

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joseph Wooley,
Appellant-Petitioner,

v.

Mariah Fulton,
Appellee-Respondent.

October 29, 2021

Court of Appeals Case No.
21A-JP-432

Appeal from the Huntington
Circuit Court

The Honorable Davin G. Smith,
Judge

Trial Court Cause No.
35C01-1912-JP-47

Pyle, Judge.

Statement of the Case

- [1] Joseph Wooley (“Father”) appeals the trial court’s order that phased in his parenting time with his two children and ordered him to pay \$1,000.00 of

Mariah Fulton’s (“Mother”) attorney fees. Father specifically argues that the trial court abused its discretion when it: (1) phased in his parenting time without a finding that such a restriction was warranted; and (2) ordered him to pay \$1,000.00 of Mother’s attorney fees. Concluding that Father invited any error with regard to parenting time and that the trial court did not abuse its discretion when it ordered him to pay \$1,000.00 of Mother’s attorney fees, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether Father invited any error with regard to parenting time.
2. Whether the trial court abused its discretion when it ordered Father to pay \$1,000.00 of Mother’s attorney fees.

Facts

[3] Mother and Father, who were never married, are the parents of two children: (1) daughter J.M.W. (“J.M.W.”), who was born in March 2017; and son J.S.W. (“J.S.W.”) (collectively “the Children”), who was born in August 2019. Mother and Father were involved in a four-year relationship. However, the last two years of the relationship were turbulent because of Father’s drug use.

[4] For example, in the spring or early summer of 2017, when J.M.W. was approximately three months old, Mother asked Father to take J.M.W. to daycare because Mother was running late to work. Mother placed J.M.W. in a

portable car seat on the front porch so that Father could place the car seat in his vehicle. Mother did not buckle J.M.W. in the car seat. After Mother had left for work, Father passed out on top of the car seat and knocked J.M.W. out of it and onto the porch. A neighbor, who had heard a baby crying for thirty minutes, found Father and J.M.W. on the porch. Someone apparently contacted the police, and Father, who was barely able to stand or talk, left his home and the child before the police arrived.

- [5] During another incident, Mother and Father were arguing in the car while Father was driving on a country road. When Mother handed her engagement ring back to Father, Father threw the ring out the window. Father then increased the speed of his vehicle to ninety miles per hour and threatened to crash the car and kill both himself and Mother.
- [6] Further, in May 2019, while Mother was six-months pregnant with J.S.W., Mother and Father became involved in an altercation. The State charged Father with: (1) Level 5 felony domestic battery with bodily injury to a pregnant victim; (2) Level 5 felony strangulation of a pregnant victim; (3) Level 6 felony domestic battery committed in the presence of a child less than sixteen years old; (4) Class A misdemeanor domestic battery; and (5) Class B misdemeanor possession of marijuana.
- [7] Four months later, in September 2019, Father, who was out on bond for these pending charges, tested positive for methamphetamine. Father knew that there would soon be a warrant for his arrest and entered a drug treatment program.

- [8] In December 2019, the State amended the May 2019 charging information to include a count of Level 6 felony criminal confinement. Father pleaded guilty, pursuant to a plea agreement, to that Level 6 felony, and the State dismissed the remaining charges. As a term of probation, Father was required to complete a halfway house program for drug addicts. Father began the halfway house program in December 2019.
- [9] Also in December 2019, Father filed two separate petitions under two separate cause numbers to establish paternity of J.M.W. and J.S.W. The trial court eventually consolidated the two cases. In these petitions, Father requested parenting time with the Children if he was determined to be their biological father.
- [10] Following Mother and Father's unsuccessful attempt at mediation, the trial court held a hearing on Father's petitions in November 2020. The trial court heard the evidence as set forth above. In addition, at the time of the hearing, the parties had signed paternity affidavits that Father was the Children's biological father.
- [11] Also at the hearing, Mother, who has a third young child, testified that she had lost her job at Vision Source in March 2020 as a result of the COVID-19 pandemic. After losing her job, Mother decided to attend cosmetology school as a full-time student to secure a better future for her children. She was not employed at the time of the hearing but expected to complete cosmetology school in March 2021. Mother had also recently purchased a house with her

savings. At the time of the hearing, Mother paid \$60.00 per week for childcare expenses. However, according to Mother, those childcare expenses would soon be increasing to \$220.00 per week. Mother testified that when she and Father had lived together, Father had earned \$20.00 per hour and worked forty hours per week. She submitted a Child Support Obligation Worksheet, whereon she listed Father's weekly gross income as \$800.00 per week. Although she was not employed, Mother thought it was fair to list her income at minimum wage. Accordingly, Mother listed her weekly gross income as \$290.00.

[12] Mother also testified that she and the Children had met Father in a park the day before Father's Day in 2020 so that Father could spend time with the Children. In addition, the following day, Father's Day in 2020, Mother had taken the Children for a visit to Father's parents' home, where Father lives. Mother did not leave the Children alone with Father during either visit.

[13] Regarding Father's future parenting time, Mother testified that "therapy would be a good reintegration tool . . . for [Father] and the kids to get to know one another." (Tr. Vol. 2 at 121). In addition, Mother testified that she was asking for visits in therapy to continue until a therapist would deem it acceptable to move to a second phase. Mother further agreed that her hope was that "ultimately the phase-in process would lead to [parenting time pursuant to] the Indiana Parenting Time Guidelines." (Tr. Vol. 2 at 126). Lastly, Mother testified that she had incurred \$5,000.00 in attorney fees, and she asked the trial court to order Father to pay all or part of those fees.

