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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Guardianship of A.E.R. (Minor Child)

Shawn Wright,
Appellant-Respondent/Cross-Appellee,

v.

Gilberto Ruiz, Sr., and Teresa Ruiz,
Appellees-Petitioners/Cross-Appellants

February 11, 2022

Court of Appeals Case No. 21A-GU-1682

Appeal from the Lake Circuit Court

The Honorable Marissa J. McDermott, Judge

The Honorable Jewell Harris, Jr. Commissioner

Trial Court Cause No. 45C01-2009-GU-200

Crone, Judge.

Case Summary

[1] Shawn Wright (Mother) appeals the order appointing Gilberto Ruiz, Sr., and Teresa Ruiz (collectively Grandparents) as guardians of her child A.E.R. (Child). Mother argues that the trial court abused its discretion by denying her

motion to transfer venue and by appointing Grandparents as Child's guardians. On cross-appeal, Grandparents request appellate attorney's fees. Finding no abuse of discretion, we affirm the trial court in all respects. In addition, we conclude that Grandparents are not entitled to attorney's fees.

Facts and Procedural History

[2] Child was born in 2006. Since Child was five years old, she and Mother lived in Lake County in Whiting across the alley from the residence where Child's father, Omar Ruiz (Father), lived with Grandparents. Tr. Vol. 2 at 14. Child attended Whiting schools her entire life. Father passed away on July 22, 2020.

[3] In the weeks following Father's death, Mother believed that Grandparents entered her home without her permission, which created such conflict between them that Grandparents contacted law enforcement. *Id*. at 238-39. On two occasions, Mother was charged with disorderly conduct. *Id*. Ultimately, one charge was dismissed, and the other charge is pending based on Mother's successful completion of her pretrial diversion program. Also, during the weeks following Father's death, the Department of Child Services (DCS) conducted an investigation, which was terminated when Grandparents were appointed Child's temporary guardians. Appealed Order at 10 (Finding #50). There was also an incident in which Mother had an interaction with drug dealers that involved a weapon. After Mother's second arrest for disorderly conduct, the police gave Mother the choice of either going to jail or voluntarily admitting herself into the hospital. *Id*. at 2 (#8). Mother voluntarily admitted herself into St. Catherine's Hospital for mental health issues, and she stayed for

approximately one week. Tr. Vol. 2 at 232. Mother was diagnosed with a Bipolar 1 episode. *Id*. at 136, 197, 203, 233; Appealed Order at 2-3, 8, 10 (#9, 39, 50). At Mother's request, Child went to stay with her adult half brother Jordan Tzavaras, who lives with his father George in Porter County. Tr. Vol. 2 at 41. At that time, Child was enrolled in Whiting High School and was engaged in virtual learning, which she continued while staying with Jordan.

[4] On September 9, 2020, Grandparents initiated this proceeding in Lake Circuit Court by filing an emergency petition for temporary and/or permanent guardianship over Child, who was then fourteen years old. On September 11, 2020, in Porter Superior Court, Jordan and George (collectively Tzavarases) filed a petition for guardianship over Child with Mother's and Child's consents to guardianship.[1] Appellant's App. Vol. 2 at 29. On September 14, 2020, the

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[1] In a motion to strike, Grandparents contend that the Porter Superior Court documents were not part of the record below and were erroneously included in Mother's appendix. However, there are multiple references to these documents in the parties' filings in this case. In addition, the Porter Superior Court order appointing Jordan as Child's guardian was attached as an exhibit to one of Mother's filings in this case. Appellant's App. Vol. 2 at 20. Also, in one of Grandparents' filings in this case, they quote from Tzavarases' Porter Superior Court guardianship petition, and Grandparents filed notice of the Porter Superior Court's dismissal of Tzavarases' guardianship petition. *Id*. at 23, 29; Appellees' App. Vol. 2 at 6. Mother did not file a response to Grandparents' motion to strike. If any of the Porter Superior Court documents in Mother's appendix were not part of the record below, their inclusion is a violation of Indiana Appellate Rules 27 and 50(A)(1). Nevertheless, the Porter Superior Court documents are relevant to the venue issue raised in this appeal by establishing a clear timeline of the events. Pursuant to Indiana Evidence Rule 201(b)(5), we may take judicial notice of the records of a court of this state. Judicial notice may be taken at any stage of the proceedings, including on appeal. Ind. Evidence Rule 201(d); *see Knight v. State*, 155 N.E.3d 1242, 1254 n.2 (Ind Ct. App. 2020) (taking judicial notice of the Indiana Supreme Court's public reprimand of defendant); *Banks v. Banks*, 980 N.E.2d 423, 425-26 (Ind. Ct. App. 2012) (declining to grant appellant's motion to strike document in appellee's appendix where appellee presented colorable basis for taking judicial notice of document), *trans. denied*. Accordingly, pursuant to Evidence Rule 201(b)(5), we take judicial notice of the Porter Superior Court record in cause number 64D02-2009-GU-7221. We also deny Grandparents' motion to strike by separate order.

