

## 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.



---

ATTORNEY FOR APPELLANT

Dianna L. Mejia  
Law Offices of Dianna L. Mejia  
Urbana, Illinois

ATTORNEY FOR APPELLEE

Julianne Cartmel  
The Cartmel Group  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Christine Ling Chen,  
*Appellant-Respondent,*

v.

Robert Lee Brewer,  
*Appellee-Petitioner.*

January 25, 2022

Court of Appeals Case No.  
21A-JP-1184

Appeal from the Bartholomew  
Superior Court

The Honorable Jonathan L.  
Rohde, Judge

Trial Court Cause No.  
03D02-2002-JP-1159

**Bradford, Chief Judge.**

## Case Summary

[1] Christine Ling Chen (“Mother”) and Robert Brewer (“Father”) (collectively, “Parents”) are the biological parents of A.G.B. (“Child”). Although they never married, Parents cohabitated with Child until Mother was arrested on February 13, 2020, for allegedly committing domestic violence against Father in Child’s presence. Father has been Child’s sole care provider since that time. On February 28, 2020, Father filed a petition seeking sole legal custody of Child. Although Mother subsequently agreed to submit to a psychological examination that met certain requirements, Mother failed to do so. The trial court conducted a two-day evidentiary hearing on Father’s petition on May 4–5, 2021, after which it issued an order granting Father sole legal custody of Child, granting Mother parenting time with Child, and ordering Mother to pay child support. Mother contends that the trial court erred in relying on evidence that was excluded from the record, abused its discretion in granting sole legal custody to Father and in restricting her parenting time with Child, and erred in calculating her child support obligation. We affirm.

## Facts and Procedural History

[2] Mother and Father are the parents of Child, who was born out of wedlock on April 22, 2018. Paternity for Child was established by execution of a paternity affidavit. Following Child’s birth and the establishment of paternity, Parents cohabitated with Child and did not have any formal custody, parenting time, or support orders in place.

- [3] On February 13, 2020, Mother was arrested for allegedly committing domestic violence against Father in the presence of Child. The Department of Child Services (“DCS”) became involved with the family and, on February 14, 2020, executed a safety plan which restricted Mother’s access to Child and prohibited Mother from returning to the family home. On February 28, 2020, Father filed a petition seeking sole legal and physical custody of Child. Mother has since requested joint legal and shared physical custody.
- [4] On July 10, 2020, Parents entered into a verified agreement for temporary custody and parenting time (“the Agreement”). Pursuant to the terms of the Agreement, Mother agreed

to schedule a full psychological evaluation within 14 days of the date this agreement is signed, and further agree to execute necessary releases for health and medical records to confirm proper disclosure of issues that must be addressed and compliance with recommended treatment, in sufficient time to obtain such records so that they may be reviewed prior to the final hearing in this matter. Mother shall promptly advise Father of the name of the provider conducting her psychological evaluation so that Father may schedule a separate appointment with that therapist for purposes of sharing his perspective on family issues pertaining to Mother, Father and [Child]. Mother shall ensure that she follows any recommendations for treatment included in the evaluation report specifically related to each parents’ ability to make decisions in the best interests of [Child]. Mother’s course of treatment shall address anger and stress management and Mother shall satisfactorily address any medical issues that may be deemed to be contributing to her outbursts and health issues that could pose risk to [Child]. Father shall provide Mother a copy of his psychological evaluation completed during the pending CHINS matter.

Appellant's App. Vol. II pp. 32–33. Parents further agreed that it was in Child's best interests "that Father have sole legal custody of [Child] and that Father remain the primary care giver for [Child] pending final determination of custody, parenting time and child support." Appellant's App. Vol. II p. 31.

[5] Following an August 31, 2020 hearing, the trial court ordered Mother to pay child support in the amount of \$90.00 per week and awarded Mother limited parenting time. The parties thereafter continued to request hearings regarding parenting time. On November 12, 2020, the trial court indicated that no further hearings would be held until Mother fully complied with the portion the Agreement relating to her completion of a psychological examination.

[6] On November 13, 2020, Mother submitted documentation indicating that she had completed a comprehensive psychological evaluation with Dr. David L. Lombard, a licensed clinical psychologist, on August 27, 2020. The validity of this psychological evaluation was disputed throughout the proceedings.

