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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of A.R.S. (Minor Child);

P.M.S.,

Appellant-Petitioner,

v.

T.P.W.,

Appellee-Respondent.

November 16, 2022

Court of Appeals Case No. 22A-JP-529

Appeal from the Warrick Superior Court

The Honorable Amy Steinkamp Miskimen, Judge

Trial Court Cause No. 87D02-1211-JP-284

Tavitas, Judge.

Case Summary

[1] P.M.S. ("Father") appeals the order of the trial court modifying custody of A.R.S. ("Daughter") in favor of T.P.W. ("Mother") and awarding Father parenting time pursuant to the Indiana Parenting Time Guidelines. Father claims that the trial court abused its discretion by: (1) modifying custody in

favor of Mother; and (2) granting Father less parenting time than that called for in the Indiana Parenting Time Guidelines. We conclude that the trial court did not abuse its discretion by modifying custody in favor of Mother and that the trial court, in its written order, granted Father parenting time pursuant to the Indiana Parenting Time Guidelines. Accordingly, we affirm.

Issues

[2] Father presents two issues, which we restate as:

> I. Whether the trial court abused its discretion by modifying the existing custody order to give Mother primary physical custody of Daughter and awarding the parties "joint legal custody" with Mother as "the final decision maker in areas of disagreement." Amended Notice of Completion of Clerk's Record pp. 3.
>
> II. Whether the trial court abused its discretion by granting Father parenting time pursuant to the Indiana Parenting Time Guidelines.

Facts

[3] Daughter was born in July 2012 to Mother and Father ("Parents"). Father established paternity in 2013. In 2016, the trial court granted Father primary physical custody of Daughter and granted joint legal custody to Parents. Mother was granted parenting time pursuant to the Indiana Parenting Time Guidelines.

[4] Mother lives in Evansville, Indiana, with her husband and two other children. Mother's husband was previously on active duty in the United States Army, which required her to move several times in the past. Mother's husband was honorably discharged at the end of 2021 and has lived with Mother since his discharge. Father lives nearby in Newburgh, Indiana, with his girlfriend. He is employed as a contractor and occasionally tends bar at a lounge in Evansville. While in Father's care, Daughter often spent time with her paternal grandparents.

[5] In October 2021, Daughter told a friend at school that Daughter had been molested. The Department of Child Services ("DCS") investigated, and Daughter reported that her eleven-year-old cousin ("Cousin") had been having sexual contact with her, including sexual intercourse at the grandparents' home. DCS Family Case Manager ("FCM") Erica Cornelius investigated the allegations and spoke with Mother, Father, and Father's parents. Father acknowledged that, for the past several months, he and Daughter had been staying at Father's parents' house, due to his house being treated for fleas. FCM Cornelius arranged for Daughter to undergo a forensic interview on October 15, 2021.

[6] The day before the scheduled interview, Mother arranged to pick Daughter up from school to start the fall break. Father and Mother argued over which parent would have Daughter over the break, and Father ultimately conceded that Daughter would spend the break with Mother. When Mother went to pick Daughter up from school, however, Daughter was not there. Concerned,

Mother attempted to contact Father to no avail. Eventually, Mother discovered that Father had picked up Daughter. As a result, Mother never spoke to Daughter prior to the forensic interview. Although Father stated that he instructed Daughter to tell the truth during the forensic interview, regardless of the consequences, Daughter failed to repeat her allegations of sexual abuse during the interview.

[7] Mother still believed Daughter's initial claims of being molested. Daughter began to have suicidal thoughts and ideations and wrote in her journal of her desire to kill herself. Upon discovering this journal entry, Mother took Daughter to a treatment center, where Mother was given a safety plan to ensure Daughter's physical safety. Mother also discovered that Father and his parents had recently told Daughter Aesop's fable "The Boy Who Cried Wolf,"[1] which Mother believed played a part in Daughter's failure to disclose the abuse during the first forensic interview.