Porter Superior Court issued an order appointing Jordan as Child's guardian. *Id*. at 13-14, 20. The same day, Grandparents filed a motion to dismiss Tzavarases' guardianship petition. *Id*. at 29. On September 17, 2020, the Porter Superior Court granted Grandparents' motion and dismissed Tzavarases' guardianship petition without prejudice. *Id*. at 15; Appellees' App. Vol. 2 at 6.

[5] On September 16, 2020, in Lake Circuit Court, Mother filed a motion to dismiss, or in the alternative, stay proceedings and transfer venue to the Porter Superior Court (Mother's motion to transfer venue). Appellant's App. Vol. 2 at 20. On September 17, 2020, Grandparents filed a response arguing that Lake County was the proper venue because that was Child's residence, and Child had been staying at Jordan's residence for only two weeks, which could not constitute a change of residency. *Id*. at 33. On September 21, 2020, Mother filed another motion to transfer venue. *Id*. at 23.

[6] On September 21, 2020, Tzavarases filed a petition in the Lake Circuit Court for emergency guardianship over Child with Mother's consent to guardianship. Appellees' App. Vol. 2 at 20. On September 22, 2020, the trial court held a hearing on the appointment of a temporary guardian and Mother's motion to transfer venue to Porter Superior Court. On September 24, 2020, the trial court issued an order denying Mother's motion to transfer venue, denying Tzavarases' petition for guardianship, and granting Grandparents' petition for temporary guardianship over Child. Appellant's App. Vol. 2 at 37-38. At some point, the trial court appointed a guardian ad litem for Child.

[7] On November 10, 2020, Grandparents filed their petition for appointment of guardian over Child. *Id*. at 41. In April and June 2021, the trial court held hearings on Grandparents' petition. Tzavarases withdrew their petition for guardianship, and Mother objected to guardianship, arguing that it was no longer necessary. Tr. Vol. 2 at 175-76. On July 6, 2021, the trial court issued an order with findings of fact and conclusions thereon appointing Grandparents as Child's guardians. The order reads in relevant part as follows:

> 20. Dr. Rebesco was hired by the Mother to conduct a psychological assessment and came to Court to testify on behalf of the Mother. …. The report itself cautions that any projections as to the Mother's future mental health "*would need to be offered with a degree of speculation*." Dr. Rebesco's report also warns that Bipolar I episodes (as experienced by the Mother) may reoccur in days, months or years. Moreover, Dr. Rebesco's report dealt with the Mother's mental health only during that small window of time when Dr. Rebesco actually evaluated the Mother.
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> 21. Dr. Rebesco recommended that the Mother seek a confidential consultation with a psychiatrist whom she trusts; that the Mother seek short-term psychotherapy aimed at "*reviewing her history of life choices and revising them in keeping with her current reality*," and that the Mother not use alcohol or cannabis as "*both drugs increase risk of psychiatric deterioration*" for the Mother who was already "*psychiatrically fragile*." Dr. Rebesco testified that the Mother required therapy that was "*issued* [sic] *focused*" and a "*specific, targeted treatment*." The Mother has not yet followed through on at least some of Dr. Rebesco's recommendations.
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> ….

30. When determining whether to grant the Petition for Permanent Guardianship, the Court has given due consideration to the Mother's second criminal disorderly conduct offense which has not yet been dismissed. The Mother is on pretrial diversion which is scheduled for review on February 25, 2022.

31. The Mother has been ordered to continue her treatment with Scott West as a condition of her pretrial diversion and as part of her still active criminal case. The Mother's pretrial diversion is scheduled to end in February 2022. After that ends, the Court will have a history of whether the Mother's interaction with her prescribing LPN continues after the criminal court's requirement to do so terminates.

….

