

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Shattuck,
Appellant-Respondent,

v.

Alicia Velazquez Shattuck,
Appellee-Petitioner

September 29, 2023

Court of Appeals Case No.
22A-DC-2731

Appeal from the Marion Superior
Court

The Honorable Marshelle Dawkins
Broadwell, Judge

Trial Court Cause No.
49D10-1910-DC-44946

Memorandum Decision by Judge Crone
Judges Brown and Felix concur.

Crone, Judge.

Case Summary

- [1] James Shattuck (Father) appeals the findings of fact, conclusions thereon, and decree (Dissolution Decree) dissolving his marriage to Alicia Velazquez (Mother). Specifically, he argues that the trial court's decision to award Mother primary physical custody of the parties' child and grant them joint legal custody is clearly erroneous. Father also appeals the order (Contempt Order) denying his motions for rule to show cause, contending that the denial is clearly erroneous. Finding no clear error regarding either judgment, we affirm.

Facts and Procedural History

- [2] The undisputed findings and the evidence supporting the judgments show that in August 2018, Mother and Father wed. They have one child, S.S. (Child), who was born in January 2014. Mother also has three adult children.
- [3] In September 2019, Mother separated from Father with Child. In October 2019, Mother filed her verified petition for dissolution of marriage. In January 2020, the trial court held a preliminary hearing and issued a preliminary order awarding Father primary physical custody of Child, with Mother to have parenting time pursuant to the Indiana Parenting Time Guidelines (IPTG), and granting the parties joint legal custody. After the preliminary hearing, Mother relocated to Westfield, while Father resided in Terre Haute.
- [4] In July 2020, the parties agreed to the appointment of Zachary Phillips as the guardian ad litem (GAL). In April 2022, the GAL filed his report. He recommended that Mother have sole legal and primary physical custody of

Child, that Father have parenting time pursuant to the IPTG, that each party have regular phone contact with Child when Child is in the other parent's care, that neither party post anything negative about the other parent on social media, that neither party discuss the divorce/custody proceedings with Child or speak negatively about the other parent to Child, that Child continue with counseling, and that Father engage in personal counseling as recommended by his mental health professional. At some point, Father "screamed" at the GAL's assistant and "cussed her out." Tr. Vol. 2 at 71.¹ The GAL called Father to inform him that his behavior was inappropriate. Father told the GAL that he was recording all their phone conversations. The GAL then informed Father's attorney that all communication between him and Father should go through Father's attorney.

[5] Also in April 2022, the trial court approved the parties' agreed entry as to property, leaving all the child-related issues for a final hearing. Father filed a motion for findings of fact, which the trial court granted. A four-day hearing on all the child-related issues was held in May and July 2022.

[6] In June 2022, Father filed a motion for rule to show cause. In his motion, he alleged that Mother traveled with Child to California from June 3 to 11, 2022, without his knowledge, and that she interfered with his ability to communicate

¹ All citations to volume 2 of the transcript refer to the volume filed on June 22, 2023.

with Child in violation of the IPTG. In July 2022, Father filed a second motion for rule to show cause, alleging that Mother told him that she would be traveling with Child to Alabama for several days, but Father had not been allowed to have any communications with Child. The trial court held a hearing on Father's motions over three days in September, October, and November 2022.

[7] In October 2022, the trial court issued the Dissolution Decree. In relevant part, the trial court found as follows:

9. Both parties have behaved in a manner that the Court finds truly shocking, despite many years of experience in presiding over Criminal, Family Law and Protection Order matters.

10. Both parties have engaged in a pattern of recording each other at exchanges and other times, engaging family to assist in recording, yelling, screaming, hurling foul insults, name calling, denigrating the other party and that party's family to Child, causing outrageous scenes in public that have required the intervention of law enforcement, and interrogating Child as to each other's activities and households.

11. Both parties have filed multiple DCS complaints against each other.

12. Although both parties have behaved terribly, the Court additionally finds that Father's inappropriate behavior has been in excess of Mother's inappropriate behavior.

13. The GAL in this cause had to limit Father's engagement with the GAL's office staff due to Father's behavior.

14. On 7/9/2022, Father inappropriately contacted Mother's counsel, while Father was represented by counsel, on a telephone number counsel has only provided to family members which is unavailable to counsel's clients.

15. Father has engaged in a pattern of following and tracking Mother's activities.

....

17. On 6/17/2022, Father inappropriately confronted Mother's adult son's father-in-law in a restaurant in Bloomington, Indiana.

18. Both parties attempt to hide the Child's whereabouts during that party's parenting time and restrict the other party's access to information, including medical information.

19. On February 14, 2005, [Father] was convicted of Felony Sexual Battery in a criminal case in which [Father's] fourteen-year-old former stepdaughter was the victim and ... [Father] was sentenced to a term of imprisonment of three (3) years. Mother was aware of this conviction prior to the instant marriage between the parties, and prior to the Child's birth.

