

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of:
Z.D.B.,

Darlene Lewis,

Appellant,

v.

Christopher J. Ballinger, Sr.,

Appellee.

January 23, 2024

Court of Appeals Case No.
23A-JP-1268

Appeal from the Marion Circuit
Court

The Honorable Susan Boatright,
Magistrate

Trial Court Cause No.
49C01-1504-JP-11812

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

- [1] Darlene Lewis (“Grandmother”) appeals the trial court’s order suspending her grandparent visitation. We affirm.

Facts and Procedural History

- [2] Z.D.B. (“Child”) was born in August 2014, and Child’s biological mother died eight days after Child’s birth. Christopher J. Ballinger, Sr., (“Father”) completed a paternity affidavit in August 2014 and has since had physical and legal custody of Child. In April 2015, Father filed a petition to establish paternity under cause number 49C01-1504-JP-11812 (“Cause No. 812”).¹ Father married Misty White (“Adoptive Mother”), who adopted Child. In August 2017, Grandmother, who was Child’s biological maternal grandmother, filed a petition for custody and motion for rule to show cause.² On December 5, 2017, the court issued an Order on Grandparent Visitation granting Grandmother visitation, beginning January 1, 2018, on one Saturday each month for seven hours. On September 4, 2018, the court entered a Mediated Agreement, signed by Father and Grandmother, providing that Father shall maintain sole legal and physical custody of Child, Grandmother shall have visitation on the first or second Saturday of each month for seven hours, Grandmother shall follow any dietary and medical instructions provided by Father for Child’s care, and Child shall continue counseling as necessary. In

¹ Grandmother had previously filed a petition for guardianship in November 2014 under cause number 49D08-1411-GU-36377 (“Cause No. 377”), and the court later ordered that Cause No. 377 be consolidated with Cause No. 812.

² The appellant’s appendix does not contain a copy of these filings.

January 2021, Father filed a petition for contempt and request to terminate grandparent visitation.³

- [3] On December 1, 2021, the court entered a Final Agreed Entry, signed by Father and Grandmother, providing that a number of issues were pending⁴ and that the parties wished to make an agreement in order to avoid a contentious trial. The order provided: “As per the [guardian ad litem’s] recommendation: [Child] and [Grandmother] will engage in counseling to address the impact of the lack of regular contact between them which is now in excess of a year; [Child’s] anger and frustration with Grandmother and their respective positions on what has or has not happened when [Child] is with Grandmother.” Appellant’s Appendix Volume II at 53-54. It provided Child “will be evaluated for individual counseling and follow the recommendation of the counseling [sic] performing said evaluation,” “[i]f recommended and approved by the therapist, visitation between Grandmother and [Child] will resume after five (5) joint counseling sessions between Grandmother and [Child] and will be two (2) hours in duration on one Saturday per month,” and “[t]he visitation will continue at this frequency and duration until further order of the Court or agreement of the parties.” *Id.* at 54-55. It further provided “[a]ll parties when spending time with [Child] shall comply with directive from [Child’s]

³ The appellant’s appendix does not contain a copy of this petition.

⁴ The agreement referred to Father’s January 2021 petition for contempt and request to terminate grandparent visitation and to several motions for rule to show cause and compel discovery.

healthcare providers and promptly share information regarding medications allergies and food restrictions, etc. upon receipt from the medical provider.” *Id.* at 56. The order also stated a review hearing would be set to address the status of counseling and “what steps, if any, should be taken to resume the visitation beyond the initial two (2) hour visit called for under the terms of this Agreement.” *Id.* at 58. An entry on April 7, 2022, in the chronological case summary (“CCS”) states “Grandmother and the child have been order[ed] to attend joint counseling sessions before grandparent visitation resumes. . . . Referring to Service Referral Center for assistance in potentially locating applicable service provider for joint counseling.” *Id.* at 19. The CCS shows the court held several status conferences and that “SRC” filed several reports. *Id.* at 20-24. A CCS entry on March 7, 2023, states the court received “a closure report from the SRC.” *Id.* at 25.