40. The Court finds that the Mother's current mental health and how it impacts her ability to care for the minor child are the gravamen of this case. The Mother currently suffers from both anxiety and PTSD. Dr. Rebesco testified that the Mother is "psychiatrically fragile," has compulsive traits, and suffers a chronically higher baseline of anxiety than most people. ….

41. The Mother testified as to her difficulty, because of COVID, scheduling an initial appointment with a psychotherapist and that her first appointment was not scheduled until the end of this month. The Mother's breakdown was last Fall[,] but the Mother has yet to start the recommended psychotherapy. The Court is troubled by this delay.

….

43. The Mother claims that she had not taken drugs since last Fall. Indeed, the Mother passed a random drug test taken during

a recess of the June 10, 2021 hearing. The Court congratulates the Mother on her recent sobriety and encouragers [sic] her to continue on that path. However, the … main reason for the Temporary Guardianship was the Mother's mental health, an issue with which the Mother continues to struggle.

….

46. The child's interest[s] are substantially and significantly served by placement with the Grandparents because the Mother admitted to having a gun held to her face by a drug dealer, although the Mother testified she was no longer using drugs and the Mother passed a drug test. The Mother's involvement with nefarious elements is concerning to the Court and the Court heard no evidence that the Mother's interactions with these people had stopped.

47. The child's interests are substantially and significantly served by placement with the Grandparents because, although it has been over four months since Dr. Rebesco's recommendations, the Mother has not yet started her recommended psychotherapy. The Court finds that this was an important part of Dr. Rebesco's recommendations, essential for the Mother's continued recovery.

48. The child's interests are substantially and significantly served by placement with the Grandparents because, the Mother's own witness, the child's half- brother, feared that, less than a year ago, the child's physical safety was in peril when the child was with the Mother. The child's safety is of paramount importance to the Court and, until the Mother complies with all of the recommendations of her own expert, the Court continues to have concerns.

49. The Court-appointed Guardian ad Litem recommended that the Permanent Guardianship be granted, that the Mother start

> her psychotherapy; that the Mother stay clean and sober; that the child remain in the Whiting Schools; and that the Permanent Guardianship be reevaluated in twelve months. The Court hereby accepts the recommendations of the Guardian ad Litem and hereby orders same.
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> ….
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> 64. At the time of the granting of the Emergency Temporary Guardianship, all of the evidence set forth herein established that the child was in an unsafe situation which substantially and significantly impacted the child's care and welfare in a negative way. Although the Mother has certainly made some positive changes in her life, the Court finds that the Grandparents have established by clear and cogent evidence that the Mother still has a way to go before the welfare of the child would best be served by the return of the child to the Mother's care.
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> ….
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> 66. This Permanent Guardianship shall be reevaluated in one year. At that time, the Court will hear testimony and review the Mother's past and current mental health records (including records from the psychotherapy scheduled to commence at the end of the month). At that time, the Mother's pretrial diversion should be concluded and there should be no criminal charges pending against the Mother. The Mother's psychotherapy, if not concluded by then, should be well underway.

Appealed Order at 4, 6-10, 12-13. Mother now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion by denying Mother's motion to transfer venue.

[8] In its temporary guardianship order, the trial court denied Mother's motion to transfer venue to Porter Superior Court. Appellant's App. Vol. 2 at 38. Specifically, the trial court found that Child's residence is in Lake County and that "[s]taying with her half-brother for approximately two weeks prior to the filing of the guardianship petition cannot constitute residency as contemplated by the guardianship statute." *Id*. Mother challenges the trial court's denial of her motion to transfer venue.

[9] We review a trial court's order on a motion to transfer venue for an abuse of discretion. *In re Adoption of W.M.*, 55 N.E.3d 386, 387 (Ind. Ct. App. 2016), *trans. denied*. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law. *Id*. We review any factual findings on an appeal from a ruling on a motion for transfer of venue for clear error and review conclusions of law de novo. *Arkla Indus., Inc. v. Columbia St. Partners, Inc.*, 95 N.E.3d 194, 196 (Ind. Ct. App. 2018), *trans. denied*.

