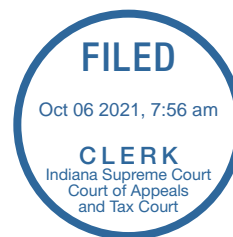


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Steven Michael Fougrousse,
Appellant-Respondent,

v.

Dawn M. (Fougrousse)
Dardeen,
Appellee-Petitioner

October 6, 2021

Court of Appeals Case No.
21A-DC-599

Appeal from the Hendricks
Superior Court

The Honorable Mark A. Smith,
Judge

Trial Court Cause No.
32D04-1805-DC-276

Crone, Judge.

Case Summary

- [1] Steven Michael Fougrousse (Father) appeals the trial court's orders restricting his parenting time, claiming that no evidence was presented that parenting time

would endanger his children’s physical health or significantly impair their emotional development. We affirm.

Facts and Procedural History

[2] Father and Dawn M. (Fougerousse) Dardeen (Mother) have two daughters (the Children): M.F., born in July 2003, and H.F., born in January 2007. Father and Mother were divorced in 2009. Mother received primary custody, and Father was granted parenting time. Mother resides in Danville, and Father resides in Bloomington. As of October 2020, Father regularly exercised standard parenting time pursuant to the Indiana Parenting Time Guidelines (alternating weekends plus extended time during the summer),¹ and he was obligated to pay Mother \$250 weekly in child support.

[3] On October 5, Mother filed a verified emergency motion to suspend Father’s parenting time, alleging that Father’s “abuse of alcohol and other behaviors during his parenting time with the Children might endanger the Children’s physical safety” and “significantly impairs the Children’s emotional development.” Appellant’s App. Vol. 2 at 37. Among other things, Mother alleged that Father “has been intoxicated in public locations with the Children[,]” “has been so intoxicated while in his home exercising parenting time with the Children that he has ‘passed out,’” had “scream[ed] and rag[ed] at his family members and his girlfriend” within earshot of the Children, and

¹ See Ind. Parenting Time Guidelines § II(E) (parenting time for adolescents and teenagers).

“acts toward the Children in an intimidating manner.” *Id.* at 36, 37. Mother also filed a verified motion to modify Father’s parenting time and child support.

[4] On October 16, the trial court held an evidentiary hearing on Mother’s emergency motion. The Children’s licensed mental health counselor, Jean Crane, testified that the Children told her during their first session several months earlier that Father “is intoxicated during the entire visit that they have with him” Tr. Vol. 2 at 12. During their second session, the Children stated that “they were too afraid to address it with him because they were really afraid that he would get angry with them[,]” that “his family has known about this problem with drinking but they haven’t done anything and his girlfriend who currently lives with him also knows that he’s drinking the whole time” *Id.* Crane was so concerned that she contacted Child Protective Services, “because obviously [Father is] not available to supervise the way that he should during the visit and it is also no sort of quality relationship being built if he’s spending the whole time intoxicated” *Id.* According to Crane, the Children told her “that they couldn’t even remember a time for the past years that they’ve been going down [to Father’s residence] that he hasn’t been intoxicated during the whole visit[,]” and that they spend as much of their visit “as they possibly can up in their room away from him because he can tend to get angry or upset with them” *Id.* at 12, 13.

[5] Mother testified that M.H. drives H.F. to Father’s residence for parenting time and has “been doing that since she got her driver’s license” approximately one year earlier. *Id.* at 23. According to Mother, she initiated the Children’s

counseling with Crane after “an argument at their grandparent[s]’ house that they had witnessed between [Father] and their grandfather.” *Id.* at 24. She testified that Father’s “excessive drinking” had been an issue “[f]or years[,]” and she was concerned “[n]ot so much [for the Children’s] physical safety but more their mental and emotional safety[.]” *Id.* at 24, 25.