[8] On October 19, 2021, Daughter again reported to a teacher at school that Cousin had sexually abused her, and DCS scheduled another forensic interview. This time, Daughter reported the sexual abuse to the interviewer. Daughter stated that Cousin had been sexually molesting her since she was four years old and that the molestations occurred at her paternal grandparents' home when grandparents were present but the children were unsupervised. Cousin

[1] *See The Æsop for Children, The Shepherd Boy & the Wolf*, available online from the Library of Congress at: https://read.gov/aesop/043.html.

admitted the sexual abuse. Despite determining that there was sufficient evidence to substantiate Daughter's report of sexual abuse, DCS decided not to substantiate the claims due to Cousin's age and fear that the stigma of being a sexual abuser would follow him into adulthood. Instead, DCS and Cousin's parents agreed that Cousin would enter treatment for sexually maladaptive behavior.

[9] The DCS report notes that Father was upset by the molestation allegations and that he made inconsistent statements about whether he planned to keep Daughter away from Cousin. Father also "kept trying to change the focus to the child's mother and was not addressing the allegations. FCM had to keep bringing the conversation back [to] the importance of his own child's mental health." Ex. Vol. p. 29. After Father reviewed the contents of the forensic interview, "he again kept discussing being worried about his nephew [i.e., Cousin], his mother, and his sister, but was not sympathetic to his own child." *Id*.

[10] Per DCS's request, Mother arranged for Daughter to attend counseling. The only session she missed occurred when Daughter was in Father's care. Father claimed that Daughter was sick on that day and accused Mother of failing to remind him of the appointment, even though he had been notified of the counseling sessions via email.

[11] DCS also referred the family to Ireland Home Based Services, where case worker Princess Wimsatt was assigned to the case. Both parents cooperated

with Wimsatt, who informed the parents that they should not discuss any court-related matters in front of Daughter. Despite this, Father discussed with Daughter the possibility of changing schools.

[12] Wimsatt recommended that Daughter have a means of contacting both parents at all times. Accordingly, Mother obtained a cell phone for Daughter. Father did not agree with providing Daughter with a cell phone, but Wimsatt told Mother that she did not need Father's permission to give the phone to Daughter.[2] Father was upset by Mother's decision to give Daughter the phone, and when Daughter returned to his house, he immediately took the phone from her and would not give it back to Daughter while she was in his care. This upset Daughter. Nevertheless, Father and paternal grandmother contacted Daughter via her phone several times while Daughter was in Mother's care.

[13] While in Father's care, Daughter began to have issues at her school. Daughter disclosed to her friends that she had been sexually abused. Some of her friends then told their parents, who, inexplicably, informed their children to avoid Daughter. As a result, Daughter was isolated and bullied at school and often would not even go outside at recess. Daughter's school advisor and Father discussed switching elementary schools within the same school district. Mother wanted Daughter to switch to a school in Mother's school district. The parents

[2] Mother took steps to ensure Daughter's safety on the phone. She purchased a children's plan through her cellular provider, which allows Mother to control the phone and block numbers. Mother also enrolled the phone through her Apple ID, so that Daughter has to have permission to install any mobile apps. Mother can also monitor and restrict Daughter's access to the internet through her provider.

discussed the bullying issue with the school principal, who suggested that the parents consider transferring Daughter to a different school.[3] The Guardian Ad Litem ("GAL")[4] was also concerned with the bullying Daughter experienced at school and recommended a transfer to another school.

[14] According to the then existing parenting-time order, "[t]he parties shall provide the other with the Opportunity for Additional Parenting, pursuant to the 2013 Indiana Parenting Time Guidelines, for any period of time that the parent is unavailable for four (4) hours or more." Appellant's App. Vol. II p. 30. During the latter part of 2021, however, Father frequently took Daughter to stay with his parents instead of giving Mother the opportunity for additional parenting time. This concerned Mother because Daughter was molested while in the care of her paternal grandparents. During the 2021 holiday season, Daughter was to spend the first half of her Christmas break with Mother and the second half with Father. Father informed Mother that he was not going to be working during this time. Mother, however, later discovered that Father was working during the break and had taken Daughter to her paternal grandparents' house, even though Mother was available to care for Daughter.