[10] As a general matter, Indiana Trial Rule 75(A) governs venue requirements. The procedure in probate, however, is separate and distinct from the procedure for civil proceedings prescribed in the trial rules. *In re Tr. of Rawlings*, 113 N.E.3d 675, 681 (Ind. Ct. App. 2018), *trans. denied* (2019); *MacLeod v. Guardianship of*

Hunter, 671 N.E.2d 177, 178 (Ind. Ct. App. 1996), *trans. denied* (1997). "It is only where the probate code does not provide an adequate and complete mode of procedure that it is proper to resort to the rules of pleading and practice applicable to civil actions." *Cmty. Hosps. of Indiana, Inc. v. Est. of N.*, 661 N.E.2d 1235, 1239 (Ind. Ct. App. 1996) (citing *Gray v. Gray*, 221 Ind. 311, 314, 47 N.E.2d 610, 610-11 (1943)), *trans. denied*. In guardianship proceedings, Indiana Code Section 29-3-2-2 provides an adequate and complete mode of procedure for determining the proper county of venue. *MacLeod*, 671 N.E.2d at 178-79.

[11] Specifically, Section 29-3-2-2(a)(1)(A) provides that the venue for the appointment of a guardian, if the alleged minor resides in Indiana, is "in the county where the alleged … minor resides[.]" Further, the minor's residence "shall be determined by actual presence rather than technical domicile." Ind. Code § 29-3-2-5. In a situation where, as here, guardianship proceedings have been initiated in more than one county, Section 29-3-2-2(b) sets forth the proper procedure as follows:

> If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

As a preliminary matter, we note that the Lake Circuit Court guardianship proceeding was initiated prior to the Porter Superior Court proceeding, and therefore the trial court's exercise of authority to determine proper venue was in accordance with the statute.[2]

[12] Mother argues that the trial court erred by determining that Child's residence is in Lake County rather than in Porter County because "[a]lthough [Child's] actual presence was brief, the proper venue was the county where the child was actually located at the time of the filing of the case." Appellant's Br. at 18. Mother's argument requires us to consider whether Child's presence in Porter County for two weeks established Child's residence in that county under Sections 29-3-2-2 and 29-3-2-5. The parties do not cite any case law interpreting "actual presence" for purposes of determining residency in guardianship cases under Section 29-3-2-5. Our research has not revealed any cases that have addressed whether a minor child's actual presence in a county for a time as comparatively brief as the one here established residency. Certainly, a minor may be actually present in a certain county for varying lengths of time and for a variety of reasons, not all of which could be reasonably said to indicate

[2] We observe that the trial court's subject matter jurisdiction to adjudicate the guardianship is undisputed. Indiana Code Section 29-3-2-1(a)(1) provides that probate courts have jurisdiction over "[t]he business affairs, physical person, and property of every incapacitated person and minor residing in Indiana." It is well settled that the "filing of a case in a county in which venue does not properly reside does not divest the trial court of subject matter jurisdiction." *In re Adoption of L.T.*, 9 N.E.3d 172, 177 (Ind. Ct. App. 2014) (citing *State ex rel. Knowles v. Elkhart Circuit Court*, 256 Ind. 256, 258, 268 N.E.2d 79, 80 (1971)). Thus, even if it were ultimately determined that Lake County was not the proper venue, the trial court's jurisdiction over the matter would not be affected.

residency. Under many circumstances, such as a vacation, a child's actual presence in a certain county would be considered only temporary. As such, the determination of a minor's residence must be made on a case-by-case basis.

[13] Our review of the record shows that prior to going to stay with Jordan, Child had been living with Mother in Whiting for the previous nine years and attended Whiting High School. Tr. Vol. 2 at 14. Child went to stay with Jordan at Mother's request when Mother voluntarily admitted herself into St. Catherine's Hospital. *Id*. at 41, 136. While living with Jordan, Child continued virtual learning with Whiting High School and had no intention of changing schools. *Id*. at 46. Based upon the specific facts of this case, we cannot say that the trial court clearly erred in finding that Child's presence in Porter County for two weeks prior to the filing of the guardianship petitions did not change Child's residence from Lake County to Porter County. Accordingly, the trial court did not abuse its discretion by denying Mother's motion to transfer venue.

Section 2 – The trial court did not abuse its discretion by appointing Grandparents as Child's guardians.