[7] The trial court scheduled a two-day evidentiary hearing for May 4 and 5, 2021. Mother subsequently requested permission to have Dr. Lombard testify telephonically or virtually, rather than in person. Father objected to this request. The trial court ultimately denied Mother's request and ordered that Dr. Lombard's report would "not be admitted into evidence, unless [he was] available to be examined and cross examined in person at the hearing." Appellant's App. Vol. II p. 82.

[8] Pursuant to the trial court's prior order, Dr. Lombard's report was excluded from evidence at the evidentiary hearing after Mother failed to call him to testify in person. On May 25, 2021, the trial court issued an order in which it found as follows:

3. The Court has considered all relevant factors and makes its decision regarding custody, child support and parenting time in accordance with the best interests of the Child.

\*\*\*\*

6. As a part of [the Agreement], Mother was to schedule a full psychological examination within 14 days of the agreement; Mother further agreed to "promptly advise Father of the name of the provider conducting her psychological evaluation so that Father may schedule a separate appointment with that therapist for purposes of sharing his perspective on family issues pertaining to Mother, Father and [Child]."

7. Mother submitted her Notice of Compliance with Court Order on November 13, 2020[,] alleging that she completed a comprehensive psychological evaluation on August 27, 2020. This "comprehensive psychological evaluation" is not considered a "full psychological examination" as set forth in [the Agreement]. Therefore, Mother failed to complete a full psychological evaluation as agreed upon by the parties.

8. As a part of [the Agreement], Mother was to "ensure that she follows any recommendations for treatment included in the [psychological] evaluation." Since Mother failed to complete a full psychological evaluation as agreed upon by the parties, recommendations for her treatment are unknown.

9. As a part of [the Agreement], "Mother's course of treatment shall address anger and stress management." Mother

engaged in numerous counseling sessions. However, she never disclosed her arrest for domestic battery and other details that would be necessary to properly address anger and stress management. Therefore, Mother failed to complete treatment that addressed anger control and stress management.

10. The parties are unable to meaningfully communicate on parenting issues, and joint custody is contrary to the best interests of the Child.

\*\*\*\*

12. It is in the Child's best interest that Father be awarded sole legal custody of the Child.

\*\*\*\*

14. It is in the Child's best interest that the Court deviate from Indiana Parenting Time Guidelines for purposes of Mother's parenting time, because Mother failed to complete a full psychological evaluation as agreed upon by the parties, since recommendations for her treatment are unknown, and because Mother failed to complete treatment to address anger control or stress management. Mother will have parenting time with the Child according to the Indiana Parenting Time Guidelines, except Mother shall not have any overnights, and shall not have any extended parenting time in accordance with Section II(D)(2)&(3) of the Indiana Parenting Time Guidelines....

15. Father is not required to provide Mother with the opportunity for additional parenting time in accordance with Section I(C)(3) of the Indiana Parenting Time Guidelines. However, this does not prohibit Father from allowing Mother the opportunity for additional parenting time.

16. The ultimate goal is for Mother to have parenting time according to the Indiana Parenting Time Guidelines without the

deviations in paragraphs 14 and 15 of this Order. In order to work toward that ultimate goal, Mother will need to submit to and complete a comprehensive clinical psychiatric or psychological evaluation and meaningfully engage in any recommended follow-up treatment. In addition, Mother will need to complete treatment that addresses anger control and stress management. It will be necessary for Father to be an active participant in Mother's psychological evaluation, recommended follow-up treatment, and anger and stress management treatment, to the extent that [his participation] ensures the persons involved in the evaluations and treatment are aware of his perspective on family issues pertaining to Mother, Father and the child. Both Father and Mother shall cooperate in this process, and shall follow any recommendations from the professionals involved in Mother's treatment plan for when and how to transition from her current parenting time to parenting time according to the Indiana Parenting Time Guidelines without the deviations in paragraphs 14 and 15 of this Order.

Appellant's App. Vol. II pp. 16–18. The trial court also ordered Mother to pay child support in the amount of \$124.81 per week.

## Discussion and Decision

[9] Mother raises four issues on appeal, which we rephrase as whether the trial court (I) erred in relying on evidence that was excluded from the record, (II) abused its discretion in granting sole legal custody to Father, (III) abused its discretion by restricting her parenting time without making any findings relating to physical endangerment or emotional impairment to Child, and (IV) erred in including insurance premiums and childcare expenses in its calculation of child support.

## I. Alleged Reliance on Excluded Evidence

[10] Mother contends that the trial court erroneously relied on excluded evidence, asserting that

[t]he trial court’s determination regarding child custody and parenting time was based on the court’s consideration, and analysis, of the validity of the psychological assessment report authored by Dr. Lombard after his evaluation of Mother. The trial court’s reliance on evidence that was not introduced or admitted at the evidentiary hearing is clearly erroneous and constitutes an abuse of discretion.