[4] On March 14, 2023, Father filed a Verified Petition to Terminate and/or Stay Grandparent Visitation. The court held a hearing over two days in April 2023 at which it heard evidence from Guardian Ad Litem Travis Van Winkle (the “GAL”), Father, Adoptive Mother, and Grandmother.

[5] On May 4, 2023, the trial court issued a nineteen-page order. The court found that Father and Grandmother have had relational problems since Child’s birth and that, from birth to age five, Child saw Grandmother approximately one time per month. The court found:

55. The GAL, upon reviewing the records, and consulting with Father, Grandmother, and [Adoptive Mother], the child, and

the child's school, concluded that Grandmother and the child had had a good relationship three years prior, and that the deterioration of the relationship occurred, in part, due to Grandmother's disrespect of [Adoptive Mother's] role, as Mother, in the child's life, and because Father's directives regarding the child's medical issues were ignored by Grandmother, causing the child to become ill after several visits with Grandmother.

* * * * *

60. Grandmother said that she has an attitude toward [Adoptive Mother], that "[biological mother] will always be [Child's] mother"
61. Father said that the child became rebellious, and would say things she was not allowed to say (by Father's rules) after she visited with Grandmother. Mother reported that the child would have an attitude, would talk back, and act like she did not care. The child would also get in trouble at school on days following visits with Grandmother.
62. The child has medical diagnoses of an enlarged bladder, eczema, anxiety disorder, and dietary and health issues that affect her health and well-being.
63. Father advised Grandmother of the child's medical conditions, but Grandmother ignored Father's advice and instructions.
64. Grandmother believes that Father and [Adoptive Mother] have made up the child's medical conditions, and said that the first she'd heard about the child's medical conditions was at the hearing in April 2023.
65. Father reported that when the child visited with Grandmother, she came home from those visits and became ill. On at least one occasion, the child was so ill that she had to be taken to the emergency room.

* * * * *

- 68. Grandmother did not have contact with the child from March 2020 through December 2021.
- 69. Father properly limited, or restricted, the contact between Grandmother and the child after Grandmother ignored Father's directives to Grandmother about the child's dietary restrictions and medical conditions. . . .
- 70. Counseling commenced with the child's Therapist soon after the December 21 [sic] Agreed Entry, but was terminated when Grandmother requested a neutral therapist.

* * * * *

- 72. In relation to the first therapy visit with Grandmother, the child reacted with a panic attack, and [Adoptive Mother] reported that she screamed, was red, crying, and could not move, so the child was taken to the emergency room.
- 73. At the review hearing on April 6, 2022, the parties indicated a problem in rescheduling the counseling between Grandmother and the child, so the matter was continued. The Court issued an order referring them to the Domestic Relations Counseling Bureau for therapy. Thereafter, Grandmother completed intake, but no counseling had commenced by July 2022. There was a gap of approximately seven (7) months before another Therapist could be engaged.
- 74. Grandmother had only had one (1) visit in-person with the child at a park, in July 2022, and at which Father, [Adoptive Mother] and the GAL were also present. . . .

* * * * *

- 79. Counseling recommenced and continued with the second Therapist, who provided individual counseling to Grandmother, and the child, as well as reunification therapy with the two of them.

* * * * *

84. Although Grandmother denied it, she has said bad things to the GAL and the therapist about the Father and his wife, including remarks to the child that “they (Father and [Adoptive Mother]) are not your (real) parents.”
85. The Therapist reported that no progress was made in reunification therapy, and that the child regressed the longer therapy went on.
86. On March 6, 2023, the DRCB Therapist/Service Referral and Coordination Center issued its closing report, and terminated reunification counseling between the child and Grandmother, citing that counseling was having an “increasingly detrimental effect on [Child’s] mental health, and well-being, and behaviors at school and at home.”

