

## MEMORANDUM DECISION

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# IN THE Court of Appeals of Indiana

Harold M. Carter,  
*Appellant-Petitioner*

v.

Kelly M. Carter,  
*Appellee-Respondent*

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October 4, 2024

Court of Appeals Case No.  
24A-DR-524

Appeal from the Randolph Circuit Court  
The Honorable Brian D. Hutchison, Judge

Trial Court Cause No.  
68C01-1409-DR-858

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**Memorandum Decision by Judge Crone**  
Judges Bradford and Tavitas concur.

**Crone, Judge.**

## **Case Summary**

- [1] Harold M. Carter (Father) appeals an order, entered upon the request of Kelly M. Carter (Mother), modifying and restricting Father’s parenting time with their two children on grounds that the existing parenting time arrangement was likely to significantly impair the children’s emotional development. Father presents several issues for our review, which we consolidate and restate as whether the trial court abused its discretion by (1) relying on the information the children provided during in-camera interviews in determining that Father’s parenting time should be restricted; (2) finding that the existing parenting time arrangement was likely to significantly impair the children’s emotional development; and (3) delegating to the parties the authority to determine Father’s parenting time with the children. We affirm in part, reverse in part, and remand.

## **Facts and Procedural History<sup>1</sup>**

- [2] The record reveals that at some point, Father and Mother were married and had two daughters, All.C., born in June 2009, and Ale.C., born in May 2010 (collectively Daughters). In September 2014, Father filed for dissolution of the marriage. In December, the trial court issued a provisional order regarding

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<sup>1</sup> The facts of this case that are related to the parties’ marriage and dissolution are sparse and thus mostly taken from the chronological case summary in Father’s appendix and from Father’s appellant’s brief.

custody, parenting time, support, and the division of marital property. The final hearing for the dissolution was held in January 2016. On January 28, 2016, the trial court issued its final order dissolving the parties' marriage.

[3] Approximately one year later, Father requested a modification of parenting time, and on April 21, 2017, the trial court held a hearing and issued its order on the matter. The April 21 order is not included in the record on appeal. However, based on other evidence provided, we glean that Mother "exercise[d] custody" of Daughters, and Father was "granted parenting time rights" that consisted of "three weekends a month[,] Friday [and] Saturday [with Daughters] return[ed] home on Sunday[.]" Appealed Order at 1; Tr. Vol. 2 at 34.

[4] After Mother and Father divorced, Father began dating Katherine Bek (Stepmother). Father and Stepmother married in January 2023. Stepmother had four teenage children, J.,<sup>2</sup> C.J., V.J., and A.L. A.L. was the only child who lived with Father and Stepmother. J. lived in Ohio with Stepmother's parents; C.J. and V.J. lived in Ohio with their father; and Daughters continued to live with Mother. Father and Stepmother's home was located "three doors down" from Mother's home. Tr. Vol. 2 at 56.

[5] On September 7, 2023, Mother filed a request for change of visitation, which the trial court treated as a motion to modify the parties' parenting time with

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<sup>2</sup> The record does not contain J.'s last name.

Daughters. Mother asked the trial court to “suspend” Father’s parenting time based on “sexual allegations surrounding [Stepmother] and her children.” Appellant’s App. Vol. 2 at 16, 15. On September 19, Father filed a “Contempt Citation[,]” alleging that Mother had violated the April 21, 2017 parenting time agreement by “refus[ing]” to allow Daughters to visit Father during his parenting time weekends. *Id.* at 19. On September 28, Father filed a “Request for Injunction[,]” asking the court to “order” Mother to “continue” the parenting time schedule as previously ordered. *Id.* at 22. On October 2, the trial court issued a “Notice to Parties[,]” informing Mother and Father that the trial court had not yet modified its April 21, 2017 parenting time order and that a “knowing or intentional violation of [its] order [might] constitute contempt of court, which [was] punishable by fine, imprisonment, or both.” *Id.* at 21.

- [6] The hearings for Mother’s request to modify parenting time and Father’s contempt citation were held on November 14, December 14, and December 27, 2023. Counsel represented Mother, and Father proceeded pro se. Mother testified on her own behalf and presented testimony from Daughters’ mental health counselor, Stepmother, and Stepmother’s sons, V.J. and C.J., who both testified telephonically. Father testified on his own behalf and presented in-person testimony from Stepmother and telephonic testimony from Natalie Crist, who was formerly employed as a family case manager with the Randolph County Department of Child Services (FCM Crist). The trial court held in-camera interviews with Daughters during the November 14 and December 27

hearings. Neither the parties nor counsel were present during the interviews, and the interviews were not recorded.

[7] On February 25, 2024, the trial court issued its final order, finding in relevant part that

2. Pursuant to [Indiana Code Section] 31-17-4-1, 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. Pursuant to [Indiana Code Section] 31-[17]-4-2, the court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

3. [All.C. and Ale.C.] are ... ages 14 and 13 respectively. [Mother] seeks to limit or suspend [Father's] parenting time due to a number of issues.