[14] Mother next asserts that the trial court abused its discretion by appointing Grandparents as Child's guardians. We review the trial court's order in guardianship proceedings for an abuse of discretion, with a preference for granting latitude and deference to our trial judges in family law matters. *In re Guardianship of I.R.*, 77 N.E.3d 810, 813 (Ind. Ct. App. 2017). *See* Ind. Code § 29-3-2-4 ("All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article."). In

determining whether the trial court abused its discretion, we review the court's findings and conclusions, which we may not set aside unless they are clearly erroneous. *In re Guardianship of M.N.S.*, 23 N.E.3d 759, 766 (Ind. Ct. App. 2014). "Where the trial court issues findings of fact and conclusions thereon, we typically employ a two-tiered standard of review, determining first whether the evidence supports the findings and then whether the findings support the judgment." *In re Guardianship of A.Y.H.*, 139 N.E.3d 1050, 1052 (Ind. Ct. App. 2019). "Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made." *In re Guardianship of B.W.*, 45 N.E.3d 860, 866 (Ind. Ct. App. 2015). In conducting our review, we consider the evidence and the reasonable inferences arising therefrom in favor of the judgment and will not reweigh the evidence or reassess the credibility of witnesses. *In re Guardianship of I.R.*, 77 N.E.3d 810, 813 (Ind. Ct. App. 2017). While substantial deference is given to the trial court's findings, we review conclusions of law de novo. *A.Y.H.*, 139 N.E.3d at 1052.

[15] Pursuant to Indiana Code Section 29-3-5-3(a), a trial court shall appoint a guardian if the court finds that "(1) the individual for whom the guardian is sought is an incapacitated person or a minor; and (2) the appointment of a guardian is necessary as a means of providing care and supervision of the physical person or property of the incapacitated person or minor." Where, as here, a trial court has been asked to consider whether to place a minor in the custody of a person other than the natural parent, our supreme court has articulated the high burden that must be met:

> [B]efore placing a child in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement. The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child. The presumption will not be overcome merely because a third party could provide the better things in life for the child. In a proceeding to determine whether to place a child with a person other than the natural parent, evidence establishing the natural parent's unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would of course be important, but the trial court is not limited to these criteria. The issue is not merely the fault of the natural parent. Rather, it is whether the important and strong presumption that a child's interests are best served by placement with the natural parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person. …. A generalized finding that a placement other than with the natural parent is in a child's best interests, however, will not be adequate to support such determination, and detailed and specific findings are required.

In re Guardianship of B.H., 770 N.E.2d 283, 287 (Ind. 2002) (citations and quotation marks omitted).

[16] Mother challenges the trial court's conclusion that the guardianship is necessary as a means of providing care and support for Child. Before considering her argument, we pause to address Grandparents' contention that Mother has failed to present a cogent argument and has therefore waived this issue because she "never specifically identifies which particular findings are not supported by the evidence." Appellees' Br. at 22 (citing Ind. Appellate Rule 46(A)(8)). We

disagree that Mother has failed to present a cogent argument. Although Mother does not refer to findings by number, we are readily able to determine which findings she is challenging. That said, we observe that unchallenged findings of fact are accepted as true. *Moriarty v. Moriarty*, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020), *trans. denied*. As such, if the unchallenged findings are sufficient to support the judgment, we will affirm. *See Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015) (concluding that even if appellate court disregarded challenged findings, unchallenged findings were sufficient to support trial court's conclusion that plaintiff's claim was unreasonable and groundless so as to support trial court's award of attorney fees), *trans. denied*.

[17] In support of her argument that a guardianship is no longer necessary, Mother focuses on her mental health and employment and the resolution of her criminal charges. Specifically, she asserts that there was ample evidence that her mental state had significantly improved since her hospitalization in September 2020; she is following the recommendations of Dr. Rebesco despite the guardian ad litem's testimony to the contrary; no evidence was presented that her current mental health was anything other than stable; her inability to secure an appointment with a therapist due to COVID-19 cancellations does not suggest that she is not committed to therapy; and her medication is being monitored. She also argues that she has maintained gainful employment and can adequately support Child. Finally, she asserts that she has successfully resolved her pending criminal charges, in that one has been dismissed and the other is expected to be dismissed in February.

[18] We find Mother's argument unconvincing for several reasons. First, we observe that the trial court found that Mother was not following all of Dr. Rebesco's recommendations, and the evidence supports this finding. Dr. Rebesco's recommendations were for Mother to consult with a psychiatrist, engage in short-term psychotherapy aimed at "*reviewing her history of life choices and revising them in keeping with her current reality*," and start therapy with "*specific, targeted treatment*," and Mother had not done so. Appealed Order at 4 (#21). Although Mother's inability to start therapy may be due to circumstances related to the COVID-19 pandemic, the trial court was required to consider whether Mother was able to provide for Child's care and needs. The undisputed findings show that Mother suffers from anxiety and PTSD, is "*psychiatrically fragile*," and "suffers a chronically higher baseline of anxiety than most people." *Id*. at 8 (#40). The trial court found that Mother had suffered from anxiety all of her life and, according to Dr. Rebesco, has inadequate coping skills when overwhelmed, and therefore psychotherapy is essential for Mother's recovery. *Id*. at 10 (#53). Dr. Rebesco cautioned that any projections as to Mother's future mental health were speculative. *Id*. at 4 (#20). These findings support the trial court's finding that "Mother still has a way to go before the welfare of the child would best be served by the return of the child to the Mother's care." *Id*. at 12 (#64).