[6] Father’s girlfriend testified that she had “never witnessed” the Children exhibiting any fear of Father and had “never seen” Father “incapacitated to the point to where he’s unable to parent his children.” *Id.* at 29, 31. She further testified that she had “never seen anything where [Father was] verbally or emotionally abusive” or anything that gave her a “fear” that Father “might in fact have an alcohol problem[.]” *Id.* at 33, 34. One of Father’s former girlfriends offered similar testimony. Father denied having any issues with alcohol and denied verbally or emotionally abusing the Children, and he testified that the Children had never exhibited or communicated any fear to him. He did acknowledge having a “heated conversation” with his father, as well as being convicted of operating while intoxicated (OWI) in 2008 and 2018. *Id.* at 52.

[7] The parties did not call the Children as witnesses, and the trial court interviewed them in camera. *See* Ind. Code § 31-17-4-1(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."').² At the conclusion of the hearing, the court told the parties,

You know a judge's job in these types of cases, uh, is to take everything that he hears and try to reconcile it. When you have two diametrically opposed positions where two people are saying completely polar opposite things that can be challenging so there are certain things, certain patterns that a judge looks for, certain pieces to try to move the barometer to one side or the other. And I guess [Father] what I'll tell you is that the pieces that I'm hearing from your side don't move the barometer but the pieces that I'm hearing from the other side including, uh, what I heard from your daughters convinced me that I need to grant this motion here today. There's clearly a disconnect, uh, whether it be from your prospective [sic] on your use of alcohol or whatever is going on when the girls are with you. The things that I look for when I interview children in terms of, uh, reliability, coaching, none of that existed when I talked to your daughters. They both independently told me things that were consistent but enough inconsistent minor details that led me to conclude that they weren't being rehearsed. Both of them told me when I asked them flat out no one had told them what to say but they had asked to come. They've been dealing with a circumstances [sic] during parenting time for quite a long time because they're seventeen and they're thirteen. They didn't know how to deal with it. And it got to the point where we're at today because they didn't know how to deal with it emotionally a seventeen and a thirteen-year-old don't know how to deal with those things and that's why we're here today. They wanted this.[...] And so I heard enough from both of them in their stories and their consistency to reconcile it with the other things that I heard here today to led [sic] me to believe that what I was hearing from you

² All in-camera interviews in this proceeding were recorded and transcribed by the court reporter. The Children were not placed under oath, but they did promise to tell the truth.

is not consistent with what I'm hearing from the other piece, okay? That's why I'm granting Mother's motion.

Tr. Vol. 2 at 105-06.

[8] The trial court stated that it was suspending Father's parenting time pending review at the forthcoming hearing on Mother's motion to modify and issued a written order that reads in relevant part as follows:

1. Mother's Motion to Suspend Father's Parenting Time is granted until further order of this court.
2. Father is to engage in counseling and participate in person or remotely as directed by the Counselor, Jean Crane.
3. Father is ordered to complete Substance Abuse and Alcohol Evaluation with a DMHA approved provider at Father's cost and is ordered to complete any recommended treatment.

Appealed Order at 1. Father did not object to the trial court's ruling at the hearing or initiate an appeal from the written order.

[9] The evidentiary hearing on Mother's motion to modify was held on March 18, 2021. Crane testified that she and Father and the Children had "been meeting regularly" since December and that the "counseling sessions [had] gone well." Tr. Vol. 2 at 114, 115. She acknowledged that she had not communicated with the therapist that Father was seeing pursuant to the trial court's order.

Regarding parenting time, Crane stated,

I don't have any problem with going back to state minimum guidelines in the fact that I feel that [Father] has worked really hard to, uh, do everything that's been asked of him and I

appreciate that so much, but I also think that it could be in the girls' best interests for us to continue to monitor this for a little longer.

....