[15] On October 22, 2021, Mother filed a petition to modify custody, parenting time, and child support. The trial court held evidentiary hearings on Mother's

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[3] The trial court noted its disapproval of the principal's failure to address the bullying directly.

[4] The GAL was originally appointed in 2016 and was re-appointed in 2019 and again in 2021 after Mother filed her petition to modify.

petition on November 18, 2021, December 20, 2021, January 24, 2022, and February 8, 2022. The GAL filed his report on December 8, 2021. The GAL recommended that Mother have primary physical custody of Daughter and that Daughter attend school in Mother's school district. The GAL also recommended that Daughter have no contact with Cousin. The GAL explained that Mother took Daughter's report of sexual abuse seriously, whereas Father believed the sexual contact was "consensual." Tr. Vol. II p. 72.

[16] Father testified that he had difficulty "processing" Daughter's allegations because of how close his family was. *Id.* at 100. He stated:

> [Cousin] and my daughter are as close as brothers and sisters. I am very close with his mother and very close to him as well. So, when all of the sudden out of the blue when all of these accusations were coming up, I could not, it just, I had no words. I still don't have words on how I was feeling back then because it just seemed so unbelievable with, knowing my nephew, it just didn't seem probable.

Id. at 101.

[17] When asked, "[a]s we sit here today, do you believe that these allegations occurred," Father responded, "[t]o some extent, yes." *Id.* Father also stated that he had kept Daughter away from Cousin "[f]or the most part," but admitted that they may have seen each other in passing during the holidays. *Id.* When asked what he meant by using the term "consensual" with regard to the sexual molestation, Father testified:

> Basically, it was kids being kids who have a very close relationship that it could have potentially been a matter of that. I didn't see a, at the time, it didn't seem that it was any sort of malicious intent behind it. I was unaware of fully my nephew initiating or if my daughter was initiating it because I did not have the full story from either party.

Id. at 107.

[18] Father also expressed doubts about whether the molestation began when Daughter was four years old. When asked, "[d]o you believe your daughter," Father responded, "I think there are some questionable things that she has said because her living with me full time and knowing how she is with understanding time. Initially, when it all happened, I did not believe that things were factually correct." *Id*. at 145. And when asked bluntly, "Do you believe your daughter was molested by her cousin beginning at four years of age," Father replied, "I do not believe that had happened that long ago." *Id*. Instead, Father believed it started "at the beginning of the year." *Id*. Although Cousin lives only one street away from Father, Father had no plan to ensure no contact between the two. Father stated: "We simply have not had any, I personally have not seen or talked to him, my sister and I have discussed not allowing them to be together. Mainly until this case is settled." *Id*. at 143. Father stated that he would not allow contact until the children's therapist recommended any contact.

[19] At the conclusion of the evidence, the trial court stated from the bench:

> I am going to keep it a joint legal custody. Mom is the primary decision maker. I will make mom the primary physical custodian. [Father], I am going to have you on Indiana Parenting Time Guidelines **with overnights** every other weekend and half the summer. I do not want molestation discussed with [Daughter] unless she brings it up with you. I want, I know [Daughter] is in counseling right now. I want her to continue with the counseling. [Daughter] is not [to] be left alone with her paternal grandmother or ever be around with [Cousin]. . . . Your child is a victim. I understand, you stated this little incident has disrupted our close family, this is not a little incident. This is huge. This effects [sic] your daughter for the rest of her life. If you don't believe her, go to counseling with her. Go to counseling together. You've got a chan[c]e because she is so young to pull it all together to be her biggest supporter. I am not going to order any child support because there is back child support owed. [Mother,] I would encourage you to catch up to that. And, good luck to you all. . . .

Tr. Vol. II pp. 172-73 (emphasis added).