20. [Mother's] adult daughter and [Father's] current stepdaughter, [M.V.], testified as to groping and other inappropriate contact from [Father] that occurred when [she] was fifteen (15) years old in 2015. [M.V.] subsequently recanted the 2015 allegations prior to the instant marriage between the parties. Mother was aware of her adult daughter's allegations prior to the parties' marriage. Five years later, after the dissolution cause was filed, [M.V.] contacted the West Terre Haute Police Department in 2020 to reaffirm the veracity of her allegations and express her willingness to proceed forward with the matter. Father has not

been charged or convicted with respect to the alleged incidents involving [M.V.] in 2015.

21. During a parenting time exchange on December 25, 2021, Father spit on [Mother's] adult son, resulting in a criminal charge and a No-Contact Order barring Father from contacting Mother's son.

....

24. The GAL specifically addressed his serious concerns that should Father continue to be the primary physical custodian that he will use his influence over [Child] to manipulate and damage her relationships with other people, including her mother and siblings.

25. The Court has concerns that Mother may engage in damaging behavior with Child if given the opportunity to isolate Child from Father and Father's family.

26. The GAL expressed that [Father] is highly suspicious of other people and their intentions and expressed concerns about how that outlook may impact Child. The GAL testified that some of Father's suspicions and paranoia stem from an event instigated by Mother where law enforcement illegally and forcibly broke into Father's home and removed the Child.

Appealed Orders at 3-6.

[8] The trial court awarded Mother primary physical custody of Child and granted the parties joint legal custody. The trial court also ordered that Child continue with her current counselor, that parenting time exchanges take place at a

neutral location, that neither party exit their vehicle during parenting time exchanges, that both parties refrain from speaking to each other during parenting time exchanges, that each party be entitled to one ten-minute phone call each day when Child is in the other party's care, that each party refrain from making video or audio recordings of the other party and from criticizing the other party to or within hearing of Child, and that Father exercise parenting time pursuant to the IPTG except that he have parenting time during Child's entire fall and spring breaks each year.

[9] In November 2022, the trial court issued its Contempt Order denying Father's motions for rule to show cause. The trial court found in relevant part:

Father's behavior has directly contributed to his inability to contact [Child] on the telephone, from time to time, as both parties have traumatized [Child], drawn [Child] into their discord and made it clear to [Child] that communicating with one of her parents will subject her to interrogation and ire by the other parent.

Appealed Orders at 12-13. This appeal ensued.

Discussion and Decision

Section 1 – The trial court's custody determination is not clearly erroneous.

[10] Father first challenges the trial court's custody determination. "Determinations regarding child custody fall within the trial court's sound discretion." *Kakollu v. Vadlamudi*, 175 N.E.3d 287, 296 (Ind. Ct. App. 2021), *trans. denied*. Where, as

here, the trial court enters specific findings of fact to support its decision, “the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial Rule 52. Findings are clearly erroneous “when the record contains no facts to support them either directly or by inference.” *Hamilton v. Hamilton*, 103 N.E.3d 690, 694 (Ind. Ct. App. 2018), *trans. denied*. “A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts.” *Campbell v. Campbell*, 993 N.E.2d 205, 209 (Ind. Ct. App. 2013), *trans. denied*. “To determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made.” *Id.* “We accept unchallenged findings as true.” *Henderson v. Henderson*, 139 N.E.3d 227, 232 (Ind. Ct. App. 2019).

[11] As we review the trial court’s custody determinations, we are mindful that “there is a well-established preference in Indiana ‘for granting latitude and deference to our trial judges in family law matters.’” *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). Our supreme court has explained,

Appellate courts 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. 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. Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

Id. (citations and quotation marks omitted).

[12] In making an initial custody determination, the trial court shall “enter a custody order in accordance with the best interests of the child.” Ind. Code § 31-17-2-8. In determining the child’s best interests, “[t]here is no presumption favoring either parent.” *Id.* Further, the court must consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child’s parent or parents.
- (3) The wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child’s parent or parents;
 - (B) the child’s sibling; and
 - (C) any other person who may significantly affect the child’s best interests.
- (5) The child’s adjustment to the child’s:

(A) home;

(B) school; and

(C) community.

(6) The mental and physical health of all individuals involved.

(7) Evidence of a pattern of domestic or family violence by either parent.

(8) Evidence that the child has been cared for by a de facto custodian

(9) A designation in a power of attorney of:

(A) the child's parent; or

(B) a person found to be a de facto custodian of the child.

Id.

[13] Father argues that Child's best interests are not served by being placed in Mother's primary physical custody with the parties sharing joint legal custody. He asserts that he should be granted primary physical custody and sole legal custody of Child. He contends that finding 12, in which the trial court found that his inappropriate behavior exceeds Mother's inappropriate behavior "is not supported by the evidence or the trial court's findings." Appellant's Br. at 23. In support, Father states that Mother intentionally concealed an injury to Child's

arm from him, failed to seek medical care for almost twenty-four hours after Child injured her arm, made numerous and malicious reports to DCS, engaged in an “online smear campaign[,]” made “inflammatory accusations” about him in front of Child in public, ignored calls he made to Child when Child was in Mother’s care, and prioritized her daughter M.V.’s financial gain over Child’s safety by allowing M.V. to provide massages at her home when Child was present. *Id.* at 24-25.