I mean my professional opinion would be that I think it actually could be a good thing to do two one night overnights per month and then I personally think it would be good for [H.F.] to do one of those overnights by herself because you know [M.F.'s] going off to college [at Purdue in August 2021] so [H.F.] will be doing those overnights by herself so just to kind of while we're still in counseling and making sure that everything's going well that she wants to give her opinion of how things are going. I don't think there's anything wrong with that. I feel like that's a pretty good compromise when it comes to, you know, making sure that we're working on quality not just quantity.

Id. at 119, 121. According to Crane, Father had “never admitted to [her] that [he has] an actual addiction [to alcohol] but he has [...] said that he has used alcohol a lot in the past.” *Id.* at 124. The Children had reported to Crane that Father did not consume alcohol during recent brief outings that they had together, but Crane testified that she had recently received an email from M.F. indicating that Father “had asked her to call him later that night and then she had called him and then the next day he said I guess you were too busy to call me so he couldn't remember that they had actually had that phone conversation” *Id.* at 125.

[10] Mother testified that she supported “what kind of relationship [the Children] want to have [with Father] at whatever time frame they feel they're comfortable

doing that.” *Id.* at 139. She further testified that the Children had exhibited “far less anxiety and worry” since Father’s weekend parenting time was suspended. *Id.* at 140. Mother also stated,

I would, would not be honest if I said I don’t worry about [Father] relapsing and to, you know, drinking with the girls around or, uh, you know, one drink’s okay tonight but tomorrow it might be two or three or and then having [H.F.] in a situation where she can’t leave unless she calls, you know, me or my husband to come get her, you know, something like that. I’m not saying that that’s going to happen, but it’s always a chance it could happen.

Id. at 141.

[11] Father testified that he had “made a commitment to the girls that [he wants] to proceed at their pace[.]” *Id.* at 159. He denied being an alcoholic and stated that he had completed a substance abuse and alcohol evaluation at Centerstone, where he is currently receiving “personal therapy[.]” *Id.* at 163.³ He testified that he consumes alcohol “on the weekends” but not daily. *Id.* at 164. Father denied having “consumed so much alcohol in one evening that [he] had a phone call with [M.F.] that [he] did not recall the next morning[.]” *Id.* at 165. He claimed that he and the Children had reached an agreement regarding

³ Father offered into evidence an intake evaluation report from Centerstone, which states,

[Father] explains that his ex-wife called an “emergency hearing 3 weeks ago accusing me of drinking too much and being emotionally abusive to my two 13 & 17 year old daughters”. [Father] further reports that his daughters also talked to the judge, and the outcome was having his visitation [...] “temporarily suspended”. He denies any of these allegations[.]

Exhibit Vol. at 49. As indicated above, the trial court found those allegations credible.

visitation the previous weekend, but he learned that the arrangement was no longer “acceptable” to the Children two days before the hearing. *Id.* at 169. He testified that he was “ready to resume [his] regular parenting time” and saw no “reason for delaying that[.]” *Id.* at 172. After Father testified, the trial court again interviewed the Children in camera.

[12] On March 19, the court issued an order that reads in pertinent part as follows:⁴

5. Since the last hearing on October 16, 2020 Father has actively engaged and participated in counseling with the minor children and Jean Crane as he was ordered to do. He has been a willing participant and not missed any sessions. This therapy has helped to improve Father’s relationship with the girls.

6. Father also completed a substance abuse evaluation as ordered. He was referred for individual therapy one (1) hour one (1) time per week and is currently participating in the same.