* * * * *

91. Despite continue[d] focus on developing coping skills, and allaying the child’s fears, the child continued to experience anxiety, anger, acting out, nightmares, and wets her clothes at school when confronted with seeing, or having contact with, Grandmother. The Therapist reported:

“[Child] struggles to utilize coping skills with emotions that are intense such as after joint sessions and during times when her thoughts or dreams focus on her fear that her grandmother will take her away from her parents. Therapist and [Adoptive Mother] have spent [a] great deal of time assuring [Child] that she will not be taken away from her parents and that the goal of reunification counseling is to build [a]relationship with her grandmother. However, [Child] continues to express this fear and has begun having nightmares about this fear. [Child’s] anxiety continues to be heightened, she is displaying negative behaviors in school resulting in multiple calls home, she had [a] bladder accident,

and has begun to have nightmares about being taken away”

* * * * *

98. The GAL concurs with the therapist’s recommendations that reunification counseling terminate, that Grandmother have no contact with the child at this time, and that future visits between them be considered when the child is older and develops better coping skills. The GAL admitted that it is a risk that Grandmother’s and the child’s relationship may not be reconciled.
99. The Court finds that Father’s, [Adoptive Mother’s], and the GAL’s testimony is more credible than Grandmother’s testimony.
100. The Court finds Father is a fit person to make the decisions regarding the child, and has considered whether it is in the child’s best interests to have contact with Grandmother, giving due consideration to the impact that the child’s visits have had on her physical, emotional, educational, and familial relationships and well-being.
101. The Court gives special weight to Father’s testimony that he has the child’s best interests in mind when he restricted or denied Grandmother’s visitation with the child.
102. The Court finds that any limitations placed by Father on Grandmother’s contact with the child, although very hurtful to her and her extended family, were reasonable in consideration of the child’s physical, emotional, and mental reactions to those visits.
103. The Court acknowledges that Grandmother has given great effort to maintaining a relationship with the child, but she has ignored the advice and recommendations of Father, and the recommendations of the GAL and both of the child’s therapists, that it is not in the child’s best interests to have visits with her, at least since 2021, and not at this time.

104. The Court finds that Grandmother has not established that in-person visits, or a continuation of reunification/conjoint counseling, is in the child's best interests.
105. The Court finds and orders that it is in the child's best interests that all reunification counseling terminate between Grandmother and the child, at this time, until the child is older and can develop coping skills to overcome her fears and anxieties about Grandmother.
106. The Court suspends all in-person visits between the child and Grandmother, effective immediately, as it is not in the child's best interests for such visits to occur at this time.
107. Either party may petition this Court for a review of the reinstitution of reunification counseling once the child reaches age 10, or earlier, if her therapist recommends that she is able to cope with such contact, and it is in the child's best interests.

Id. at 38-45.

Discussion

- [6] Grandmother argues that, as the party petitioning to modify a grandparent visitation order, the burden of proof should have been placed on Father, not her, and that the trial court erroneously placed the burden on her. She further asserts the evidence shows that continued reunification therapy and visitation was in Child's best interests. Father argues the evidence supports the court's best interests determination and the court entered adequate factual findings to support its order.
- [7] Ind. Code § 31-17-5-1 provides that a child's grandparent may seek visitation rights under certain circumstances including where the child's parent is

deceased. Ind. Code § 31-17-5-2 provides the court may grant visitation rights if it determines that visitation rights are in the best interests of the child and, in determining the best interests of the child, it may consider whether a grandparent has had or has attempted to have meaningful contact with the child. Ind. Code § 31-17-5-6 provides that, upon hearing evidence in support of and opposition to a petition, the court shall enter a decree setting forth the court's findings and conclusions.

