

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Marriage of,
Emily G. McConnell,
Appellant-Respondent,

v.

Cedric J. Booker,
Appellee-Petitioner.

March 21, 2023

Court of Appeals Case No.
22A-DC-2348

Appeal from the
Warrick Superior Court

The Honorable
Amy Steinkamp Miskimen, Judge

Trial Court Cause No.
87D02-2111-DC-2188

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Emily G. McConnell (“Mother”) appeals from the trial court’s dissolution decree, which granted parenting time to Cedric J. Booker (“Father”) that deviated from the Indiana Parenting Guidelines. Mother raises two issues for our review, which we restate as:

- I. Whether the trial court abused its discretion in its parenting time determination because it deviated from the recommended parenting time for a child aged ten months to thirty-six months; and
- II. Whether the trial court abused its discretion when it did not place any restrictions on the child’s ability to be in contact with maternal grandfather.

[2] Because we conclude that the trial court did not abuse its discretion on either count, we affirm.

Facts and Procedural History

[3] Mother and Father were married on April 10, 2021. The parties share a child together, R.M.B. (“the Child”), who was born on September 15, 2021. Mother and Father separated, and after the birth of the Child, Mother moved from Evansville, Indiana to her mother’s home in Bloomington, Indiana. On November 5, 2021, Father filed a Petition for Order of Custody and Support. At that time, Mother and Father had not yet satisfied Indiana’s residency requirements for a divorce, but after the residency requirements were met, Father later filed a petition for dissolution of the marriage between the parties.

- [4] On December 20, 2021, a hearing was held on Father’s Petition for Order of Custody and Support. The trial court issued a provisional order on December 27, 2021, and awarded Mother primary physical custody of the Child. Father was granted parenting time with the Child each Sunday from 9:00 a.m. to 5:00 p.m. (CST). The parties were ordered to meet in Washington, Indiana for the exchanges. Mother and Father followed this parenting time schedule for the next seven and a half months.
- [5] On January 17, 2022, Father filed a Petition for Dissolution of Marriage, and a hearing was held on that petition on August 2, 2022. At the time of the hearing, Father lived with his mother in Evansville, which was one hour and forty minutes from where Mother resided. He had a crib in his room for the Child. Father worked the day shift at Toyota on Mondays through Fridays and had the weekends off. Father’s mother had worked for over thirty years as a certified medical assistant at Deaconess Hospital. When Father drove to pick the Child up for his parenting time, his mother would accompany him and ride in the back of the car with the Child. Father testified that the Child was well-adjusted and happy during his parenting time and that the Child was comfortable and happy during travel for the exchanges. Father had “no problems at all” with the Child during his parenting time. Tr. Vol. 2 p. 30.
- [6] At the time of the hearing, Mother lived in Bloomington with her mother and stepfather. Mother worked at St. Vincent Hospital in Indianapolis and typically worked two ten-hour shifts per week. Mother’s mother watched the Child when Mother went to work. Mother had a “complicated relationship” with her

father (“Grandfather”), and she did not want the Child to meet him without her being present. She testified that when she was a child, he had threatened to commit suicide in front of her and her siblings and he had been physically abusive to her stepbrother. However, Father and Grandfather maintained a relationship after Father and Mother separated, and Grandfather checks in with Father once or twice each month to see how Father is doing. Mother was disappointed that Grandfather and Father continued their relationship after the parties separated. Father testified that he wanted the Child to have a relationship with Grandfather because he was her grandfather and should not be judged based on his past behavior.

- [7] The Child suffers from bilateral sensorineural hearing loss, a genetic condition that caused partial hearing loss and was discovered approximately a month after her birth. She has moderate to severe hearing loss in both ears, and she wears hearing aids and responds well to verbal communication. Due to the Child’s diagnosis, she received services from many providers, including an audiologist, a deaf mentor, an ENT doctor, and a speech therapist. Because of the Child’s partial hearing loss, it was recommended that the parents learn sign language to communicate with the Child. At the time of the final hearing, Father had begun learning sign language and had taken steps to stay up to date on the Child’s treatment. Father is also certified in First Aid and CPR. It had been recommended that the Child attend the Indianapolis School for Deaf and Hard of Hearing, and the school had programs that she could attend once she reached the age of eighteen months. At the hearing, Mother sought for the trial

court to order that the Child be enrolled at the school when she reached the proper age.

[8] At the final hearing, Father requested that the trial court grant him parenting time on alternating weekends from Friday at 6:00 p.m. to Sunday at 6:00 p.m. Mother requested that the trial court deny Father overnight parenting time due to the Child's age, hearing issues, and separation anxiety. Instead, Mother requested that Father's parenting time be limited to ten hours on one day each weekend. She also asked that the trial court order that the Child not be in the presence of Grandfather without her consent or her being present.

