

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

James L. Brower,
Appellant,

v.

Kali A. Ballard,
Appellee.

November 7, 2022

Court of Appeals Case No.
22A-DC-970

Appeal from the Wayne Circuit
Court

The Honorable April R. Drake,
Judge

Trial Court Cause No.
89C01-2102-DC-19

Weissmann, Judge.

[1] James L. Brower (Father) appeals restrictions on his parenting time with his six-year-old daughter. As the restrictions were recommended by the Guardian ad Litem (GAL), entered due to Father's erratic behavior, and necessary to protect the child, we affirm.

Facts

[2] Kali A. Ballard (Mother) and Father are the divorced parents of K.B. (Child). During parenting time modification proceedings, the court appointed an experienced GAL. After working with Mother, Father, and Child for 5½ months, the GAL reported several concerning behaviors by Father, including:

- * Father's display to Child of anatomical pictures depicting breasts, genital areas, and fetal development. Child, who was in kindergarten, was distressed by the pictures. The Wayne County Sheriff's Department was investigating Father in connection with the incident.

- * Father's appearance at Child's school smelling of alcohol and having broken tongue depressors wrapped to his fingers and bloody gauze in his mouth. Father initially communicated to Child's teacher only through mostly illegible notes that he wrote with a crayon. He later spoke to her unintelligibly before she escorted him out of the school for safety reasons.

- * Father's pattern of missing supervised parenting time appointments without explanation.

- * His "manic" and angry behavior that frightened Child and left the visitation supervisor so uncomfortable that she called for guards. Although Father did not have a cell phone with him, he left early because he said he had received an emergency text from his employer. Father thereafter refused to provide the text or employment documentation to the GAL.

* Father's inappropriate communications to Child during telephone visits, including whispering details about court matters and pressuring her to repeat new information that he wanted her to learn.

Appellee's App. Vol. II, pp. 36-40.

[3] Based on Father's behavior, the GAL recommended the trial court consider:

* Ordering Father to undergo a parenting time evaluation.

* Suspending Father's phone visits until Father documented his work schedule and verified that he was in treatment with a licensed mental health therapist.

* Requiring Father to contact the GAL to resume parenting time.

* Suspending visits after they resume if Father missed two in a row without verification of his illness; and

* Reminding Father that he is to cooperate with the GAL.

Id. at 41.

[4] Despite receiving the GAL's recommendations, Father continued to miss telephone visits and declined to meet with or provide requested information to the GAL. He also requested Child's therapist allow him access to Child during her sessions, although he was not allowed such contact. Submitting an addendum to her initial recommendations, the GAL suggested suspension of Father's visits until he verified that he is undergoing mental health treatment. She also recommended the trial court order Father to begin a parenting time

evaluation immediately and require Father pay the GAL's fees relating to the "ongoing issues." *Id.* at 71.

- [5] The GAL submitted a second addendum to her recommendations after receiving Father's employment records. Those records showed that Father was terminated as a pharmacy tech for two inappropriate acts. First, he was accused of tampering with Child's pharmacy records, including adding his number as Child's home phone number. He also allegedly added to Child's pharmacy records a forged letter, purportedly from Mother, requesting that the pharmacy refrain from changing Child's home phone number.
- [6] The second act that prompted Father's termination was his written response on a vaccine request form. The generic form questioned whether the person seeking the vaccine was pregnant or breastfeeding. Father responded by writing, "Is this an offer?" *Id.* at 74. Father's colleague who received the form was breastfeeding and reported the incident to their employer.
- [7] The GAL believed that employment record supported Mother's allegations that Father was changing Child's contact information with Child's service providers. The GAL also viewed the vaccine form incident as further indication of Father's "bizarre behaviors" that she had previously reported. *Id.* at 73. Father agreed to, and the court ordered, a suspension of his parenting time with Child until the GAL's concerns could be addressed at a hearing. The trial court also entered a temporary restraining order sought by Mother and agreed to by Father barring his interference with Child's medical records and appointments.

[8] Father had no contact with Child for the next three months. After a hearing on the GAL's recommendations, the trial court adopted most of the GAL's recommendations. It continued the suspension of Father's supervised parenting time and phone contact until he petitions for, and the court grants, resumption of that contact. But it ruled that Father could not petition for that parenting time until he completes a parenting time evaluation and provides proof that he is in ongoing mental health treatment. The court also ordered Father to pay \$400 in GAL fees and to sign a release allowing the GAL access to his treatment records. Father appeals.¹

Discussion and Decision

[9] Father contends the restrictions placed on his parenting time violate his right to due process under the Fourteenth Amendment to the United States Constitution. We review a trial court's parenting time decision for an abuse of discretion. *Hazelett v. Hazelett*, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019). An abuse of discretion occurs when the trial court misinterprets the law or the court's ruling is clearly against the logic and effect of the facts and