[20] On February 9, 2022, the trial court made the following entry into the chronological case summary ("CCS"):

> This being the date and time set for Continued Hearing, Court continues to hear sworn testimony and examines admitted exhibits. Court now orders Joint Legal Custody with Mother being the Primary Decision Maker[5] and Primary Physical Custod[ian]: Mother will enroll Child in Evansville Vanderburgh School Corporation as soon as possible: Father will follow Indiana Parenting Time Guidelines **without overnight visits**; Father's parenting time will be every other Saturday and Sunday 9:00 am to 6:00 pm; Child shall have no contact with her abuser;

[5] As noted *infra,* this is not truly joint legal custody.

> Court does not order Child Support at this time; Parties agree on amount of Mother's arrearage and will work on an agreement for repayment.

Appellant's App. Vol. II p. 14 (emphasis added). The trial court ordered Mother's counsel to submit a proposed order reflecting the trial court's oral order. No order was ever prepared or submitted. Father filed his notice of appeal on March 10, 2022.

[21] On September 1, 2022, this Court issued an order *sua sponte*, noting that no final written custody order was issued by the trial court. Accordingly, we temporarily stayed the appeal and remanded to the trial court "for the limited purpose of issuing a written modification of custody order supporting the trial court's modification of custody and parenting time decision." Order of Sept. 1, 2022. We ordered the trial court to issue its written order no later than fifteen days from the date of our order.

[22] On September 2, 2022, the trial court issued its written order, which it noted with an entry in the CCS. This order provides in relevant part:

> 1. The Court finds that [Mother] has met her burden and her Petition is hereby GRANTED.
>
> 2. The Court orders that the parties shall have joint legal custody with [Mother] being the final decision maker in areas of disagreement.
>
> 3. [Mother] shall have primary physical custody of [Daughter]. [Father] **shall have time pursuant to the Indiana Parenting Time Guidelines**, including half of the summer school break.

4. The parties are ordered not to discuss the child's molestation with her unless she brings it up. Further, the child is to continue her counseling.

5. [Father] is ordered not to have the alleged perpetrator in the same vicinity as his child, including holidays. Further, the child shall not be left alone in the presence of the paternal grandmother; [Father] or his significant other shall be present.

6. [Mother] shall change the child's school immediately.

Amended Notice of Completion of Clerk's Record pp. 3-4 (emphasis added).

Discussion and Decision

[23] "'Appellate 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.'" *Hahn-Weisz v. Johnson*, 189 N.E.3d 1136, 1141 (Ind. Ct. App. 2022) (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)). Trial courts are "'enabled to assess credibility and character through both factual testimony and intuitive discernment," and, therefore, are "in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children.'" *Id*. (quoting *Best*, 941 N.E.2d at 502).

[24] We further noted in *Hahn-Weiz* that:

> there is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their

> testimony as it came from the witness stand, did not properly understand the significance of the evidence. On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.

189 N.E.3d at 1141 (quoting *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016)) (internal citations and quotations omitted).

[25] Trial courts have discretion in both initial custody and modification of custody determinations, and we review those determinations for an abuse of discretion. *See In re Paternity of Snyder*, 26 N.E.3d 996, 998 (Ind. Ct. App. 2015) ("We review custody modifications for abuse of discretion, with a preference for granting latitude and deference to our trial judges in family law matters."). Although a trial court is not required to enter specific findings on a petition to modify, *Hecht v. Hecht*, 142 N.E.3d 1022, 1031 (Ind. Ct. App. 2020), the absence of such findings impacts our review. *In re Souders*, 148 N.E.3d 1098, 1102 (Ind. Ct. App. 2020). That is, we apply a general judgment standard to any issue about which a court made no findings. *Id.* (citing *Rea v. Shroyer*, 797 N.E.2d 1178, 1181 (Ind. Ct. App. 2003)). Under this standard, we will reverse the award of custody only if the trial court's determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences to be drawn therefrom. *Id*. (citing *Wallin v. Wallin*, 668 N.E.2d 259, 260 (Ind. Ct. App. 1996)).