[9] At the conclusion of the hearing, the trial court issued a dissolution decree that dissolved the marriage. The trial court ordered that Mother and Father shall share joint legal custody of the Child and that Mother shall have primary physical custody of the Child. The trial court ordered that Father shall have parenting time with the Child on alternating weekends from Friday at 6:00 p.m. to Sunday at 4:00 pm. The trial court further ordered holiday parenting time pursuant to the Indiana Parenting Time Guidelines. The parties were ordered to continue exchanging the Child in Washington, Indiana with Father being the driver and having a third-party present to ride in the back with the Child.

[10] On August 26, 2022, Mother filed a motion to correct error, alleging that the trial court erred in awarding Father parenting time every other weekend from Friday at 6:00 p.m. until Sunday at 4:00 p.m. Mother alleged the trial court erred because the Indiana Parenting Time Guidelines ("IPTGs") do not

recommend overnight parenting time unless the noncustodial parent has exercised regular care responsibilities and that the relevant portions of the IPTGs for a child ten months of age recommend three non-consecutive “days” per week with one day on a “non-work” day for eight hours. Ind. Parenting Time Guideline § II(C)(3)(A)(1). The other days shall be for three hours each day, and all scheduled holidays are to be for eight hours. *Id.* Mother also alleged Father’s actions in refusing to communicate with her were not in the spirit of the IPTGs, which encourage parents to be respectful of each other and cooperate with each other in promoting the minor child’s best interests. Further, Mother took issue with the trial court not making any prohibition for the Child to be around Grandfather without Mother’s prior consent. After Father filed a response, the trial court denied Mother’s motion to correct error on September 9, 2022. Mother now appeals.

Discussion and Decision

[11] Mother appeals from the denial of her motion to correct error. ““The standard of appellate review of trial court rulings on motions to correct error is abuse of discretion.”” *Brimner v. Binz*, 149 N.E.3d 1214, 1218 (Ind. Ct. App. 2020) (quoting *Paragon Fam. Rest. v. Bartolini*, 799 N.E.2d 1048, 1055 (Ind. 2003)). A trial court has abused its discretion when its decision is against the logic and effect of the circumstances. *Id.* The basis of Mother’s argument is her contention that the trial court abused its discretion in its award of parenting time to Father.

[12] “[A] parent not granted custody of the child is entitled to reasonable parenting time rights unless 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). “[I]n all parenting time controversies, courts are required to give foremost consideration to the best interests of the child.”¹ *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. *Hazelett v. Hazelett*, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019). 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 appellant before there is a basis for reversal. *In re C.H.*, 936 N.E.2d at 1273. Further, we may not reweigh the evidence or judge the credibility of the witnesses. *Id.*

¹ Mother argues that the trial court erred when it failed to consider or reference the factors under Indiana Code section 31-17-2-8 in its determination of parenting time. However, the factors under that statute are to be considered when the trial court determines custody of a child and enters a custody order. Here, Mother only takes issue with the trial court’s parenting time determination and not its custody determination, in which she was granted sole physical custody of the Child, and Mother and Father are to share legal custody. We, therefore, do not find any error in the trial court not articulating any reference to the factors under Indiana Code section 31-17-2-8.

I. Parenting Time

- [13] Mother argues that the trial court abused its discretion when it ordered that Father shall have parenting time with the Child on alternating weekends that included two overnights and awarded holiday parenting time pursuant to the IPTGs for a child age three or older. She contends that the award of parenting time was not in the Child's best interests because it deviated significantly from the IPTGs and failed to take into account the Child's young age.
- [14] Indiana has long recognized that the right of parents to visit their children is a precious privilege and that a non-custodial parent is generally entitled to reasonable visitation rights. *Perkinson v. Perkinson*, 989 N.E.2d 758, 762 (Ind. 2013). While the IPTGs provide courts with specific parenting times for a child of a given age, the commentary to the Preamble of the IPTGs explains that the IPTGs "represent the minimum time a noncustodial parent should spend with a child when the parents are unable to reach their own agreement." Parenting Time G. Preamble cmt. 2. The IPTGs "are not meant to foreclose the parents from agreeing to, or the court from granting, such additional or reduced parenting time as may be in the best interest of the child in any given case." *Id.*
- [15] After awarding Mother primary physical custody of the Child, the trial court determined that Father should have parenting time with the Child on alternating weekends from Friday at 6:00 p.m. until Sunday at 4:00 p.m. and that holiday parenting time should be according to the IPTGs for a child three years of age or older. In the case of *In re Paternity of C.H.*, the mother argued that the trial court abused its discretion in its parenting time order because there

was no evidence to support the “ultra-liberal” parenting time schedule ordered. 936 N.E.2d at 1272. On appeal, this court affirmed the trial court’s order of parenting time, stating:

When faced with the flexible nature of the Guidelines, we cannot conclude that the trial court clearly erred in ordering the parenting time schedule in this instance. In short, we are not in a position to second-guess the trial court’s assessment in this regard. Therefore, we decline to set aside the trial court’s parenting time schedule.

