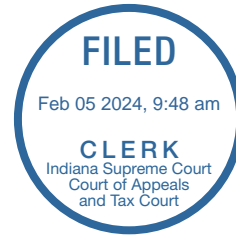


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Alicia Marie Zeller,
Appellant-Petitioner,

v.

Clifton Anthony Johnson,
Appellee-Respondent

February 5, 2024

Court of Appeals Case No.
23A-DC-1441

Appeal from the
Marion Superior Court

The Honorable
Geoffrey Gaither, Judge

Trial Court Cause No.
49D09-1811-DC-46592

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

- [1] Alicia Marie Zeller appeals the trial court’s orders on the issues of parenting time and legal custody regarding her daughter. We affirm.

Facts and Procedural History

- [2] Zeller (“Mother”) and Clifton Anthony Johnson (“Father”) married in 2008 and divorced in 2019. They have a daughter, M.J. (“Child”), who was born in 2012. The parties initially shared physical and legal custody after the divorce but soon filed cross-motions to modify that arrangement. In March 2021, the trial court issued an order awarding Mother primary physical custody and sole legal custody. On the issue of legal custody, the trial court found that “Father deliberately refused to coparent with Mother and this case is therefore not appropriate for joint legal custody.” Appellant’s App. Vol. II p. 66. The court ordered, “Mother is reminded to consult Father on all major decisions for [Child’s] future, but she shall have the ultimate decision-making authority.” *Id.* The court added, “Mother shall have sole authority to direct and decide [Child’s] coming-of-age issues such as the need to wear a bra, deodorant, makeup, etc.” *Id.*
- [3] Regarding Father’s parenting time, the court ordered that if Father wanted his new wife (“Stepmother”) to be present, the parenting time “shall be supervised by Neutral Ground Solutions[.]” Appellant’s App. Vol. II p. 69. The court

noted that based on the report and recommendations of the guardian ad litem (GAL) it had “grave concerns about the influence of [Stepmother] on [Child] and her relationship with Mother.” *Id.* at 68. The court listed several examples of Stepmother’s “concerning behavior” and found supervision was necessary “to prevent [Child] from suffering additional emotional harm.” *Id.* at 68-69. The court also ordered that “Father shall not leave Child in the care of anyone at any time without the express, advance permission of Mother.” *Id.* at 69.

[4] Father appealed. He challenged, among other things, the requirement that any parenting time with Stepmother present be supervised. In December 2021, this Court rejected Father’s arguments and affirmed the trial court’s order. *Johnson v. Johnson*, No. 21A-DC-585, 2021 WL 5751857 (Ind. Ct. App. Dec. 3, 2021). On the parenting-time issue, we held that the supervision requirement was supported by the evidence, “including the GAL’s conclusion that Stepmother impedes the relationship between Child and Mother.” *Id.* at *7.

[5] The next month, Father asked the trial court to eliminate the requirement that parenting time be supervised if Stepmother is present. He claimed the requirement “is unnecessarily harsh, unrealistic, impractical, unwarranted, unreasonable and unduly burdensome on this family.” Appellant’s App. Vol. II p. 72. After a change of judge, the trial court held a hearing on Father’s petition. In an exhibit filed a few days before the hearing and then on the record at the hearing, Father—in addition to seeking elimination of the supervision requirement—requested clarification of the legal-custody order, claiming that

Mother wasn't consulting him on major decisions and arguing that he should be allowed to talk to Child about her "coming of age" issues. *See Ex. A; Tr. p. 42.*

[6] On March 15, 2023, the trial court issued findings of fact and conclusions of law. On the issue of legal custody, the court ordered:

Mother shall continue to have primary legal & physical custody of [Child] (age 11)

- a. [Child] shall continue to attend school in Mother's district in Brownsburg.
- b. Mother shall consult with Father PRIOR to making any changes to [Child's] doctor, dentist, therapist, school, and tutor.
- c. Both parties shall have equal access to all of [Child's] medical and education information and shall be listed on forms for enrollment, registration, etc. Neither party shall take any actions to restrict the other parent's access to [Child's] records or information.
- d. Only the parents shall be permitted to attend appointments and communicate with [Child's] providers, including but not limited to her doctor, dentist, therapist, teachers, and other medical and school personnel.
- e. Each parent shall be free to assist [Child] with all "coming of age" issues.