I. Modification of Custody

[26] Father first contends that the trial court erred by modifying custody. Indiana Code Section 31-14-13-6 requires the party seeking to modify an existing custody order to prove that: (1) modification is in the best interests of the Child; and (2) there has been a substantial change in one or more of the factors set forth in Indiana Code Sections 31-14-13-2 or 31-14-13-2.5.[6]

[27] The factors set forth in Indiana Code Section 31-14-13-2 ("Section 2") are:

> (1) The age and sex of the child.
>
> (2) The wishes of the child's 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 parents;
>
> (B) the child's siblings; and
>
> (C) any other person who may significantly affect the child's best interest.
>
> (5) The child's adjustment to home, school, and community.
>
> (6) The mental and physical health of all individuals involved.
>
> (7) Evidence of a pattern of domestic or family violence by either parent.

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[6] Indiana Code Section 31-14-13-2.5 applies only when the trial court finds by clear and convincing evidence that the child has been cared for by a de facto custodian, which is inapplicable in this case.

> (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

In making a child custody determination under Section 2, a trial court "shall" consider "all relevant factors," including each factor listed above.[7] I.C. § 31-14-13-2; *see also Souders*, 148 N.E.3d at 1105.

A. Physical Custody

[28] Father first argues that the trial court erred by modifying custody and granting to Mother primary physical custody of Daughter. Father repeatedly claims that the trial court failed to make findings regarding the statutory factors it must consider under Indiana Code Section 31-14-13-2 and that modification was in Daughter's best interest. We have long held, however, that trial courts are not required to enter specific findings and conclusions thereon when modifying custody. *Hecht*, 142 N.E.3d at 1031. "Indeed, the plain language of the statute only requires a court to 'consider' the factors, not to make a finding regarding each one." *Anselm v. Anselm*, 146 N.E.3d 1042, 1047 (Ind. Ct. App. 2020), *trans. denied*.[8] Instead, specific findings are required only if requested in writing

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[7] Indiana Code Section 31-14-13-6 says that the trial court may not order a custody modification unless: "(1) 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 2 and, if applicable, section 2.5 of this chapter." (Emphasis added). Section 2, however, states that the trial court "**shall** consider all relevant factors, including" those listed in that Section. I.C. § 31-14-13-2 (emphasis added). We do not read the use of "may" in Section 6 as altering the mandatory "shall" in Section 2. That is, we read both statutes as requiring the trial court to consider the factors listed in Section 2, among other relevant factors.

[8] *Anselm* referred to Indiana Code 31-17-2-8, which contains the same list of factors as Indiana Code Section 31-14-13-2. Section 31-17-2-8 governs custody following a dissolution of marriage, whereas Section 31-14-13-2 governs custody in paternity actions.

pursuant to Indiana Trial Rule 52(A). *Hecht*, 142 N.E.3d at 1031. Here, neither party made such a request. Thus, there is no error in the trial court's failure to make specific findings regarding the statutory factors.

[29] That having been said, we note that specific findings of fact are helpful to us as the reviewing court and to the parties. Specific findings, especially when they cite to the relevant statutes, give us confidence that the trial court considered the requisite factors when modifying or awarding custody.

[30] Still, we presume trial courts know and follow the law. *Id*. (citing *Ramsey v. Ramsey*, 863 N.E.2d 1232, 1239 (Ind. Ct. App. 2007)). We will overlook this presumption only if the trial court's order leads us to conclude that "'an unjustifiable risk exists that the trial court did not follow the applicable law.'" *Id*. (quoting *Ramsey*, 863 N.E.2d at 1239). Absent clear indications to the contrary, we presume that the trial court considered all the relevant statutory factors when making its decision to modify primary physical custody of Daughter to Mother. *See Amselm*, 146 N.E.3d at 1047 (assuming trial court properly considered all factors under modification-of-custody statute even though it did not mention the statute in its order). Accordingly, we cannot say that the trial court's order is insufficient simply because it did not explicitly discuss the statutory factors. *See id*.

[31] Father also complains that the trial court, when it ruled from the bench, stated:

> What bothers me is through testimony, statements, one statement from the father [sic] won't let them around each other until this whole thing is over. Sir, you have got to realize for

> your daughter, this is never, ever going to be over. Being around her cousin is going to cause he[r] to have flashbacks and post traumatic syndrome. Statistically speaking. That is the after-effects. To have her around who is essentially her molester/abuser is to re-traumatize her again, and again, and again. It is just unfathomable to me that you would consider putting your child in that situation.