[14] We observe that there are numerous findings that Father does not challenge, which we accept as true. These findings establish that both parties have caused “outrageous scenes in public”; both parties have denigrated each other to Child and have interrogated Child as to each other’s activities and households; and both parties have attempted to hide Child’s whereabouts during that party’s parenting time and restricted the other’s access to information. Appealed Order at 3. In addition, the findings show that Father has “engaged in a pattern of following and tracking Mother’s activities”; inappropriately confronted Mother’s family members in public; spit on Mother’s adult son, resulting in a criminal charge; inappropriately contacted Mother’s counsel; and engaged in behavior that caused the GAL to limit Father’s contact with the GAL’s office staff. *Id.* at 15. Father’s argument that finding 12 is clearly erroneous amounts to a request that we reweigh the evidence, which we must decline.

[15] Father also argues that Mother’s primary physical custody does not serve Child’s best interests because he takes better care of Child and is more involved in Child’s school and therapy than Mother. In addition, he criticizes the GAL’s

recommendation that Mother be awarded primary physical custody as unreliable. These assertions require us to reweigh evidence and judge witness credibility, which we will not do. We conclude that the findings and the GAL's recommendation support the trial court's determination that Child's best interests are served by being in Mother's primary physical custody. Because Father's argument regarding joint legal custody is premised on his unsuccessful physical custody argument, we need not address it.² Thus, the trial court did not commit clear error in making its custody determination, and we affirm the Dissolution Decree.

Section 2 – The trial court's denial of Father's motions for rule to show cause is not clearly erroneous.

[16] “Indirect contempt, or civil contempt, is the willful disobedience of any lawfully entered court order of which the offender has notice.” *J.S. v. W.K.*, 62 N.E.3d 1, 6 (Ind. Ct. App. 2016). “[The] determination of whether a party is in contempt of court is a matter committed to the trial court’s sound discretion and we will reverse [that determination] only for an abuse of discretion.” *Kicken v. Kicken*, 798 N.E.2d 529, 533 (Ind. Ct. App. 2003). “We will not reweigh the evidence or assess the credibility of the witnesses, and we view the evidence in the light

² Father also presents a three-sentence argument that the trial court clearly erred by limiting the parties to one call per day when Child is in the other party's care. We find that assertion waived for failure to present a cogent argument. See Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal relied on); *In re Paternity of A.J.*, 146 N.E.3d 1075, 1083 (Ind. Ct. App. 2020) (concluding that appellant waived argument that court erred when it ordered him to pay child support because he failed to support it with cogent reasoning and appropriate citations to record), *trans. denied*.

most favorable to the judgment.” *Heagy v. Kean*, 864 N.E.2d 383, 386 (Ind. Ct. App. 2007), *trans denied*. “Where the trial court has declined to find a party in contempt, we reverse only where there is no rational basis for the trial court’s action.” *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1260 (Ind. Ct. App. 2010). Further, the trial court’s Contempt Order was supported with specific findings of fact, and in such a case, “we may not set aside the findings or judgment unless they are clearly erroneous.” *Richardson v. Hansrote*, 883 N.E.2d 1165, 1171 (Ind. Ct. App. 2008).

[17] Father asserts that the trial court erred by failing to grant his two motions for rule to show cause because Mother acted with willful disobedience by traveling out of state without providing him with sufficient travel information. The trial court found that Mother had interfered with Father’s access to Child and failed to provide information regarding Child’s location and that “Mother’s behavior of blocking access to the child is inappropriate.” Appealed Order at 12.

However, the trial court also found that “Mother’s behavior is *directly related* to Father’s similar behaviors, and Father’s disturbing behaviors of following Mother and inappropriately attempting to control Mother’s parenting time with [Child], and [her] access to maternal relatives.” *Id.* (emphasis added). In addition, the trial court found that Father’s behavior “*directly contributed* to his inability to contact” Child because both parties have “traumatized” Child. *Id.* (emphasis added). Also relevant to Father’s behavior, the trial court found that

[m]uch of the time and testimony in this cause was spent discussing multiple occasions Father has engaged law

enforcement when he was unable to reach [Child] on the telephone for a relatively short period of time, when Father knew that [Child] was in Mother's care and had no rational basis to assume that [Child] was in danger.

Id. at 13. Father does not challenge these findings, and accordingly we accept them as true. We conclude that the trial court's denial of Father's motions for rule to show cause has a rational basis. Therefore, we affirm the Contempt Order.

[18] Affirmed.

Brown, J., and Felix, J., concur.