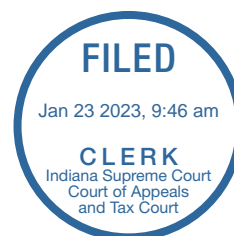


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Jamee M. Ferro,
Appellant-Petitioner,

v.

Ryan Ronald Beheyt,
Appellee-Respondent.

January 23, 2023

Court of Appeals Case No.
22A-JP-1861

Appeal from the St. Joseph
Superior Court

The Honorable Mark P. Telloyan,
Judge

The Honorable Mary Beth
Bonaventura, Judge Pro Tem

Trial Court Cause No.
71D07-0708-JP-965

Mathias, Judge.

- [1] Jamee Ferro (“Mother”) appeals the St. Joseph Superior Court’s order modifying custody of her minor child to Ryan Ronald Beheyt (“Father”).

Mother argues that the trial court erred when it modified custody without holding an evidentiary hearing.

[2] We affirm.

Facts and Procedural History

[3] Z.B.B. was born in April 2007. Mother and Father were not married and Mother had custody of Z.B.B. Father established his paternity of Z.B.B. in January 2008. Father was ordered to have parenting time with Z.B.B. as allowed by the Indiana Parenting Time Guidelines. Father moved to Florida and Alabama during Z.B.B.'s childhood but exercised parenting time when Father returned to Indiana for work.

[4] Father was temporarily living in Mishawaka in June 2022, when Z.B.B. was fifteen. The parties agreed that Father would have parenting time with Z.B.B. every other week. Father failed to return Z.B.B. to Mother's home after his week that ended on Father's Day, June 19, 2022. Mother attempted to contact Z.B.B., but he did not return Mother's phone calls and texts. Thereafter, on June 24, 2022, Mother filed a verified information for rule to show cause.

[5] In response, Father filed a verified petition to modify custody of Z.B.B. Father alleged that Mother's home was not a safe environment for Z.B.B. due to Z.B.B.'s contentious relationships with Mother's husband ("Stepfather"). Father alleged that "Stepfather has intimidated, provoked and prodded this child to the point of the child suffering significant emotional withdrawal."

Appellant's App. p. 9. Thereafter, Mother requested mediation, the appointment of a guardian ad litem, and an evidentiary hearing.

[6] The trial court held a hearing on July 15, 2022. Mother and Father were present and represented by counsel. Both Mother and Father testified at the hearing. Father described a physical incident that happened between Z.B.B. and Stepfather. He also testified that Mother discussed the incident with him in a phone call. Tr. p. 11. Father testified that Z.B.B. is scared, and Mother does not protect him from Stepfather. *Id.* Father stated that Z.B.B. is rebellious but "has been suicidal because of some of these issues[.]" *Id.* Father claimed that Z.B.B. wanted to live with Father. *Id.* at 12. Father also testified that he encourages Z.B.B. to communicate with Mother. *Id.* Mother testified that Stepfather pinned Z.B.B. against a wall because the child was defiant and would not allow her to access his cellphone. *Id.* at 18. But she denied Father's claim that Stepfather's hands were around Z.B.B.'s neck. *Id.* at 19. When asked if the court wanted to hear testimony from Stepfather, the court said it did not. *Id.* at 22. The court also conducted an *in camera* interview of Z.B.B. on July 29, 2022.

[7] On August 2, 2022, the trial court issued its order granting Father's petition to modify custody of Z.B.B. and awarded legal and physical custody to Father. Because Father lives in Alabama, Mother was awarded parenting time for one month in the summer and other time as agreed to by the parties. If the parties cannot agree, then her parenting time "shall be pursuant to the Indiana Parenting Time Guidelines when distance is a major factor." Appellant's App. p. 13.

[8] Mother now appeals.

Discussion and Decision

[9] Mother claims that the trial court erred when it modified custody of Z.B.B. without holding an evidentiary hearing. In support of her argument, Mother relies solely on our Supreme Court’s opinion in *Wilson v. Myers*, 997 N.E.2d 338 (Ind. 2013).