Tr. Vol. II pp. 171-72.[9] Father argues that this statement has no bearing on the factors listed in Section 2. The factors listed in that section, however, are only those that the trial court *must* consider; courts are not prohibited from considering other relevant factors. This is apparent by the plain language of the statute, which provides that trial courts "shall consider all relevant factors," including those listed. I.C. § 31-14-13-2; *see also Madden v. Phelps*, 152 N.E.3d 602, 613 (Ind. Ct. App. 2020) (noting that the list of factors in Indiana Code Section 31-14-13-2 are not exclusive).

[32] Furthermore, the trial court's statements fit well within the factor regarding "the interaction and interrelationship of the child with . . . any other person who may significantly affect the child's best interest." I.C. § 31-14-13-2(4)(C). The trial court's statement is also relevant to "the mental and physical health of all individuals involved." *Id*. § 2(6). Accordingly, we cannot say that the trial

[9] Father is correct that no evidence was presented that Daughter was suffering from any of the symptoms listed by the trial court, such as PTSD or flashbacks. But we cannot say that the trial court erred by being concerned about the potential for harmful effects of being a victim of child molestation, especially by one's cousin. Moreover, the GAL's report recommended Daughter not have any contact with her abuser.

court erred by noting the potential for psychological harm to Daughter if brought back in contact with Cousin, who molested her.

[33] Father also claims that the trial court's statement that he was a "good dad" who loves his child is incompatible with modification of custody. Tr. Vol. II p. 172. Father claims that the trial court "did not adequately consider the statutory factors for modification of physical and legal custody of the child" because someone who is a "good dad" and loves his child cannot "fit into the side of the analysis required by section 8[10] of the modification statute . . . ." Appellant's Br. p. 18. The fact that Father loves Daughter and is generally a good Father is not inconsistent with the modification of custody. If there has been a substantial change in one or more of the factors listed in Section 2, and modification is in the best interest of the child, a trial court may modify custody.

[34] Here, ample evidence was presented from which the trial court could reasonably conclude that there had been substantial changes in one of the factors set forth in Section 2. Specifically, Daughter is five years older than she was when the initial agreed custody order was entered, *see* I.C. § 31-14-13-2(1), and Mother no longer wishes Father to have primary physical custody. *See id*. § 2(2). Further, there has been a substantial change in the interaction and interrelationship between Daughter, and Father, her paternal grandparents, and

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[10] Father mistakenly cites Indiana Code Section 31-17-2-8, which governs custody determinations following a dissolution of marriage. As noted above, Section 2 contains an identical list of factors but is applicable in custody determinations in paternity actions such as the present case.

Cousin who abused her. *See id.* § 2(4). Father has shown hesitation to believe his daughter's accusations against his nephew and, until recently, still wanted Daughter to interact with her abuser. And paternal grandmother still does not appear to appreciate the seriousness of what happened to Daughter. She claimed the two children were just "examining or exploring," and does not view Cousin, who is her grandson, as an abuser or a molester. Tr. Vol. II p. 171. This supports a determination that there was a substantial change in the interaction and interrelationship between Daughter and her paternal grandmother, i.e., "any other person who may significantly affect the child's best interest." I.C. § 31-14-13-2(4)(C).

[35] Additionally, evidence was submitted that Daughter was struggling in school due to bullying, which required her to change schools. Although Father is correct that Daughter has done better since changing schools within the same school system, if she remained in Father's care, Daughter would go to the same high school as the children who bullied her at elementary school. Thus, there was evidence of a substantial change in Daughter's adjustment to school. *See id*. § 2(5). Father also demonstrated hesitation and a lack of awareness regarding how the molestation affected Daughter's mental health, a factor the trial court must consider. *See id*. § 2(6).