7. Despite the improvement that has occurred, two (2) recent events have caused a set back in Father’s progress with the girls:

a. Lunch at Monicals [restaurant] in Avon – the weekend of March 13-14 the girls met with Father for lunch. Father testified that he left believing that he and the girls were on the same page with a transition plan for parenting time and they had agreed upon a plan. He believes that their plan changed after the girls returned home, inferring that their mother influenced them to change their minds. First, it’s clear Father is not on the same communication page with his daughters. Both children independently reported

⁴ We have replaced the Children’s names with initials.

that their conversation with Father about parenting time was brief, a minute or two at most. The context as a general agreement that they needed to discuss a parenting time plan, and that something like a limited number of overnights was mentioned, but nothing concrete established. Neither child left their meeting with Father believing they had agreed to a set plan. Second, both children left the meeting with Father feeling disappointed because they felt the progress with their dad had regressed. Specifically, Father's words, actions, and demeanor left them with the impression he was back to blaming Mother and/or the girls for his parenting issues.

b. Father's Phone Call with M.F. – the Court compared Father's version with M.F.'s version of what occurred. The Court even had M.F. read out loud Father's text messages from her phone. The Court concluded Father's explanation was not credible. More importantly, it has caused a break in the progress he made up to that point.

8. The lack of communication between Jean Crane and Father's individual therapist is problematic. The Court is without evidence to evaluate whether the issues Father is working on individually are the issues the girls reported as concerning them and that they are working on in their family sessions with Jean Crane.

9. A significant undercurrent permeating this case is Father's anchor of blame he frequently casts towards Mother for his parenting time issues. It's clear from his assessment with Centerstone that Father blames Mother. It was clear during this hearing Father blames Mother. His body language, tone and demeanor completely changed when he pivoted and began to Mother [sic]. It is hurting to the children personally, and it is hindering his ability to get his relationship with each of them righted.

10. Contrary to Father's beliefs, there is absolutely no evidence whatsoever that Mother is attempting to unduly influence the girls or persuade them, subtly or intentionally, about parenting time with Father. Neither this time nor last fall during the child interviews did either child display a single indicator that they were being negatively influenced by their mother. Quite naturally, both children are bonded with Mother and do want to please her. But, both also want a healthy relationship with their Father. The things the children report as causing them issues with Father occur while they are with him, not because Mother is telling them things. These girls are intelligent and observant and perfectly capable of making judgments on their own [sic]. By Father's own testimony, his children are truthful. There was no indication from the Court's perspective the children are not truthful. Jean Crane did not report any concern that the children are being influenced by Mother.

11. M.F. will be turning 18 years old on July 6, 2021, just a little over three (3) months away. She is mature enough and capable of making her own decisions as it relates to time she chooses to spend with Father. She has the desire to spend time with Father as her schedule and commitments permit. The Court therefore orders that Father shall have parenting time with M.F. as she and Father agree.

12. It is in H.F.'s best interest to attempt to return to regular parenting time with Father in phases. H.F. has never spent overnight parenting time with Father without M.F. present. M.F. has provided transportation to and from parenting time since she obtained her driver's license. H.F. is not ready to return to regular parenting time with Father. Jean Crane recommended some phased in approach. Therefore, the Court orders that Father shall have parenting time with H.F. two (2) times per month on the second and fourth weekends. One week shall be 6:00 p.m. Friday overnight until Saturday at 6:00 p.m., and the other shall be on Saturday or Sunday for eight (8) hours

from noon to 8:00 p.m. Father's parenting time shall commence March 27, 2021 for eight (8) hours. Unless otherwise agreed by the parties, Father's eight (8) hours on Saturday or Sunday shall be in Bloomington. Unless otherwise agreed by the parties, Mother and Father shall provide transportation for H.F. and shall meet at a location half-way for parenting time exchanges.

13. Father is ordered to continue in therapy with the girls and Jean Crane. Father shall be responsible for fees associated with his sessions with the girls. Mother shall be responsible for counseling fees not involving Father.

14. The Court grants Mother's requests to modify child support. Commencing Friday March 26, 2021, Father is ordered to pay \$298.00 per week in child support via income withholding order....

15. Mother requested an award of attorney fees.... Mother was successful in her effort to suspend and modify Father's parenting time and modifying child support.... The Court orders Father to pay \$4,725.00 towards Mother's attorney fees....

Appealed Order at 3-6 (underlining omitted). Father now appeals.