Appellant’s Br. p. 20. “Clear error occurs when our review of the evidence most favorable to the judgment leaves us firmly convinced that a mistake has been made.” *Maddux v. Maddux*, 40 N.E.3d 971, 974–75 (Ind. Ct. App. 2015).

For his part, Father contends that Mother’s assertion “is a gross mischaracterization of the proceedings and the trial court’s findings.”

Appellee’s Br. p. 12.

[11] In raising this contention, Mother points to three of the trial court’s findings, specifically:

6. As a part of [the Agreement], Mother was to schedule a full psychological examination within 14 days of the agreement; Mother further agreed to “promptly advise Father of the name of the provider conducting her psychological evaluation so that Father may schedule a separate appointment with that therapist for purposes of sharing his perspective on family issues pertaining to Mother, Father and [Child].”

7. Mother submitted her Notice of Compliance with Court



Order on November 13, 2020[,] alleging that she completed a comprehensive psychological evaluation on August 27, 2020. This “comprehensive psychological evaluation” is not considered a “full psychological examination” as set forth in [the Agreement]. Therefore, Mother failed to complete a full psychological evaluation as agreed upon by the parties.

8. As a part of [the Agreement], Mother was to “ensure that she follows any recommendations for treatment included in the [psychological] evaluation.” Since Mother failed to complete a full psychological evaluation as agreed upon by the parties, recommendations for her treatment are unknown.

Appellant’s App. Vol. II pp. 16–17.

[12] In each of the challenged findings, the trial court’s language clearly indicates that it was referencing the Agreement, which was properly before the court for consideration. Findings #6 and #8 accurately reflect the language of the Agreement, while Finding #7 accurately reflects the procedural history of the case, *i.e.*, that Mother filed a notice of completion of an examination. Father argued, both prior to and during the evidentiary hearing, that the examination to which Mother claimed to have submitted did not satisfy the requirements set forth in the Agreement. The question of whether the examination satisfied the requirements of the Agreement was therefore squarely before the trial court and the trial court could, without considering any statements contained in Dr. Lombard’s excluded report, look to the Agreement and determine that the examination did not satisfy its requirements. In addition, nothing in the record indicates that Mother completed a different examination that complied with the requirements of the Agreement or provided any information about treatment

that was recommended by any such examination. The trial court, therefore, did not err in finding that Mother had failed to complete an evaluation as agreed upon by the parties or by stating that recommendations for potential necessary treatment are unknown.

[13] The trial court's findings were based upon evidence squarely before it for consideration. Nothing in any of the challenged findings even suggests that the trial court considered excluded evidence. As such, we conclude that the challenged findings are supported by the record and are not clearly erroneous.

## II. Custody

[14] “In an initial custody determination, both parents are presumed equally entitled to custody, and the [t]he court shall determine custody and enter a custody order in accordance with the best interest of the child.” *Purnell v. Purnell*, 131 N.E.3d 622, 626 (Ind. Ct. App. 2019) (quoting Ind. Code § 31-17-2-8). “There is no presumption favoring either parent.” *Id.* (citing Ind. Code § 31-17-2-8). In determining the child's best interest, the trial court must consider all relevant factors, including specifically 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 siblings; 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.

Ind. Code § 31-17-2-8. The trial court's decisions on child custody "are reviewed only for an abuse of discretion." *Sabo v. Sabo*, 858 N.E.2d 1064, 1068 (Ind. Ct. App. 2006).

[15] 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)). In this regard, the Indiana Supreme Court has explained that:

[a]ppellate deference to the determinations of our trial court judges, especially in domestic relations matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time. Thus enabled to assess credibility and character through both factual testimony and intuitive discernment, our trial judges are in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children.

*Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). “It is not enough on appeal that the evidence might support some other conclusion; rather, the evidence must positively require the result sought by the appellant.” *Purnell*, 131 N.E.3d at 627 (citing *D.C. v. J.A.C.*, 977 N.E.2d 951, 957 (Ind. 2012)). “Accordingly, we will not substitute our own judgment if any evidence or legitimate inferences support the trial court’s judgment.” *Id.*

[16] In finding that it was in Child’s best interests for Father to be awarded sole legal custody, the trial court specifically noted that it considered “all relevant factors and makes its decision ... in accordance with the best interests of the Child.” Appellant’s App. Vol. II p. 16. Mother contends that “the trial court’s award of sole legal custody to Father is against the logic and effects of the facts and circumstances” of the case. Appellant’s Br. p. 20 (capitalization omitted). We cannot agree.