[36] We find Father's citation to *Russell v. Russell*, 682 N.E.2d 513 (Ind. 1997), to be unavailing. In that case, our Supreme Court reversed the trial court's decision to grant the father physical custody. In *Russell*, however, the father to whom the trial court awarded custody had a history of drug use and physical abuse,

and both the GAL and the psychologist recommended that the mother have custody. *Id*. at 515. Under such circumstances, our Supreme Court held that the trial court's decision was contrary to the child's best interests. *Id*. at 519. In contrast, here, Mother has no such history of misconduct, and the GAL recommended that Mother have custody.

[37] Father also relies on the opinion of this Court in *Day-Ping v. Ramey*, 175 N.E.3d 844 (Ind. Ct. App. 2021), *trans. denied*. In that case, the trial court granted the father's petition to modify custody, and the mother appealed. We reversed, noting several issues with the trial court's determination. *Id*. at 853-54. Primary among these were that many of the alleged issues with mother's care of the child were later the basis for a civil suit brought by mother against two DCS caseworkers, father, and his girlfriend. The mother alleged, and proved, that father and his girlfriend had made false claims of child abuse or neglect to DCS. *Id*. The case against DCS settled for almost $1,000,000, and the mother was awarded over $200,000 in her case against father and his girlfriend. Further, the mother's expert witness noted substantial problems with the report of the custody evaluator on which the trial court relied. *Id*. at 854. Under those unique circumstances, we reversed the trial court's determination and remanded for a new custody hearing for the trial court to consider all these circumstances. *Id*.

[38] The facts of *Day-Ping* are readily distinguishable from those present here. Although Father claims the GAL's report is not neutral, Father presented no evidence to attack the methodology of the GAL's report. In fact, it does not

appear that Father objected to the GAL's report at all. Instead, his arguments regarding the report are little more than a request that we reweigh the evidence, which we will not do.[11]

[39] Substantial evidence was submitted from which the trial court could conclude that there had been a substantial change in one or more of the factors listed in Indiana Code Section 31-14-13-2 and that modification of physical custody in favor of Mother was in Daughter's best interests. The trial court did not abuse its discretion by modifying custody and granting sole physical custody to Mother.

B. Legal Custody

[40] Mother and Father previously agreed to joint legal custody. The trial court's order modifying custody granted the parents "joint legal custody with [Mother] being the final decision maker in areas of disagreement."[12] Amended Notice of Completion of Clerk's Record p. 3. Father now claims this was improper.

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[11] Father also argues that the GAL's report does not consider the statutory factors set forth in Section 2. Those factors must be considered by the trial court. There is no statutory requirement that these factors be considered by a GAL.

[12] In a footnote in his brief, Father notes the unusual nature of the trial court's legal custody determination with Mother being the "final decision maker" if the parties disagree. Appellant's Br. p. 20 n.3. He claims that this "can be considered nothing other than sole legal custody being awarded to [Mother]." *Id.* We agree with Father that the trial court's legal custody determination did not truly award joint legal custody. "'Joint legal custody' . . . means that the persons awarded joint custody will share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training." Ind. Code § 31-9-2-67. Here, if the trial court had awarded Mother sole legal custody of Daughter, then Father would have no authority or responsibility for Daughter's upbringing. Under the trial court's custody order, however, Father has such authority and responsibility. If the parties cannot agree, however, Mother will have the final say. Although this may not truly be joint legal custody, Father makes no argument that the trial court was without authority to modify legal custody in this manner.

[41] When considering a modification of legal custody, a trial court should specifically consider whether modification is in the best interest of the child and whether there has been a change in one of the statutory factors governing awards of joint legal custody. I.C. § 31-14-13-6; *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1259-60 (Ind. Ct. App. 2010)). As we explained in *Milcherska v. Hoerstman*, when reviewing the modification of legal custody, "we must determine whether there has been a substantial change in one or more of the factors listed in Indiana Code section [31-14-13-2.3], in addition to considering any substantial change to the Section [2] factors, as is typically necessary for physical custody modifications." 56 N.E.3d 634, 641 (Ind. Ct. App. 2016) (citing *Julie C.*, 924 N.E.2d at 1259).[13]

[42] The factors listed in Indiana Code Section 31-14-13.2.3(c), applicable in paternity cases,[14] are:

> (1) the fitness and suitability of each of the persons awarded joint legal custody;
>
> (2) whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare;

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[13] *Milcherska* referred to the statutes that govern modification of legal custody in dissolution cases. We refer to the statutes that govern the modification of legal custody in paternity actions, which are substantially identical to those in dissolution cases.

