MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kristin Varnhagen,
Appellant-Respondent,

v.

David Varnhagen,
Appellee-Petitioner.

August 10, 2023

Court of Appeals Case No. 22A-DC-3057

Appeal from the Hamilton Superior Court

The Honorable David Najjar, Judge

Trial Court Cause No. 29D05-1703-DC-2717

Memorandum Decision by Judge Bradford
Judges Crone and Brown concur.

Bradford, Judge.

Case Summary

[1] Kristin Varnhagen ("Mother") and David Varnhagen ("Father") (collectively, "the Parents") had one child together, K.V., before they dissolved their marriage in 2017. In 2019, the trial court awarded Mother sole legal custody and primary physical custody of K.V., subject to Father's parenting time. In 2022, after a series of motions and responses filed by each party, the trial court modified its original custody order to award Father primary physical custody and sole legal custody, subject to Mother's parenting time. Mother argues that the trial court abused its discretion when it modified its original custody order because there was neither a substantial change in circumstances nor a showing that modification was in K.V.'s best interests. We affirm.

Facts and Procedural History

[2] K.V. was born to Mother and Father in 2009 while they were married. K.V. has been diagnosed with an emotional disability exhibited by an "emotional instability to self-regulate, defiance, refusals and reactions that are abnormal in intensity and frequency and many avoidance behaviors." Appellant's App. Vol. III p. 181. In 2017, Mother petitioned for a dissolution of her marriage to Father. In 2019, the trial court awarded primary physical custody and sole legal custody to Mother. Stephanie Gookins, the Parents' parenting coordinator ("PC Gookins"), described Father as "more rules-oriented and structured while Mother is more nurturing and accommodating." Appellant's App. Vol. II p. 40. PC Gookins also identified that the parties suffer from

numerous issues, including different communication styles and "different visions as to how [K.V.] should be parented." Tr. Vol. II p. 6. The difference in parenting styles became a "source of conflict" and "fostered a litany of issues" for K.V. Appellant's App. Vol. II p. 3.

[3] According to PC Gookins, a major source of conflict is K.V.'s education, namely, K.V.'s completion of his homework while at Father's residence. Mother has testified that she has had difficulty in getting K.V. to take schoolwork to Father's during parenting time visits due to K.V.'s "extreme anxiety." Appellant's App. Vol. III p. 63. Prompted by the "constant battle" to get K.V. to go to Father's and bring his homework, in March of 2021, Mother filed a petition to modify the custody order such that K.V. would not have to do schoolwork with Father. In response, Father filed an answer and petition to modify legal custody, and the trial court set a hearing on all pending issues for November 3, 2021; however, the evidence was not concluded, and the trial court set another hearing for February of 2022.

[4] In the meantime, PC Gookins filed her final report in which she had explained that the Parents still suffered from ongoing issues and "don't agree about anything." Tr. Vol. II p. 14. Guardian ad litem ("GAL") Portland Schnitzius indicated that doing homework at Father's house is "probably the largest source of anxiety" between K.V. and Father. Tr. Vol. II p. 206. As a result, GAL Schnitzius recommended that homework not be part of Father's parenting time and that, unless the trial court were to provide "some guidance […] on this homework issue," increased parenting time through Monday overnight visits

was not in K.V.'s best interests. Tr. Vol. II p. 219. Further compounding K.V.'s educational problems is that "Mother has allowed [K.V.] to miss a tremendous amount of school." Appellant's App. Vol. II p. 41. Mother admitted that sometimes K.V. did not complete his homework assignments when at Mother's home. Despite these difficulties around completing his homework, K.V. has been "a good student" and has maintained "all A's and B's all along." Tr. Vol. II p. 27.

[5] Sometime between the November 3, 2021 hearing and the scheduled February 14, 2022 hearing, Mother and K.V. relocated to Mother's fiancé's residence. Mother did not inform Father of this move until November 8, 2022. Mother did, however, relay this information to K.V.'s therapist, David Doan, on October 11, 2021, at which point Doan began discussing the intended move with K.V. K.V. had been seeing Doan since 2017.

[6] At the February 14, 2022 hearing, Doan testified that he had been working with K.V. regarding stress and school-related issues. Doan additionally testified about an incident that had occurred on January 14, 2022, during Father's parenting time. At some point, K.V. had reported "not feeling safe" at Father's home and had reported to Doan that Father had "threatened to hit him" on two occasions. Tr. Vol. II p. 119. More specifically, when K.V. had arrived at Father's house that day, he had run to a neighbor's house and the neighbor had subsequently called the police to report that K.V. had been "attacked or hit by his [F]ather[.]" Tr. Vol. II p. 136. However, after Officer Brian Graves had arrived and evaluated K.V., he found no signs to corroborate that report. At

that point, Officer Graves, Father, and K.V. had attempted to call Mother, but she had not answered their calls. A few hours later, Mother had returned their calls and had met with them at Father's residence to pick up K.V. Officer Graves had described Father as "calm" during this interaction. Tr. Vol. II p. 136. Officer Graves had further determined that K.V. had lied about Father hitting him. As a result of this incident, Mother had withheld Father's parenting time until the February 14, 2022, hearing.