[17] Mother argues that the trial court “improperly considered [her] psychological evaluation in its custody determination and therefore erred in its decision regarding custody of the parties’ minor Child.” Appellant’s Br. p. 21. On the contrary, Mother’s mental health was clearly an appropriate factor for the trial court to consider pursuant to Indiana Code section 31-17-2-8(6), and given that the record contained allegations that Mother had previously threatened to harm both Father and Child, it was not inappropriate for the trial court to consider the fact that Mother had failed to complete the agreed upon mental health evaluation and recommended treatment in considering Child’s best interests.

[18] While the trial court's findings did not suggest that Mother had ever physically harmed Child, the findings did note that Mother had been arrested for allegedly committing domestic violence against Father while in the presence of Child. This is an appropriate factor for the trial court to consider pursuant to Indiana Code section 31-17-2-8(7). We also believe that one may reasonably infer that witnessing domestic violence between Mother and Father likely had a negative effect on Child. DCS Case Manager Amanda Myers, who worked with Father in creating Child's safety plan, testified as such, stating that "the evidence strongly supports that it is not healthy and it is not in the best interest of the child," to see a parent being physically aggressive toward the other parent. Tr. Vol. II p. 90.

[19] Further, since the episode of domestic violence by Mother, Father had been Child's sole caregiver. The record contains evidence suggesting that Child is comfortable with Father and is well-adjusted to his care. The record does not demonstrate the same for Mother, instead indicating that Child was hesitant around and did not want to be touched by Mother. Mother had also indicated to Father on multiple occasions that she would leave, leaving Child with Father. It is unclear where Mother would go or what she would do for employment if she left given that in discussing her prior employment prior to her relationship with Father, Mother alluded to working in the illicit massage industry and working undercover for police "just for prostitution and also drugs and also for fake marriage, just that type" of thing, reporting to "Eddy, from Washington." Tr. Vol. III p. 232.

[20] The record also supports the trial court’s findings that the parties were unable to meaningfully communicate with each other regarding issues relating to Child, with Mother admitting that she had previously refused to communicate with Father because “he wants to have the full custody.” Tr. Vol. IV p. 6. Mother had also previously sought unnecessary medical care for Child, unnecessarily taking Child to the hospital on at least three occasions.

[21] Despite Mother’s claim, we cannot say that the trial court’s determination “amounts to punishing Mother for non-compliance with the custody agreement.” Appellant’s Br. p. 23. The trial court’s findings show that the trial court considered the relevant considerations regarding Child’s best interests in awarding sole legal custody to Father. The trial court, therefore, did not abuse its discretion in this regard.

### III. Parenting Time

[22] In making decisions regarding the amount of parenting time to award a noncustodial parent, trial courts “give foremost consideration to the best interests of the child.” *Marlow v. Marlow*, 702 N.E.2d 733, 735 (Ind. Ct. App. 1998), *trans. denied*. When reviewing the trial court’s resolution of a visitation issue, we reverse only when the trial court abused its discretion. *Id.* “If the record reveals a rational basis supporting the trial court’s determination, no abuse of discretion occurred.” *Id.* Furthermore, because judgments in custody matters “typically turn on essentially factual determinations,” factual determinations “will be set aside only when they are clearly erroneous.”

*Baxendale v. Raich*, 878 N.E.2d 1252, 1257 (Ind. 2008). “We will not substitute our own judgment if any evidence or legitimate inferences support the trial court’s judgment.” *Id.* at 1257–58. Likewise, “[w]e will not reweigh the evidence or reassess the credibility of witnesses.” *Marlow*, 702 N.E.2d at 735.

[23] Again, with regard to parenting time, the trial court found as follows:

14. It is in the Child’s best interest that the Court deviate from Indiana Parenting Time Guidelines for purposes of Mother’s parenting time, because Mother failed to complete a full psychological evaluation as agreed upon by the parties, since recommendations for her treatment are unknown, and because Mother failed to complete treatment to address anger control or stress management. Mother will have parenting time with the Child according to the Indiana Parenting Time Guidelines, except Mother shall not have any overnights, and shall not have any extended parenting time in accordance with Section II(D)(2)&(3) of the Indiana Parenting Time Guidelines....