[10] In that case, the trial court scheduled a hearing on the mother’s motion to modify custody from father to mother. *Id.* at 339. Prior to the hearing, the parties and their children participated in family counseling for a year. The parents appeared for the hearing, as did the family’s counselors. Much of the hearing was devoted to arguments concerning parents’ participation in counseling sessions and why the father had not paid for counseling sessions. *Id.* The father also requested that the trial court hold an *in camera* interview with the parties two children. *Id.*

[11] The trial court “abruptly concluded the hearing” and stated that it did not want to do an *in camera* interview with the children. *Id.* The court also stated that there was no need to hold an evidentiary hearing. *Id.* The court then granted the mother’s motion to modify custody and awarded custody to her. *Id.*

[12] On appeal, our Supreme Court observed that a trial 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 and, if applicable, section 8.5 of this chapter.” [Ind. Code § 31-17-2-21\(a\)](#) (2008). “In making its determination, the court shall consider the factors listed under section 8 of this chapter.” [Ind. Code § 31-17-2-21\(b\)](#). Those factors include: the child’s age and sex; the wishes of the parent(s); the child’s wishes; the relationship the child has with his or her parent(s), sibling(s), and others; the child’s adjustment to home, school, and community; the mental and physical health of all involved; any evidence of domestic or family violence; and any evidence that the child has been cared for by a de facto custodian. [Ind. Code § 31-17-2-8\(1\)–\(8\)](#) (2008). There is no presumption favoring either parent, [Ind. Code § 31-17-2-8](#), and the party seeking the modification bears the burden of demonstrating that the existing arrangement is no longer in the best interests of the child and there has been a substantial change in one or more of the enumerated statutory factors, *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002).

Id. at 339-40.

[13] After examining the trial court’s modification order, the Supreme Court noted that the order did not contain any mention of whether modification of custody was in the children’s best interests or whether there was a substantial change in any of the [Indiana Code section 31-17-2-8](#) factors.¹ *Id.* at 341. In this regard, the

¹ This case involves a paternity proceeding, and, therefore, the trial court was bound to consider whether there was a substantial change in one or more of the factors in [Indiana Code section 31-14-13-2](#), *see* [Ind. Code § 31-14-13-6](#), but these factors are the same as the factors listed in [Indiana Code section 31-17-2-8](#). And [Indiana Code section 31-14-13-6](#) also only allows a trial court to modify a child custody order in a paternity action if the modification is in the child’s best interests.

circumstances in this case are analogous to *Wilson*. The order in this case does not explicitly address either of those considerations.

[14] But the *Wilson* Court also observed that none of the witnesses at the hearing were sworn or cross-examined. *Id.* Moreover,

No courtroom formalities (and few civilities) seem to have been observed at all. Parties, attorneys, counselors, and the judge talked freely, interrupted, and questioned each other without any semblance of order or procedure. The trial court made reference to looking at “the whole picture” in making its decision, but provided no insight into what was contained in that picture before simply announcing that it planned to grant [Mother’s] motion to modify custody. We know that the trial court contacted the family counselors directly, but none of what was learned during those conversations is reflected in the record. And nothing in the transcript of the hearing relates to any of the factors enumerated in [Section 31–17–2–8](#), so we cannot safely assume that they were considered.

Id. (footnote and record citation omitted). In sum, the court observed:

what we are now faced with on appeal is an order directing one parent to hand over two children to another parent with no mention or hint that doing so is in accordance with the Indiana Code. And the only support for this order is the transcript of what seems to be little more than an unorganized shouting match labeled as an “evidentiary hearing.” To issue such an order was therefore an abuse of discretion.

Id. at 341-42.

[15] At the hearing here, the trial court initially heard argument from both counsel on Mother's rule to show cause and Father's petition to modify custody. Unlike in *Wilson*, however, the court proceeded to hear testimony from both parents. Mother and Father were also subject to cross-examination. Importantly, the trial court also conducted an in person *in camera* interview of fifteen-year-old Z.B.B.

[16] Before concluding the hearing, the trial court discussed considering the child's wishes and what is in the best interests of the child. Tr. p. 24. The trial court also expressed concern about Z.B.B.'s mental health. And the trial court heard evidence concerning several factors enumerated in [Indiana Code section 31-14-13-2](#) and explicitly stated that that it was concerned with the child's best interests.

[17] In its order, the court referenced its *in camera* interview with Z.B.B. and the evidence presented at the hearing. The trial court did not make findings in its order modifying custody, but neither party requested specific findings.

[18] After reviewing the record, we conclude that, contrary to Mother's claim, the trial court held an evidentiary hearing. Further, the record supports the court's judgment. Finding no error, we affirm the trial court's order modifying custody of Z.B.B. and awarding custody to Father.

[19] Affirmed.

Robb, J., and Foley, J., concur.