

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Patricia Daisy (Pace),
Appellant-Intervenor,

v.

Sarah Ransom,
Appellee-Petitioner

and

Anthony Pace,
Appellee-Respondent

June 2, 2022

Court of Appeals Case No.
21A-DR-2335

Appeal from the
LaPorte Superior Court

The Honorable
Richard R. Stalbrink, Jr., Judge

Trial Court Cause No.
46D02-0904-DR-118

Vaidik, Judge.

Case Summary

- [1] P.D. (“Stepmother”) moved to intervene in a child-custody proceeding between A.P. (“Father”) and S.R. (“Mother”), alleging she is the child’s de facto custodian. The trial court granted Stepmother’s motion to intervene but denied her de facto custodian status, finding she was not the child’s primary caregiver. Stepmother appeals, and we affirm.

Facts and Procedural History

- [2] D.P. (“Child”) was born to Mother and Father, who never married, in March 2009. After Child’s birth, Mother had physical custody and Father exercised parenting time. In 2011, Father met Stepmother and the two soon began living together. The next year, Mother was in a “really bad relationship and she didn’t want [Child] involved,” so Father took Child full-time. Tr. Vol. II p. 11. Father and Stepmother married in August 2012, and the next month Father moved to officially modify custody of Child, now three. The court granted Father primary physical custody of Child.
- [3] From 2012 to 2019, Child lived with Father and Stepmother, and Mother had parenting time generally consisting of alternating weekends and two non-overnight visits a week. Due to Father’s work schedule, Stepmother often cared for Child while he was in their home, including cooking most of his meals, taking him to and from school, and helping with homework. She also attended doctor’s appointments and school conferences with Mother and Father.

- [4] In July 2019, Father and Stepmother separated, and Father and Child, now ten, moved out of the home. The couple reconciled later that year but broke up again in March 2020. Stepmother continued to visit with Child until October, when Father filed for divorce and cut off contact between Stepmother and Child.
- [5] A month later, Mother moved to modify custody, requesting she be given physical custody of Child. Stepmother moved to intervene in the custody proceeding and filed a “petition to establish herself as [Child’s] de facto custodian,” asking for the trial court to take her status of de facto custodian into account “when making any determination on modification of custody and/or visitation between her and [Child].” Appellant’s App. Vol. II pp. 18, 21.¹ A hearing on Stepmother’s motion was held in March 2021. Stepmother testified about her care of Child while he lived in her home and stated she and Child were “very connected.” Tr. Vol. II p. 13.
- [6] After the hearing, the trial court issued an order granting Stepmother’s motion to intervene but denying her “establishment as a de facto custodian.” Appellee’s App. Vol. II p. 6. In doing so, the trial court found,

¹ As this statement shows, there was confusion in the record as to whether Stepmother, as de facto custodian, was seeking custody or visitation. But whether a third party qualifies as a de facto custodian “bears only on the question of custody,” not visitation. *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 462 (Ind. 2009). Stepmother has other avenues to seek visitation. *See Richardson v. Richardson*, 34 N.E.3d 696, 701 (Ind. Ct. App. 2015) (“[O]ur supreme court has recognized that a stepparent may be granted visitation upon establishing the existence of a custodial and parental relationship and that visitation is in the child’s best interests.”).

3. However, pursuant to Indiana Code Section 31-9-2-35.5, for [Stepmother] to establish herself as a de facto custodian, she must be the *primary caregiver* for the statutorily required period.

4. As [Stepmother] was a caregiver for the Child, the Father was also a caregiver to the child while residing with [Stepmother]. Furthermore, the Mother also qualifies as a caregiver to the Child throughout this time. Thus, it would be unjust to qualify [Stepmother] as a *primary caregiver* for the [C]hild while both biological parents provided care for the Child during this same period.

Id.

[7] Stepmother now appeals.

Discussion and Decision

[8] Stepmother contends the trial court erred in determining she was not Child's de facto custodian. Before custody can be awarded to a third party, that third party must establish de facto custodian status by clear and convincing evidence. *A.J.L. v. D.A.L.*, 912 N.E.2d 866, 872 (Ind. Ct. App. 2009). In reviewing a judgment requiring proof by clear and convincing evidence, an appellate court may not impose its own view about whether the evidence is clear and convincing, but must determine, by considering only the probative evidence and reasonable inferences supporting the judgment and without weighing evidence or assessing witness credibility, whether a reasonable trier of fact could conclude that the judgment was established by clear and convincing evidence.

Id.

[9] If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding and shall award custody to the de facto custodian if it determines that is in the child's best interests. Ind. Code § 31-14-13-2.5. Indiana law defines a "de facto custodian" as a person who has been the primary caregiver for, and financial support of, a child who has resided with the person for a period of at least one year if the child is at least three years old. I.C. § 31-9-2-35.5. "The apparent intent of the de facto custodian statute is to clarify that a third party may have standing in certain custody proceedings, and that it may be in a child's best interests to be placed in that party's custody." *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 462 (Ind. 2009).

[10] Here, the trial court determined that while Stepmother was a caregiver for Child, because of Father's and Mother's significant presence in his life, she was not the **primary** caregiver. This is supported by the record. Child lived with Mother until Father took custody of him in 2012. Then Child lived with Father and Stepmother and Mother exercised parenting time—overnights on alternating weekends, holidays, and two weekly visits. While Stepmother testified she cared for Child while he lived with Father, including taking him to and from school and making meals, the record shows Mother and Father were also actively involved in Child's life, including taking him to medical appointments and school conferences.

[11] Yet Stepmother argues the trial court "created an alternate test" under the statute by holding that when "the biological parents performed some small

amount of caregiving . . . no other person could be found to have been the primary caregiver.” Appellant’s Br. p. 16. We do not read the trial court’s order so broadly. Instead, the trial court found that Father, Mother, and Stepmother were all Child’s caregivers, and that as such Stepmother was not the “primary” caregiver despite her active involvement in Child’s life. Given that we have required the term “primary caregiver” to be strictly construed, we cannot say this was an erroneous conclusion. *See In re Paternity of T.P.*, 920 N.E.2d 726, 731 (Ind. Ct. App. 2010) (holding caretakers’ claim that they cared for child about 49% of the time was not a “significant majority” and thus they were not primary caregivers), *trans. denied*.

[12] Stepmother fails to show the trial court’s conclusion that she was not Child’s primary caregiver and de facto custodian is clearly erroneous.

[13] Affirmed.

Crone, J., and Altice, J., concur.