[19] Second, the trial court acknowledged that Mother had made some progress in certain areas but did not accord that progress much weight, which was well within its discretion. The trial court recognized that Mother's medication was

being monitored but found that Mother had been ordered to continue that treatment as a condition of her pretrial diversion in her still active criminal case. *Id*. at 7 (#31). The trial court also recognized Mother's current employment but found that her employment history has been spotty. *Id*. (#35).

[20] Third, we disagree that Mother has resolved her criminal charges. She is still on pretrial diversion. When and if she successfully completes pretrial diversion, her criminal charges will be resolved.

[21] Last, the trial court made numerous findings that Mother does not challenge. The trial court found that Child's interests are "substantially and significantly" served by placement with Grandparents because Mother admitted to having a gun held to her face by a drug dealer, and the trial court heard no evidence that Mother was no longer interacting with these people; Mother had not started recommended psychotherapy that is essential for her recovery; and Child's half-brother "feared that, less than a year ago, [Child's] physical safety was in peril when [she] was with [Mother]." *Id*. at 9-10 (# 46, 47, 48). The trial court also found that Child's "safety is of paramount importance to the Court and, until the Mother complies with all of the recommendations of her own expert, the Court continues to have concerns." *Id*. (# 48). By and large, Mother's argument is an invitation to reweigh the evidence, which we must decline. We conclude that the trial court did not err by finding that the guardianship is necessary as a means of providing care and support for Child. As such, we find no abuse of

discretion in the trial court's decision to appoint Grandparents as Child's guardians and affirm the guardianship order.[3]

Section 3 – Grandparents are not entitled to appellate attorney's fees.

[22] Grandparents contend that Mother's failure to follow the Rules of Appellate Procedure constitutes procedural bad faith justifying the award of appellate attorney's fees. Pursuant to Indiana Appellate Rule 66(E), this Court in its discretion may award appellate attorney's fees "if the appeal, petition, or motion, or response, is frivolous or in bad faith." Our discretion is limited to circumstances where the appeal is "permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). "A strong showing is required to justify an award of appellate damages, and the sanction is not imposed to punish mere lack of merit, but something more egregious." *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1033 (Ind. Ct. App 2018), *trans. denied* (2019). "In general, we are cautious to award attorney fees because of the potentially chilling effect the award may have upon the exercise of the right to appeal." *Holland v. Steele*, 961 N.E.2d 516, 529 (Ind. Ct. App. 2012), *trans. denied*.

[3] Notably, the trial court will reevaluate the guardianship in twelve months. Appealed Order at 12 (#66).

[23] Claims for appellate attorney fees may be based on substantive and/or procedural bad faith. *In re Guardianship of Lamey*, 87 N.E.3d 512, 527 (Ind. Ct. App. 2017). Here, we address a claim of procedural bad faith.

> Procedural bad faith occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court.

Staff Source, LLC v. Wallace, 143 N.E.3d 996, 1012 (Ind. Ct. App. 2020).

[24] In support of their procedural bad faith claim, Grandparents point to numerous specific instances of appellate rule violations by Mother, including the insertion of the Porter Superior Court documents in her appendix. Appellees' Br. at 28-29. We observe that some of these were ultimately corrected. In our view, the most notable violations of Indiana Appellate Rule 46 were Mother's failure to present the statement of facts in narrative form and provide a summary of the argument. However, we have rejected Grandparents' argument that Mother waived the second issue for failure to present a cogent argument, and we have determined it is appropriate to take judicial notice of the Porter Superior Court documents. On the whole, Mother's violations do not indicate a flagrant disregard of the form and content requirements of the appellate rules or that her brief was written in a manner calculated to require the maximum expenditure of time by the opposing party and this Court. Accordingly, we deny Grandparents' request for appellate attorney's fees.

[25] Affirmed.

Bradford, C.J., and Tavitas, J., concur.