15. Father is not required to provide Mother with the opportunity for additional parenting time in accordance with Section I(C)(3) of the Indiana Parenting Time Guidelines. However, this does not prohibit Father from allowing Mother the opportunity for additional parenting time.

16. The ultimate goal is for Mother to have parenting time according to the Indiana Parenting Time Guidelines without the deviations in paragraphs 14 and 15 of this Order. In order to work toward that ultimate goal, Mother will need to submit to and complete a comprehensive clinical psychiatric or psychological evaluation and meaningfully engage in any recommended follow-up treatment. In addition, Mother will need to complete treatment that addresses anger control and stress management. It will be necessary for Father to be an active participant in Mother’s psychological evaluation, recommended

follow-up treatment, and anger and stress management treatment, to the extent that [his participation] ensures the persons involved in the evaluations and treatment are aware of his perspective on family issues pertaining to Mother, Father and the child. Both Father and Mother shall cooperate in this process, and shall follow any recommendations from the professionals involved in Mother's treatment plan for when and how to transition from her current parenting time to parenting time according to the Indiana Parenting Time Guidelines without the deviations in paragraphs 14 and 15 of this Order.

Appellant's App. Vol. II pp. 17–18.

[24] Indiana Code section 31-14-14-1(a) provides that “[a] noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time might: (1) endanger the child's physical health and well-being; or (2) significantly impair the child's emotional development.” In challenging the portion of the trial court's order relating to parenting time, Mother is seemingly arguing that the amount of parenting time she was awarded is unreasonable. In support of her claim that the trial court erroneously restricted her parenting time, Mother again asserts that the trial court relied on excluded evidence. For the reasons stated above, Mother's claim fails, and we again conclude that the trial court did not rely on excluded evidence, but rather on evidence properly before the court, *i.e.*, the Agreement. The trial court's findings make it clear that the goal is to increase Mother's parenting time with Child once she successfully complies with the Agreement, including submitting to a full psychological examination in the manner described in the Agreement and completing any recommended services.



Mother has complete control over if and when she does so. In the meantime, for the reasons discussed above relating to Child's best interests, we cannot say that the trial court abused its discretion in limiting Mother's parenting time with Child.

#### IV. Child Support

[25] Child support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines. *See McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). The Guidelines apportion the cost of supporting children between the parents according to their means, on the premise that children should receive the same portion of parental income after a dissolution that they would have received if the family had remained intact. *See id.* The trial court is vested with broad discretion in making child support determinations. *Carter v. Dayhuff*, 829 N.E.2d 560, 569 (Ind. Ct. App. 2005). A calculation of child support under the Guidelines is presumed to be valid. *McGill*, 801 N.E.2d at 1251.

We will reverse a trial court's grant or denial of a request for modification of child support only where the court has abused its discretion. *Carter*, 829 N.E.2d at 569–70. An abuse of discretion occurs when the trial court misinterprets the law or the decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* We do not reweigh the evidence or judge the credibility of the witnesses upon review; rather, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *Id.* at 570.

*Sandlin v. Sandlin*, 972 N.E.2d 371, 374–75 (Ind. Ct. App. 2012).

[26] Mother contends that the trial court “erred when it calculated Mother’s child support obligation because (1) the trial court included a portion of the childcare expenses in Mother’s child support obligation, and (2) the trial court included a portion of the medical insurance premium in Mother’s child support obligation.” Appellant’s Br. p. 27. However, review of the trial court’s child support order indicates that the trial court did not assign a portion of either childcare or medical insurance costs to Mother, but rather assigned the full amount of each to Father. With respect to Father’s work-related childcare expenses, the child-support worksheet adopted by the trial court assigns responsibility for “\$170.00” in weekly work-related childcare expenses to Father and “\$0.00” to Mother. Appellant’s App. Vol. II p. 22. With respect to medical insurance costs, the trial court, relying on demonstrative exhibits submitted to the trial court by Father’s counsel, notes an insurance cost of “\$52.85” which it credits to Father as an expense paid by Father. Appellant’s App. Vol. II p. 22. Given that the trial court’s support order does not assign any portion of the childcare or medical insurance expenses to Mother and that the portions relating to Father’s income as well as that imputed to Mother are consistent with the amounts reflected in the record, we must agree with Father that the trial court’s “support calculations are consistent with the evidence and testimony, properly calculated using the Indiana Child Support Guidelines.” Appellee’s Br. p. 14. The trial court did not abuse its discretion in this regard.

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

Crone, J., and Tavitas, J., concur.