Discussion and Decision

[13] Mother did not file an appellee's brief.

When an appellee fails to submit a brief, we do not undertake the burden of developing appellee's arguments, and we apply a less stringent standard of review. We may reverse if the appellant establishes prima facie error, which is error at first sight, on first appearance, or on the face of it. The prima facie error rule relieves this Court of the burden of controverting arguments advanced in favor of reversal where that burden properly rests with the appellee.

Dunka v. Erickson, 70 N.E.3d 828, 830 (Ind. Ct. App. 2017) (quoting *Jenkins v. Jenkins*, 17 N.E.3d 350, 351-52 (Ind. Ct. App. 2014)).

[14] Indiana Code Section 31-17-4-2 provides,

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.

"Our appellate courts have interpreted this statute to require evidence establishing that visitation *would* endanger or impair the physical or mental health of the child." *Manis v. McNabb*, 104 N.E.3d 611, 620 (Ind. Ct. App. 2018) (citing *Perkinson v. Perkinson*, 989 N.E.2d 758, 762 (Ind. 2013)). The parent who seeks to restrict the other parent's visitation rights bears the burden of proving by a preponderance of the evidence a justification for such a restriction. *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013). In all parenting time controversies, the court is required to give foremost consideration to the best interests of the children. *Id.*

[15] "Generally speaking, parenting time decisions are committed to the sound discretion of the trial court." *In re B.J.N.*, 19 N.E.3d 765, 769 (Ind. Ct. App. 2014). "We therefore review parenting time decisions for an abuse of discretion." *Id.* "A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Hatmaker*, 998 N.E.2d at 761. If there is

a rational basis for the trial court's determination in a parenting-time dispute, then no abuse of discretion will be found. *Downey v. Muffley*, 767 N.E.2d 1014, 1017 (Ind. Ct. App. 2002). "Further, we may not reweigh the evidence or judge the credibility of witnesses." *Id.*

[16] Father complains that the trial court did not make a specific finding in either of its orders that parenting time would endanger the Children's physical health or significantly impair their emotional development, and he contends that remand is appropriate to either enter an order containing such a finding or enter an order with no parenting-time restrictions. *See* Appellant's Br. at 8 (citing, *inter alia*, *In re Paternity of V.A.M.C.*, 773 N.E.2d 359 (Ind. Ct. App. 2002), *opinion on reh'g*). Although the trial court did not make a specific written finding, its bench ruling at the October 16 hearing clearly indicates that it determined that parenting time with Father would significantly impair the Children's emotional development, and that determination is amply supported by the evidence set forth above.⁵ Father's argument to the contrary is simply an invitation to reweigh evidence and judge witness credibility, which we must decline. Moreover, the March 19 order clearly indicates that the trial court determined that although Father had made some progress in addressing the issues that led to the suspension of his parenting time, he was still abusing alcohol and

⁵ Also, in light of Father's OWI history and the credible reports of his longstanding alcohol abuse, there is more than a scintilla of evidence that would support a finding that parenting time would endanger H.F.'s physical health, given that she is too young to drive and will be dependent on Father for transportation in M.F.'s absence.

impairing the Children’s emotional development by unfairly blaming Mother for a predicament of his own making. Under the circumstances, we see no reason to remand for a written finding. The record before us provides a rational basis for the trial court’s parenting-time determination, and therefore we find no abuse of discretion. In sum, Father has failed to establish prima facie error. The judgment of the trial court is affirmed.⁶

[17] Affirmed.

Bailey, J., and Pyle, J., concur.

⁶ To the extent Father also complains that the trial court erred in ordering parenting time with M.F. as she and Father agree, we remind him of his “commitment” to the Children that he wanted to “proceed at their pace[.]” Tr. Vol. 2 at 159. Father does not raise a separate argument regarding the trial court’s modification of his child support obligation or its order to pay Mother’s attorney’s fees.