[8] Ind. Code § 31-17-5-7 provides: “The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child.” “Even though the petitioning grandparent carries a high burden on the initial petition for grandparent visitation rights, the petitioner seeking a subsequent change in a grandparent visitation order bears the burden of showing the order should be modified.” *In re Adoption of A.A.*, 51 N.E.3d 380, 390 (Ind. Ct. App. 2016), *reh’g denied, trans. denied*. We review an order modifying grandparent visitation for an abuse of discretion. *D.G. v. W.M.*, 118 N.E.3d 26, 29 (Ind. Ct. App. 2019), *trans. denied*. A court abuses its discretion when its decision is contrary to law or is against the logic and effect of the facts and circumstances before the court. *Id.* Our review is conducted with a preference for granting latitude and deference to trial judges in family law matters. *In re Visitation of L-A.D.W.*, 38 N.E.3d 993, 997 (Ind. 2015).

[9] As for Grandmother’s claim the court applied an incorrect legal standard, it is clear from the court’s lengthy order and numerous findings as a whole that it carefully considered and weighed the testimony and evidence presented by

Father and Grandmother, found the testimony of Father, Adoptive Mother, and the GAL to be more credible than Grandmother's testimony, and concluded that Father presented evidence regarding the best interests of Child showing the order should be modified. *See Joe v. Lebow*, 670 N.E.2d 9, 26 (Ind. Ct. App. 1996) (“[W]hen we consider the trial court’s special findings, they are to be looked at as a whole, and are construed liberally to support the judgment.”). Reversal is not required on this basis.

[10] As for Child’s best interests, to the extent Grandmother does not challenge the court’s findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*. The trial court issued numerous findings revealing that it heard and carefully considered the evidence regarding Child’s needs, medical conditions, and behaviors during and following visits with Grandmother; Grandmother’s actions and statements regarding Adoptive Mother and Father and Child’s needs and behaviors; and the outcomes of counseling. The court found that “the DRCB Therapist/Service Referral and Coordination Center issued its closing report, and terminated reunification counseling between [Child] and Grandmother, citing that counseling was having an ‘increasingly detrimental effect on [Child’s] mental health, and well-being, and behaviors at school and at home.’” Appellant’s Appendix Volume II at 42. The court found that Grandmother ignored the recommendations of Father, the GAL, and both of Child’s therapists.

[11] Father testified regarding Grandmother's disregard for his requests related to Child's medical conditions, Child's changed behavior following visits with Grandmother, and the impact of visits on Child's mental health. Adoptive Mother testified regarding Child's behavior after visits with Grandmother and Child's panic attack following a joint therapy session. The GAL testified that Grandmother's position has been that Child does not have medical conditions or that the conditions were exaggerated. He indicated that, according to Child, Grandmother has stated to Child that Father and Adoptive Mother are not her real parents. He testified Child did not want to visit Grandmother's home or be alone with Grandmother. He indicated that progress was not made in therapy in terms of reunification.

[12] The GAL testified "I don't see how visits at this point can happen in a way that's healthy for [Child]," "she was having nightmares about [Grandmother] coming to the school and trying to take her," and "[s]he continued to have this concern that if she goes with [Grandmother], [Grandmother's] not going to send her back." Transcript Volume II at 22. He testified "I think it's in [Child's] best interest to stay the visits" and "[t]he counselor had indicated in the last report filed that she thought it may be best to revisit this as [Child] got a little older and better able to handle the anxiety and stress and use coping skills to work on her relationship with [Grandmother]." *Id.* at 23. The court found that it is in Child's best interests that reunification counseling between Grandmother and Child terminate "at this time, until the child is older and can develop coping skills to overcome her fears and anxieties about Grandmother."

Appellant's Appendix Volume II at 45. While it suspended in-person visits the trial court ordered that "[e]ither party may petition . . . for a review of the reinstitution of reunification counseling once [Child] reaches age 10, or earlier, if her therapist recommends that she is able to cope with such contact, and it is in [Child's] best interests." *Id.* Evidence was presented supporting the court's conclusion that modification would serve Child's best interests. Mindful of our deference to trial judges in family law matters, we find no abuse of discretion.

[13] For the foregoing reasons, we affirm the trial court.

[14] Affirmed.

Vaidik, J., and Bradford, J., concur.