Appellant's App. Vol. II p. 53. Regarding Father's parenting time, the court ordered:

Father shall have unrestricted parenting time pursuant to the Indiana Parenting Time Guidelines, including holidays, special days and extended parenting time.

a. Stepmother's contact with [Child] shall be supervised.

b. Parenting time exchanges shall continue to occur at Southern Plaza unless otherwise agreed by Mother and Father.

c. Each parent shall be free to share their parenting time with immediate and extended family members and shall apply their own discretion to family members who may provide care for [Child].

d. All ancillary provisions of the Indiana Parenting Time Guidelines shall apply.

Id.

[7] Mother now appeals.

Discussion and Decision

[8] Mother challenges the trial court's rulings regarding legal custody and parenting time. Father has not filed a brief. When an appellee does not respond to an appeal, we will not undertake the burden of developing an argument on their behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case

of prima facie error. *Id.* In this context, “prima facie error” means error “at first sight, on first appearance, or on the face of it.” *Id.*

I. Mother has not shown prima facie error on the issue of legal custody

[9] Mother contends “[t]he trial court committed clear error when it modified legal custody.” Appellant’s Br. p. 18. But the trial court didn’t modify legal custody. It merely clarified the issues on which Mother must consult Father, that Father has a right to access Child’s records and information, that only Mother and Father can attend Child’s appointments and communicate with her providers, and that Father can “assist” Child with “coming of age” issues. The court made clear that Mother will continue to have legal custody and therefore ultimate decision-making authority on major issues in Child’s life.

[10] Mother argues that even these clarifications were improper because Father never formally requested them in a pleading. She cites *Wheeler v. Hinshaw*, 120 N.E.3d 1039 (Ind. Ct. App. 2019), where we held that the trial court erred by modifying legal custody because no modification had been requested. But two key facts distinguish that case. First, the parents in that case had joint legal custody, and the trial court awarded sole legal custody to Father. As just discussed, no such change was ordered in this case. Second, the Father in *Wheeler* **never** requested a change in legal custody. Here, Father requested clarification of the legal-custody order a few days before the hearing and again at the hearing itself. Therefore, Mother was on notice of the request for clarification and was able to respond to it.

[11] Mother has not shown prima facie error on the issue of legal custody.

II. Mother has not shown prima facie error on the issue of parenting time

[12] Mother also contends “[t]he trial court abused its discretion when it disposed of the supervision requirement for Father’s parenting time when [S]tepmother is present.” Appellant’s Br. p. 13. But the court didn’t eliminate that requirement. As Mother acknowledges, the order states that “Stepmother’s contact with [Child] shall be supervised.” The only requirement the court eliminated is that Neutral Ground Solutions be the supervisor.

[13] Notably, one month after the court issued its order, Mother filed a combined Verified Emergency Motion for Rule to Show Cause and Motion to Clarify Supervision Order in which she alleged:

1. On or about March 15, 2023, the Court issued its *Findings of Fact, Conclusions of Law, and Judgment* in which the Court held that during Respondent/Father’s parenting time, [Stepmother] shall continue to be supervised as first ordered in the Court’s March 8, 2021 order.
2. Father exercised parenting time on April 12, 2023, and upon information and belief, [Stepmother] attended the parenting time session without supervision.
3. Father has willfully and intentionally violated section 2(a) of the Court’s March 15, 2023 order.
4. Prior to the April 12, 2023 parenting time session, Father and [Stepmother] unsuccessfully attempted to secure

supervision with a professional supervisor, illustrating that Father knew and understood his obligations under the Court's March 15, 2023 order that [Stepmother] must be supervised.

Motion, No. 49D09-1811-DC-46592 (Apr. 13, 2023). Mother asked the trial court to issue an order “confirming that the supervision requirements set forth in the March 8, 2021 Order were not amended or modified, and are still in full force and effect.” *Id.* The same day, the court signed an order in which it “confirm[ed] that the supervision requirements set forth in the March 8, 2021 Order which were not addressed in the March 15, 2023 Judgment remain in full force and effect.” *Order*, No. 49D09-1811-DC-46592 (Apr. 13, 2023).

[14] Given the language of the March 15 and April 13 orders, Mother is simply incorrect that the trial court eliminated the supervision requirement.

[15] Affirmed.

May, J., and Kenworthy, J., concur.