[14] Father testified that he had not used drugs in over a year. Father further testified that he was currently unemployed and that his income had been negatively impacted by the COVID-19 pandemic. According to Father, he had most recently worked during the summer of 2020 and had made \$12.50 an hour while working an average of twenty-five hours per week. He submitted a Child Support Obligation Worksheet, whereon he listed his weekly gross income as \$350.00 and Mother's weekly gross income as \$290.00. At the time of the hearing, Father lived with his parents. He did not testify regarding his expenses.

[15] Also at the hearing, the following colloquy occurred between Father, who had only seen the Children two times in the past year, and his counsel during direct examination:

Counsel: Now, uh, with regard to your parenting time, um, are you requesting that the court grant you parenting time pursuant to the Indiana Parenting Time Guidelines?

Father: Yes.

Counsel: Okay. Um, and it has been a while since you have seen the children on any kind of regular basis.

Father: Yes.

Counsel: Um, are you amenable to phasing in your parenting time to allow the children to acclimate to being with you on a regular basis?

Father: Yes, I am.

Counsel: Okay. Um, would you request that you start off for periods of two hours a week, moving it up to four and six up until you can implement the full parenting time guidelines?

Father: Yes, ma'am, I'm willing to do whatever it takes.

Counsel: Do you believe that your parenting time should be supervised by anyone at this point in time?

Father: I don't believe it is a priority or a necessary thing, but if that's something the court feels like would be a right move then I would be more than willing to.

(Tr. Vol. 2 at 64-65).

[16] Following the hearing, in February 2021, the trial court issued an order granting Father “phase-in parenting time with the Children as he ha[d] had little to no contact with [them] since December of 2019.” (App. Vol. 2 at 59). Specifically, the trial court ordered Father and the Children to first engage in therapeutic parenting time with a counselor. When the counselor determined that it was acceptable to phase out of therapeutic parenting time, Father would be allowed supervised visits with the Children three times a week for a total of seven hours per week. Upon successful completion of three months of supervised parenting time, Father would be allowed unsupervised parenting three times a week for a total of seven hours per week in a community setting. Upon successful completion of three months of unsupervised parenting time in a community setting, Father would be allowed parenting time pursuant to the

Parenting Time Guidelines consistent with the ages of the Children. The trial court also ordered Father to pay \$1,000.00 of Mother’s attorney fees.

[17] Father now appeals.

Decision

[18] Father argues that the trial court abused its discretion when it: (1) phased in his parenting time without a finding that such a restriction was warranted; and (2) ordered him to pay \$1,000.00 of Mother’s attorney fees. We address each of Father’s contentions in turn.

1. Parenting Time

[19] The trial court’s order granted Father “phase-in parenting time with the Children as he has had little to no contact with the minor children since December of 2019.” (App. Vol. 2 at 59). Father argues that the trial court abused its discretion when it phased in his parenting time without a finding that such a restriction was warranted.

[20] However, our review of Father’s testimony at the hearing reveals that Father agreed to phasing in his parenting time to allow the Children to acclimate to being with him on a regular basis. Indeed, Father testified that he was “willing to do whatever it t[ook]” to have parenting time with the Children. (Tr. Vol. 2 at 65). Father has therefore invited the error about which he now complains.

[21] The Indiana Supreme Court recently explained as follows:

The invited-error doctrine is based on the doctrine of estoppel and forbids a party from taking advantage of an error that [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct. Where a party invites the error, [he] cannot take advantage of that error. In short, invited error is not reversible error.

Matter of J.C., 142 N.E.3d 427, 432 (Ind. 2020) (cleaned up). Here, because Father specifically agreed to phased in parenting time and to doing whatever it took to have parenting time with the Children, Father cannot now argue that the trial court abused its discretion by phasing in his parenting time without a finding that such a restriction was warranted.

2. Attorney Fees

[22] Father also argues that the trial court abused its discretion when it ordered him to pay \$1,000.00 of Mother's attorney fees. We disagree.

[23] We review a decision to award attorney fees for an abuse of discretion.

Paternity of S.A.M., 85 N.E.3d 879, 890 (Ind. Ct. App. 2017). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.*

[24] Pursuant to INDIANA CODE § 31-14-18-2(a)(2), the trial court in a paternity action may order a party to pay a reasonable amount for attorney fees incurred by the other party. *Benefiel v. Stalker*, 119 N.E.3d 1133, 1136 (Ind. Ct. App. 2019). In making such an award, the trial court must consider the parties'

resources, their economic conditions, their respective earning abilities, and other factors that bear upon the reasonableness of the award. *Id.* The trial court may also consider any misconduct by one party that causes the other party to directly incur fees. *Id.* Moreover, when one party is in a superior position to pay fees over the other party, an award of attorney fees is proper. *Id.*

[25] Here, our review of the record reveals that, at the time of the hearing, Mother was a full-time cosmetology student with no income. She had recently purchased a home with her savings and was a single parent to three young children. Father, on the other hand, had previously earned \$20.00 per hour and had worked as recently as the summer of 2020. At the time of the hearing, he was living with his parents and did not testify about having any expenses. Based upon these facts and circumstances, Father is in a superior position to pay attorney fees over Mother. Accordingly, the trial court did not abuse its discretion when it ordered Father to pay \$1,000.00 of Mother's attorney fees, which totaled \$5,000.00. *See Benefiel*, 119 N.E.3d at 1137.

[26] Affirmed.

Bailey, J., and Crone, J., concur.