Id. at 1273. There, the evidence showed that the father was actively involved in the child’s upbringing, was well-bonded with the Child, had a flexible schedule that allowed him to have more time with the child, and expressed a desire to be able to spend more time with the child. *Id.*

[16] Here, since the Child was born, Mother has lived in Bloomington, and Father has lived in Evansville, so distance between them has been a factor in Father’s ability to exercise parenting time, as have been the work schedules of the parents. Father works Monday through Friday and resides approximately one hour and forty minutes from Mother. Father exercised his parenting time under the provisional order from December 2021 to the final hearing in August 2022. During that seven and a half months, Father performed regular care responsibilities of the Child, including feeding the Child, changing her diapers, bathing her, reading her books, and taking her swimming and on walks. Father was in the process of learning sign language by reading books and taking a course. He also testified that he has a crib set up for the Child in his room and

has food items, books, and toys available for the Child. Further, as is clear from his request for parenting time, Father desired to have additional parenting time from what he had been granted in the provisional order.

[17] Although at the time of the final hearing, Father had not yet had any overnights with the Child, this was not his fault; he had not yet been granted them through the provisional order. The distance between the parents' homes made mid-week visitations unworkable, and Father expressed a desire to have more parenting time to include overnights on alternating weekends. Based on the evidence, we cannot say that there was not a rational basis for the trial court's parenting time determination. Contrary to Mother's contentions, the IPTGs are not requirements, and are merely recommendations for the minimum amount of parenting time for noncustodial parents "based on the premise that it is usually in a child's best interest to have frequent, meaningful, and continuing contact with each parent." Ind. Parenting Time G., Preamble.

[18] Additionally, to the extent that Mother argues that the trial court erred because it based its parenting time determination on finding her in indirect contempt because she did not abide by the provisional order, we disagree. There were no petitions filed to find Mother in contempt and no findings of contempt by the trial court. Contrary to Mother's contention that she was sanctioned for her alleged contempt, the trial court did not issue any sanction to her. Instead, it merely awarded parenting time to Father on alternating weekends from Friday at 6:00 p.m. until Sunday at 4:00 p.m. This was not a sanction for Mother, and

instead, was just a grant of parenting time to Father that he was entitled to as a noncustodial parent.

[19] Mother likens this case to the case of *In re the Paternity of B.Y.*, 159 N.E.3d 575, 579 (Ind. 2020), where the trial court specifically conflated a finding of contempt on the mother with the best interests of the child in awarding both legal and physical *custody* to the father. Our Supreme Court found that the mother was punished by losing legal and physical custody of the child for her alleged contempt in violating an interim order, which was not in the best interests of the child because the child was a breastfeeding infant, and the mother violated the order because she would otherwise lose her job. *Id.* The Court reversed the award of sole legal and physical custody of the child to the father and remanded for further proceedings and urged the trial court “to decouple its finding of contempt from the best interests of the child.” *Id.*

[20] Here, this was not a case where the trial court punished Mother for a finding of contempt by awarding sole legal and physical custody of the Child to Father. There was no finding of contempt by the trial court, and Father was not awarded sole legal or physical custody of the Child. In fact, Mother was awarded sole physical custody of the Child, and she was not sanctioned at all. Instead, the trial court simply ordered Father to have parenting time that Mother asserts is in deviation of IPTGs. Based on the above, we conclude that the trial court did not abuse its discretion in its parenting time order.

II. Contact with Grandfather

[21] Mother argues that the trial court abused its discretion when it did not put any restrictions on Father's ability to allow Grandfather to have contact with the Child. Evidence was presented at the final hearing that Mother had a "complicated relationship" with Grandfather and did not want the Child to have contact with him without her being present. She testified that when she was a child, Grandfather had threatened to commit suicide in front of her and her siblings and he had been physically abusive to her stepbrother. There was no evidence about whether these actions of Grandfather had persisted or had only been isolated occurrences from many years ago. Evidence was also presented that Father and Grandfather maintained a relationship after Father and Mother separated, and Grandfather checks in with Father once or twice each month to see how Father is doing. Father testified that he wanted the Child to have a relationship with Grandfather because he was her grandfather and should not be judged based on his past behavior. The trial court heard this evidence and made the determination that there would be no restrictions on either parent to allow contact with Grandfather. The trial court was presented with the above evidence and had the opportunity to weigh the evidence and judge the credibility of the witnesses. Mother's argument asks us to reweigh the evidence, which we will not do, and we, therefore, conclude that the trial court did not abuse its discretion in its determination.

[22] Based on the above, we conclude that the trial court did not abuse its discretion in its parenting time order and in not placing any restrictions on either parent to

allow contact with Grandfather. Therefore, the trial court did not abuse its discretion when it denied Mother's motion to correct error.

[23] Affirmed.

Vaidik, J., and Tavitas, J., concur.