[7] At the February hearing, the trial court addressed Mother's motion to suspend parenting time and petition for a rule to show cause. Doan testified that Father and K.V. had vacationed in Florida in December of 2021 and that K.V. had told him that he had "had fun" and had participated in "fun activities" with Father. Tr. Vol. II p. 127. GAL Schnitzius testified that it appeared that Father and K.V. had "had a nice time together" on vacation. Tr. Vol. II p. 166. However, GAL Schnitzius also testified that, while Father's parenting time should not be suspended, she would like it to occur "in public" to "rebuild some of the trust and the relationship" after the January incident. Tr. Vol. II p. 164.

[8] On February 17, 2022, the trial court issued an order in which it declined to suspend Father's parenting time and found Mother in contempt for denying Father's parenting time. The trial court determined that the issues K.V. is struggling with "are likely a result of the parties' intense distrust and animosity towards each other." Appellant's App. Vol. II p. 161. For example, "there are numerous examples of behavior between the parties which unnecessarily place stress and discomfort on the child by placing him in the middle of their

disagreements." Appellant's App. Vol. III p. 161. The trial court warned the Parents that "enough was enough" and such behavior "should cease immediately." Appellant's App. Vol. III p. 161.

[9] On September 12, 2022, the trial court conducted another hearing. Shortly thereafter, however, Father petitioned for a rule to show cause, alleging that Mother had denied him parenting time again after the September hearing. On October 10, 2022, the Parents appeared for a hearing and Mother testified that, while she had been encouraging K.V. to attend parenting time, K.V. had "simply refused" to go. Appellant's App. Vol. II p. 43.

[10] After the October hearing, the trial court issued its order of modification in which it found Mother in contempt for having violated its previous order on parenting time and sentenced her to thirty days in the Hamilton County Jail pending a compliance review hearing on November 1, 2022. In doing so, the trial court noted that Mother needs "to take control" of K.V. Tr. Vol. III p. 43. The trial court also concluded that Father had proposed at least two reasonable methods to facilitate parenting time, both of which Mother had dismissed outright.

[11] At the November 1, 2022, review hearing, Mother explained that while K.V. had attended parenting time with Father the previous weekend and it had gone well, there had been an incident the weekend before that. Two weekends before the November hearing, K.V. had visited Father's home and had again tried to run away and a neighbor had called the police. K.V. had called Mother

and had told her that the police had come, he had tried to run away, and that Father had hurt him. As a result, Mother had asked Father to return K.V. to her that night as previously agreed; however, Father had not shown up. Mother had then explained to Father that if he did not return K.V., she would call the police and request their assistance in returning K.V. to her. When Father had not appeared, Mother had called the police.

[12] After hearing that testimony, the trial court expressed concern with Mother's choice to call the police and deny Father "the opportunity to be […] the parent, to step up, to deal with it." Tr. Vol. III p. 55. The trial court explained that Mother "inserted the police into a situation that they really didn't need to be in, thereby causing more trauma" and "took a resistant child and […] added one more layer to that resistance." Tr. Vol. III p. 56. The trial court acknowledged that Mother had been denying Father "the opportunity to be a parent" and her actions "still cloud [the] issue" of whether Father can effectively parent K.V. Tr. Vol. III p. 57. Additionally, at the time of the review hearing, K.V. had missed twenty-one days of school while under Mother's care, which the trial court found to be "a big problem." Tr. Vol. III p. 57. On November 28, 2022, the trial court issued its order of modification of custody in which it awarded Father primary physical custody of K.V., subject to Mother's parenting time, and sole legal custody of K.V.

Discussion and Decision

[13] When reviewing a trial court's decision to modify custody, "we review the court's decision for an abuse of discretion, because we give wide latitude to our trial court judges in family law matters." *In re Paternity of W.M.T.*, 180 N.E.3d 290, 296 (Ind. Ct. App. 2021), *trans. denied*. Where, as here, the trial court makes findings of fact and conclusions of law *sua sponte*, our standard of review is well-settled:

> [T]he specific findings control our review and the judgment only as to the issues those specific findings cover. Where there are no specific findings, a general judgment standard applies and we may affirm on any legal theory supported by the evidence adduced at trial.
>
> We apply the following two-tier standard of review to sua sponte findings and conclusions: whether the evidence supports the findings, and whether the findings support the judgment. Findings and conclusions will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will neither reweigh the evidence nor assess witness credibility.

