

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.



ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Thomas Wininger,
Appellant-Petitioner,

v.

Carrie Lentz,
Appellee-Respondent,

March 17, 2021

Court of Appeals Case No.
20A-DC-305

Appeal from the Monroe Circuit
Court

The Honorable Valeri Haughton,
Judge

Trial Court Cause No.
53C02-1711-DC-521

Robb, Judge.

- [1] Thomas Wininger (“Father”) and Carrie Lentz (“Mother”) adopted a child during their domestic relationship. When the relationship ended in 2017, Father filed a Verified Petition for Orders Regarding Custody, Parenting Time,

and Child Support. Father also requested the trial court enter findings of fact pursuant to Indiana Trial Rule 52(A). Following a final hearing conducted over several days in spring 2019, the trial court issued an order determining that Mother should have primary physical custody of the child with the parties to share joint legal custody. Father appealed, raising, among other issues, whether the trial court's findings supported its judgment granting Mother primary physical custody. Concluding the trial court failed to make sufficient findings to support its judgment, we remanded for entry of appropriate and adequate factual findings to support the trial court's award of custody to Mother and retained jurisdiction of the case. *Wininger v. Lentz*, No. 20A-DC-305 (Ind. Ct. App. Dec. 29, 2020).

[2] On January 25, 2021, the trial court filed with this court its Order Regarding Custody, which reads in its entirety:

The Court having been directed by the Court of Appeals of the State of Indiana to enter a more definite finding, and being duly advised now finds:

The Court finds after review of all the evidence and testimony provided it is in the best interest of the child to place him in the custody of Mother, Carrie Lentz, subject to parenting time as prescribed by the Indiana Parenting Time Guidelines.

The Court is without sufficient information to calculate child support in this matter, and as stated in its original order, will set this matter for further hearing upon decision of the Court of Appeals of the State of Indiana.

Order at 1. We now resume jurisdiction.

[3] We begin by noting that the trial court’s order on remand is, even more so than its original order, wholly inadequate. Whereas the original order at least purported to make factual findings, albeit findings we found to be insufficient, the remand order completely ignores our explicit direction to “enter appropriate and adequate findings based on evidence from the final hearing to support its judgment.” *Wininger*, No. 20A-DC-305 at *7.¹ The purpose of Trial Rule 52(A) is “to provide the parties and the reviewing court with the theory upon which the trial judge decided the case in order that the right of review for error may be effectively preserved.” *In re Paternity of S.A.M.*, 85 N.E.3d 879, 885 (Ind. Ct. App. 2017). And the purpose of remanding to the trial court for further findings was to give it the opportunity to provide that theory to the parties and to this court. Instead, the trial court provided a single, conclusory sentence, again without making factual findings to support it.²

[4] The trial court’s failure to make appropriate findings in the first place and then to respond suitably to our remand order offering the trial court a second chance to meet its obligations under Trial Rule 52(A) has resulted in lost time to both

¹ Moreover, our decision specifically pointed out for the trial court which custody determination factors were not supported by sufficient findings. *Id.*

² The original order also concluded it was in child’s best interests for Mother to have custody. *See* Appealed Order at 15, ¶ 15. We remanded not because that conclusion was necessarily wrong, but because the trial court’s order did not show how or why it reached that conclusion which, pursuant to Father’s request for findings, it was required to do. *See Wininger*, No. 20A-DC-305 at *7.

the parties³ and this court. And although it would be easier and more appropriate to resolve this case if the trial court had followed our instructions on remand, in the interest of judicial economy and most importantly, fairness to the child at the heart of this dispute, we choose not to remand again but to bring this case to a close.

[5] Although the trial court's insufficient findings in its original order did not obviously support its custody determination because they did not comment on each of the factors required to be considered in making such a determination, it is now clear, even in the continued absence of appropriate findings, that the trial court has made a credibility determination in favor of Mother that is unlikely to change regardless of further elaboration. When reviewing the findings and judgment entered pursuant to Trial Rule 52(A), we must give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Ind. Trial Rule 52(A). Without condoning the trial court's disregard for the specific requirements of Trial Rule 52(A) and our caselaw interpreting those requirements, and given our own extensive review of the record, we conclude the trial court's judgment is not clearly erroneous; in other words, we are not left with the firm conviction that a mistake has been made in the

³ Father filed his petition in November 2017. For various reasons, a hearing on his petition was not held until spring of 2019. The last day of the hearing was in June 2019, but the trial court did not enter its order ruling on the custody determination until January 2020, over six months later. In the meantime, Mother had had temporary custody of the child for over two years. "Time is of the essence in matters involving children," *In re Adoption of C.B.M.*, 992 N.E.2d 687, 691 (Ind. 2013), and trial courts should make every effort to avoid protracted uncertainty in matters of child custody. The trial court's failure to enter appropriate findings in its original custody order has now extended this case an additional year.

ultimate resolution of this case. *See Matter of K.Y.*, 145 N.E.3d 854, 860 (Ind. Ct. App. 2020), *trans. denied*.

[6] We conclude the trial court's custody order is not clearly erroneous and therefore affirm its judgment granting primary physical custody of the child to Mother.

[7] Affirmed.

Crone, J., and Brown, J., concur.