[14] In his brief, Father cites to the statutes governing awards of joint legal custody following a dissolution of marriage. Because this is a paternity action, these statutes are not controlling here, and we cite to the statute governing awards of joint legal custody in paternity actions.

(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) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody;

(5) whether the persons awarded joint legal custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so;

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody; and

(7) whether there is a pattern of domestic or family violence.

[43] In paternity cases, the trial court may award joint legal custody "if the court finds that such an award would be in the best interest of the child." *Id*. § 2.3(a). "An award of joint legal custody under this section does not require an equal division of physical custody of the child." *Id*. § 2.3(b). When "determining whether an award of joint legal custody under this section would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint legal custody have agreed to an award of joint legal custody." *Id*. § 2.3(c).

[44] Again, Father claims that the trial court failed to consider any of the relevant factors when awarding joint custody because it made no findings regarding these factors. And again, we note that the trial court was not required to make specific findings. *Anselm*, 146 N.E.3d at 1047. We also presume the trial court knew and followed the law, and we will overlook this presumption only if the

court's order leads us to conclude that there is an unjustifiable risk that the court did not follow the law. *Hecht*, 142 N.E.3d at 1031 (citing *Ramsey*, 863 N.E.2d at 1239). Here, we discern no such risk.

[45] Father claims there is a lack of evidence that he failed to cooperate or communicate with Mother. Ample evidence was presented, however, of Father's unwillingness to communicate with Mother. The parties had a dispute regarding fall break parenting time. Father denied Mother parenting time by claiming that he was with Daughter when, instead, his parents were taking care of her. Father also refused to allow Daughter to use the phone Mother bought for Daughter to allow her to contact Mother, which the therapist recommended. The parents also could not agree regarding which school Daughter should attend. These types of issues reflect the inability of the parents to "communicate and cooperate in advancing the child's welfare." I.C. § 31-14-13-2.3(c)(2). Under these facts and circumstances, we cannot say that the trial court erred by granting Mother the final decision-making authority when it comes to Daughter's upbringing.

II. Parenting Time

[46] Lastly, Father claims that, even if the trial court did not abuse its discretion by modifying custody in favor of Mother, the trial court abused its discretion by granting him less parenting time than that called for by the Indiana Parenting Time Guidelines. As set forth above, in its ruling from the bench, the trial court granted father parenting time as set forth in the Parenting Time Guidelines, which includes overnight visitation. *See* Ind. Parenting Time Guideline § 2(B)

("Unless it can be demonstrated by the custodial parent that the noncustodial parent has not had regular care responsibilities for the child, **parenting time shall include overnights**.") (emphasis added). In the trial court's CCS entry, however, the court granted parenting time **without** overnight visitation.

[47] In response to our order, the trial court clarified that Father is to have parenting time "pursuant to the Indiana Parenting Time Guidelines, including half of the summer school break." Amended Notice of Completion of Clerk's Record p. 3. This includes overnight visitation pursuant to Guideline Section 2(B). Consequently, any error in the trial court's CCS entry was corrected by the trial court's written order.

Conclusion

[48] Given the broad discretion granted to trial courts in custody matters, we cannot say that the trial court abused its discretion by modifying primary physical custody of Daughter in favor of Mother. Nor can we say that the trial court abused its discretion by awarding the parties "joint legal custody with [Mother] being the final decision maker in areas of disagreement." Amended Notice of Completion of Clerk's Record p. 3. Lastly, the trial court did not err by granting Father parenting time pursuant to the Parenting Time Guidelines. Accordingly, we affirm the judgment of the trial court.

[49] Affirmed.

Brown, J., and Altice, J., concur.