Trust No. 6011, Lake Cnty. Trust Co. v. Heil's Haven Condos. Homeowners Ass'n, 967 N.E.2d 6, 14 (Ind. Ct. App. 2012), *trans. denied*.

[14] When it comes to modification of a child-custody order, Indiana Code section 31-17-2-21, in relevant part, provides:

> (a) The court may not modify a child custody order unless:
>
> > (1) the modification is in the best interests of the child; and
> >
> > (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 [IC 31-17-2-8] and, if applicable, section 8.5 [IC 31-17-2-8.5] of this chapter.
>
> (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

Further, Indiana Code section 31-17-2-8 provides that courts should consider the following factors in determining the best interests of the child:

> (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.

[15] "A parent seeking modification of custody bears the burden of proving that the existing custody order should be altered." *Montgomery v. Montgomery*, 59 N.E.3d 350, 350 (Ind. Ct. App. 2016), *trans. denied*. Mother contends that Father failed to meet his burden to show that modification is in K.V.'s best interests and that there was a substantial change in one or more of the factors listed above. We disagree.

[16] To start, the trial court concluded that "it is in the best interests of [K.V.] that Father shall have primary physical custody" and "sole legal custody" of K.V. Appellant's App. Vol. II p. 41. While "[g]enerally, a cooperation or lack thereof with custody and parenting time orders is not an appropriate basis for modifying custody[,]" we may modify custody if "'one parent can demonstrate that the other has committed misconduct so egregious that it places a child's mental and physical welfare at stake[.]'" *Montgomery*, 59 N.E.3d at 350–51 (quoting *Maddux v. Maddux*, 40 N.E.3d 971, 979 (Ind. Ct. App. 2015)). In *Maddux*, we concluded the trial court had not abused its discretion in modifying the custody order when Mother "persisted not only in denying Father his parenting time but also in falsely accusing him of abuse." *Id*. at 980. Here, "Mother was found to be in contempt" on two separate occasions for denying Father's parenting time. Appellant's App. Vol. II p. 40. Not only has Mother

"den[ied] [Father] the opportunity to be a parent[,]" she also "inserted the police into a situation that they really didn't need to be in, thereby causing more trauma" to K.V. and jeopardizing his emotional health to "shield [K.V.] from Father's parenting style." Tr. Vol. III pp. 56, 57.

[17] Additionally, Father argues that "changes in schooling and the mental health of [K.V.] have occurred" which justify modification. Appellee's Br. p. 10. For instance, while K.V. maintains good grades, the trial court found that "Mother has allowed [K.V.] to miss a tremendous amount of school." Appellant's App. Vol. II p. 41. Even if many of the absences were excused, the trial court noted that "[t]wenty-one days missed" by the November 1, 2022, review hearing was "a big problem" and does not serve K.V.'s best interests. Tr. Vol. III p. 57; Appellant's App. Vol. II p. 41. *See Walker v. Nelson*, 911 N.E.2d 124, 128–129 (Ind. Ct. App. 2009) (concluding that modification was in child's best interests when child had missed eighteen days of school in one school year while in Mother's care, had missed a portion of state-mandated testing, and child's grades had begun to decline).

[18] Further, "Mother has made decisions involving [K.V.], including moving residences and switching schools, all without informing Father." Appellant's App. Vol. II p. 40. Mother has "effectively excluded" Father from important decision-making and the responsibility of being a parent, which it found to be "not in the best interests of [K.V.]" Appellant's App. Vol. II p. 41. *See In re Paternity of J.T.*, 988 N.E.2d 398, 401 (Ind. Ct. App. 2013) (concluding that "Mother routinely denied [Father] the parenting time to which he was

entitled[,]" which established "a substantial change in the interrelationship of the parties").

[19] In summary, we conclude that Mother's argument essentially amounts to an invitation to reweigh the evidence, which we will not do. *Trust No. 6011*, 967 N.E.2d at 14. Mother's denial of Father's parenting time on multiple occasions and K.V.'s absences from school establish that there have been substantial changes in at least one of the Indiana Code section 31-17-2-8 factors, thereby justifying the trial court's modification. Respecting the trial court's wide latitude in family law matters, we cannot say that the trial court abused its discretion in modifying the custody order. *In re Paternity of W.M.T.*, 180 N.E.3d at 296.

[20] The judgment of the trial court is affirmed.

Crone, J., and Brown, J., concur.