4. A licensed clinical therapist treating [Daughters] reports that, at a given time, one of the girls touched the other inappropriately and that is why therapy started. Through therapy, [Daughters'] relationships were improved. Both girls were upset that [Father] had hidden information from them about some really concerning maladaptive sexual behavior and emotional problems occurring with [Father's] step-children. One of the step-children had created a "death list[,"] which included [All.C.'s] name .... The therapist is concerned that continuing contact with those step-siblings may trigger a decline in [D]aughters['] mental health.

The therapist essentially recommends that [Daughters] be allowed to choose how much time they spend at [Father's] home.

....

6. When [Daughters] are at [Father's] home, he rarely engages with them to any degree, preferring to play video games or engage with [Stepmother]. He limits their access to their cell-phones or the internet. He will not allow them to meet with friends. As a result, they feel isolated. At one point, [All.C.] attempted self-harm, albeit possibly while at [Mother's] home.

7. Both girls are involved in extracurricular activities. The therapist reports that these activities are building self-esteem for the girls. [Mother] and [Daughters] complain that [Father] is not supportive of their sports, that he limits their access to them, and that on one occasion he attempted to pull [All.C.] from a team practice for no good reason.

8. [Daughters] report that [Father] and [Stepmother] have engaged in overt sexual behavior within their earshot while at the home for parenting time. There has been sexually inappropriate discussions held in their presence as well.

9. Both girls appear credible. They appear to be of average intelligence and maturity. They concur with [M]other's request to modify [Father's] parenting time.

10. The Court finds that it should restrict [Father's] parenting time rights[,] as continuing status quo is likely to significantly impair [Daughters'] emotional development.

11. The Court would be inclined to suspend all parenting time, given the dark and disturbing revelations made in this case.

However, both girls express a desire to be able to see [Father] on their own terms.

IT IS THEREFORE ORDERED that [Father's] parenting time rights are hereby modified. Parenting time shall be as the parties may agree and each should carefully and respectfully consider the desires of their children in making said agreement.

Appealed Order at 1-2.

[8] Regarding Father's contempt citation, the court's order provided that

12. [Father] asserts [Mother] has knowingly or intentionally violated his parenting time rights on September 8, 2023, and again on September 15, 2023, by denying him parenting time with [Daughters].

13. [Father] has shown by clear and convincing evidence that [Mother] did violate his rights as alleged.

IT IS THEREFORE ADJUDGED that [Mother] is in contempt of court. As sanction for the contempt, [Mother] is sentenced to 30 days incarceration in the Randolph County Jail. Said sentence is suspended on the condition that she not further violate any order of this Court for a period of one year [from] the November 14, 2023, hearing date.

*Id.* at 2. This appeal ensued. Additional facts will be provided as necessary.

## **Discussion and Decision**

[9] Mother did not file an appellee's brief. When an appellee fails to submit a brief, we do not assume the burden of developing an argument for that party, and we

apply a less stringent standard of review. *Meisberger v. Bishop*, 15 N.E.3d 653, 656 (Ind. Ct. App. 2014). That is, we may reverse if the appellant establishes prima facie error. *Id.* However, questions of law are reviewed de novo. *Id.*

[10] When the trial court enters findings sua sponte, the specific findings will not be set aside unless clearly erroneous. *Hanson v. Spolnik*, 685 N.E.2d 71, 76 (Ind. Ct. App. 1997), *trans. denied*. “A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it.” *Id.* at 76-77. We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* at 77. We consider only the evidence and reasonable inferences drawn therefrom that support the findings. *Id.* We review the trial court’s legal conclusions de novo. *Mansfield v. McShurley*, 911 N.E.2d 581, 589 (Ind. Ct. App. 2009).

[11] When faced with an appeal from a parenting time order, we “are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.” *Steele-Giri v. Steele*, 51 N.E.3d 119, 124, (Ind. 2016) (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)). As a result, we review parenting time decisions for an abuse of discretion. *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). 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).



**Section 1 – The trial court did not abuse its discretion by restricting Father’s parenting time because it did not base its decision solely on the information Daughters provided during the in-camera interviews.**

[12] Father argues that the trial court relied too heavily on Daughters’ in-camera interviews in determining that his parenting time should be restricted. Father also challenges the court’s “heavy reliance” on the in-camera interviews because, according to Father, “there was no evidence of direct or even potential harm to [Daughters] and ... the Randolph County Department of Child Services [(DCS)] had not substantiated any allegation of abuse or neglect[.]” Appellant’s Br. at 15.

[13] Indiana Code Section 31-17-4-1 permits a trial court to conduct an in-camera interview of a child in chambers within parenting time proceedings. The statute reads in relevant part that

(a) [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.

(b) The court may interview the child in chambers to assist the court in determining the child’s perception of whether 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. While trial courts are afforded latitude in parenting time decisions, a trial court’s judgment “may not rest primarily upon the results of a

private *in camera* interview.” *McCauley v. McCauley*, 678 N.E.2d 1290, 1292 (Ind. Ct. App. 1997), *trans. denied*.