¹ Father, who represents himself on appeal, has filed a brief that largely does not comply with the Indiana Rules of Appellate Procedure. Most notably, he fails to recite the facts of the case, does not make clear the issues he is raising on appeal, offers arguments that lack cogency, and cites only one appellate decision. Father's brief is so deficient that we could find that he has waived any right to review. *See* Ind. Appellate Rule 46(A); *Dridi v. Cole Kline LLC*, 172 N.E.3d 361, 366 (Ind. Ct. App. 2021) (finding appellant waived claims by citing only one appellate decision and failing to offer cogent argument). But our preference is to decide cases on their merits. *See Brazier v. Maple Lane Apts. I, LLC*, 45 N.E.3d 442, 451 (Ind. Ct. App. 2015). Therefore, we will address Father's claims to the extent they are discernible.

circumstances before it. *Id.* In all parenting time controversies, the best interest of the child is the foremost consideration. *Id.*

[10] Citing *Troxel v. Granville*, 530 U.S. 57 (2000), Father argues the parenting time restrictions intrude on his constitutional right under the Fourteenth Amendment to “make decisions concerning the care, custody, and control” of his child. *See id.* But that constitutional right is not absolute. *See In re G.Y.*, 904 N.E.2d 1257, 1260 (Ind. 2009). Parental rights may be terminated, for instance, when the parent is unwilling or unable to meet their parental obligations. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). Similarly, a non-custodial parent’s parenting time may be halted or limited “if 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.” Ind. Code § 31-17-4-1(a).

[11] The trial court made such a finding here. After a hearing devoted to the issue, it determined that Father’s exercise of parenting time with Child “might endanger [Child’s] health or significantly impair her emotional development.” Appellee’s App. Vol. II, p. 33. The court based its determination on Father’s erratic behavior, to which the GAL and parenting time supervisor testified. The court also pointed to Father’s testimony. As the court noted, Father “refused to answer most of the questions asked of him regarding his mental health and substance abuse” and “was unable to answer most questions regarding the mental health treatment he claims he is receiving.” *Id.* at 32. The court also noted that “Father testified he does not recall the last time he used alcohol,”

although the parenting time supervisor testified that Father smelled of alcohol at some visits and appeared to be under the influence of either drugs or alcohol often. *Id.* at 32-33.

[12] As he did in the trial court, Father focuses on what he perceives as Mother's inadequacies and the GAL's bias. But the GAL observed Mother to be a fit parent, and Father offers no reasonable basis for challenging that ruling. In any case, the judgment under appeal concerned only the GAL's recommendations as to Father. As to the GAL's alleged bias, Father agreed to appointment of this specific GAL. He only challenged her after she issued recommendations adverse to him.

[13] The record contains substantial evidence supporting both the GAL's recommendations and the trial court's judgment. Father's erratic and sometimes bizarre behaviors were escalating, as was Child's anxiety about Father's visits. Father's aggressiveness became so acute during one parenting time session that the intervention of courthouse guards was required. And Child's teacher had to lead Father, who was incoherent, away from Child's school to protect the children gathering there for a holiday program. Father was under criminal investigation for exposing Child to graphic anatomical material and education, and he lost his job due to alleged sexual remarks and fraudulent behavior relating to Child's medical records. When given the opportunity to explain the source of such behaviors or the treatment he was seeking to resolve them, Father was evasive.

[14] On appeal, Father’s arguments amount to an improper request that we reweigh the evidence and assess witness credibility differently than the trial court did. Adhering to our standard of review, we decline. *See J.M. v. N.M.*, 844 N.E.2d 590, 599 (Ind. Ct. App. 2006) (ruling an appellate court will neither reweigh the evidence nor judge witness credibility when determining the propriety of a trial court’s parenting time decision).

[15] We conclude that the trial court did not abuse its discretion when it determined, under Indiana Code § 31-17-4-1(a), that Father’s parenting time would endanger Child’s physical health or significantly impair Child’s emotional development. *See In re Paternity of C.H.*, 936 N.E.2d 1270, 1273 (Ind. Ct. App. 2010) (“If there is a rational basis for the trial court’s determination, then no abuse of discretion will be found.”).² We therefore affirm the trial court’s judgment restricting Father’s parenting time.

May, J., and Crone, J., concur.

² The trial court’s conclusion that Father’s continued parenting time “might endanger” Child tracks the language of Indiana Code § 31-17-4-1(a). But “[e]ven though the statute uses the word ‘might,’ this Court has previously 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[, and] an order for supervision constitutes such a restriction.” *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013). Father does not challenge the trial court’s use of “might” as inadequate to support its parenting time restrictions and thus has waived such a claim. In any case, as in *J.M.*, 844 N.E.2d at 600, we view the trial court’s conclusion, when considered in the context of the court’s five-page order, as “tantamount to a finding that unsupervised parenting time would significantly impair [Child’s] emotional development.” *But see Farrell v. Littell*, 790 N.E.2d 612, 616-17 (Ind. Ct. App. 2003) (reversing denial of parenting time for trial court’s failure to explicitly find that visitation by the father would endanger the child’s health or significantly impair the child’s emotional development).