children’s best interests, the father is not entitled to obtain a name change. *Id.* We review a trial court’s order granting a biological father’s request to change the surname of his biological children for an abuse of discretion. *In re Paternity of N.C.G.*, 994 N.E.2d 331, 334 (Ind. Ct. App. 2013). A trial court abuses its discretion when its decision is against the logic and effect of the facts and circumstances before the court. *Id.*

[42] When a biological parent seeks a surname change in a paternity action, the trial court may properly consider whether the child holds property under a given name, whether public and private entities and community members know the child by a certain name, and the degree of confusion that might be caused by a name change. *C.B.*, 985 N.E.2d at 343. The trial court may also consider whether the biological parent pays child support, exercises parenting time, and participates in the child’s life. *N.C.G.*, 994 N.E.2d at 335. *See also Peterson v. Burton*, 871 N.E.2d 1025, 1029 (Ind. Ct. App. 2007) (opining that “the indicators that complying with Father’s request [for a name change] is in the child’s best interest[s] are that he does pay support, has visitation and participates in the life of his child.”).

[43] Here, our review of the evidence reveals that Father testified that he wanted the children to have the surname Brugh so that they would know that Father cared about them and considered them to be his children. These statements show Father’s focus on his children’s best interests rather than his own. We further note, as the trial court pointed out, if Mother does not consistently use the surname Penland, granting Father’s request to change the children’s surname would avoid confusion for the children and others. In addition, Father has played an active role in E.P.’s life by exercising parenting time and paying child support. The evidence further reveals that Father has also attempted to exercise an active role in C.P.’s life despite the roadblocks that Mother has placed on his path.

[44] This Court has previously determined that having a father's surname under circumstances such as those presented in this case is in a child's best interests because it is a tangible reminder that a child has two parents. *See C.B.*, 985 N.E.2d at 348. This is particularly true when the father is the noncustodial parent. *Id.* Accordingly, the trial court did not abuse its discretion when it granted Father's request to change the children's surname from Penland to Brugh.

[45] Affirmed.

Bradford, C.J. and Robb, J. concur.