[14] Here, we find that the record contains sufficient evidence outside of the in-camera interviews to support the trial court’s findings and conclusions regarding restricting Father’s parenting time. Daughters’ mental health counselor testified to the “inappropriate sexual behaviors” that had occurred with Stepmother’s children and that Stepmother’s child, V.J., had created a “death list” and “had threatened to kill the entire family.” Tr. Vol. 2 at 8, 9. Stepmother testified to a rape incident that occurred between her and her child, C.J., and further testified regarding the inappropriate sexual behavior that had occurred with her other children. V.J. and C.J. also testified to the disturbing sexual behaviors, as did FCM Crist.

[15] This testimony was sufficient for the trial court to determine that Father’s parenting time with Daughters should be restricted. Therefore, we conclude that the trial court did not abuse its discretion by restricting Father’s parenting time because it did not base its decision solely on the information Daughters provided during the in-camera interviews. Regarding Father’s argument that DCS did not substantiate any allegations of abuse or neglect, we conclude that this argument is merely a request for us to reweigh the evidence and judge the credibility of the witnesses, which we will not do. *See Hanson*, 685 N.E.2d 71, 76.

**Section 2 – The trial court did not abuse its discretion by finding that the existing parenting time arrangement was likely to significantly impair Daughters’ emotional development.**

[16] “In parenting time disputes, our collective goal in Indiana is to seek an environment in which a child can have a ‘well-founded relationship with each parent.’” *In re Snyder*, 26 N.E.3d 996, 999 (Ind. Ct. App. 2015) (quoting *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013)). Still, “[i]n all parenting time controversies, courts must give foremost consideration to the best interests of the child.” *Hazelett*, 119 N.E.3d at 161. Accordingly, parenting time may be restricted under Indiana Code Section 31-17-4-1, which provides, as we have previously noted, that “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.” “Even though the statute uses the word ‘might,’ this Court has previously interpreted the language to mean that a court may not restrict parenting time unless that parenting time ‘would’ endanger the child’s physical health or emotional development.” *Hatmaker*, 998 N.E.2d at 761.

[17] Father contends that the court “articulated no specific finding that parenting time would cause harm to [Daughters]” and that the “past interaction between Father and [Daughters] does not approach the egregious circumstances” where this Court has “found that parenting time may be [restricted.]” Appellant’s Br. at 16. We disagree. The restriction of Father’s parenting time is supported by the same evidence that is set forth in Section 1. Also, the trial court clearly

indicated in its order that Daughters' emotional development would be at risk if Father's parenting time was not restricted, "given the dark and disturbing revelations made in this case[,]" and the evidence supports that assessment. Appealed Order at 2. Thus, the court did not abuse its discretion by finding that the existing parenting time arrangement was likely to significantly impair Daughters' emotional development. Therefore, we affirm the portion of the order restricting Father's parenting time.

**Section 3 – The trial court abused its discretion by delegating to Mother and Father the authority to determine Father's parenting time with Daughters.**

[18] Father also argues that the court erred in delegating to the parties the authority to determine when Father could exercise parenting time with Daughters. We agree. Indiana Code Section 31-17-4-2 provides that "[t]he court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child." It is well settled that

a modification of [parenting time] may not be granted absent a determination by the court that the modification would serve the best interests of the child. No statute permits this determination to be delegated to a caseworker, probation officer, guardian, or other authority, and to do so would be to undermine the safeguards inherent in reserving to a detached and impartial court the task of weighing the many considerations relevant to [parenting time].

*In re Paternity of A.R.R.*, 634 N.E.2d 786, 789 (Ind. Ct. App. 1994); *see also Carmichael v. Siegel*, 754 N.E.2d 619, 637 (Ind. Ct. App. 2001) (holding that

mother's visitation with child could not be left to doctor "or any other person or authority aside from the court itself.").

[19] Based on the foregoing, we conclude that the ultimate decision of when and how to modify parenting time is in the hands of the trial court and may not be delegated. Therefore, the trial court abused its discretion by delegating to the parties the authority to determine Father's parenting time with Daughters. Accordingly, we reverse this portion of the trial court's order and remand for the trial court to determine when, where, and under supervision, if deemed appropriate, Father should exercise parenting time based on Daughters' best interests.<sup>3</sup>

[20] Affirmed in part, reversed in part, and remanded.

Bradford, J., and Tavitias, J., concur.

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<sup>3</sup> Because we reverse and remand, we need not address Father's argument that the trial court abused its discretion by "fail[ing] to set conditions under which the restrictions on [his] parenting time will be removed[.]" Appellant's Br. at 22. According to Father, there is "nothing for [him] to work toward or to achieve such that he could present to the court that he is no longer likely to significantly impair [Daughters'] emotional development." *Id.* We note, however, that Indiana Code Section 31-17-4-2 requires trial courts to determine, before restricting parenting time, whether granting parenting privileges would endanger the child's physical health or emotional development. However, the statute does not expressly require trial courts to set forth conditions that, once met, allow for the removal or modification of restrictions on parenting time.