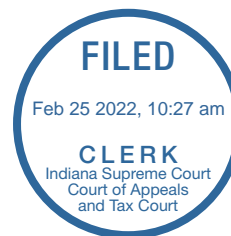


MEMORANDUM DECISION

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.



APPELLANT *PRO SE*¹

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ATTORNEYS FOR APPELLEE

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IN THE COURT OF APPEALS OF INDIANA

Jeanette Williams,
Appellant-Respondent,

v.

Chivas Fritz Williams,
Appellee-Petitioner.

February 25, 2022

Court of Appeals Case No.
21A-JP-2013

Appeal from the Monroe Circuit
Court

The Honorable Stephen R. Galvin,
Judge
The Honorable Bret Raper,
Commissioner

Trial Court Cause No.
53C07-1508-JP-477

¹ We note that Williams was represented by counsel at the time that she filed her Appellant's Brief. However, counsel has since withdrawn their appearances and Mother is continuing with the instant appeal *pro se*.

Bradford, Chief Judge.

Case Summary

[1] Jeanette Williams (“Mother”) and Chivas Fritz Williams (“Father”) (collectively, “Parents”) were never married but share one child, C.W. (“Child”). Since 2018, Mother has had sole legal and primary physical custody of Child, subject to Father’s exercise of parenting time with Child. In 2020, Mother sought a modification of the amount of parenting time to which Father was entitled after making numerous unsubstantiated allegations of wrongdoing by Father. In response, Father sought a modification of custody. At Mother’s request, her petition seeking a reduction of Father’s parenting time was subsequently dismissed. The trial court conducted an evidentiary hearing on Father’s petition to modify custody, after which it granted Father’s petition and awarded Father primary physical custody and sole legal custody of Child. Mother contends on appeal that the trial court abused its discretion in granting Father’s petition, arguing that Father failed to prove that there had been a change in the circumstances that would warrant a change of custody. We affirm.

Facts and Procedural History

[2] Parents, who were never married, are the biological parents of Child, who was born on February 26, 2015. Father’s paternity was established at or near the time of Child’s birth and has never been in dispute. Parents “lived together

briefly for a time while Mother was pregnant and then after [Child's] birth" but have lived separately "since approximately June 2015." Ex. Vol. p. 12. Since 2018, Mother has had sole legal and primary physical custody of Child, subject to Father's exercise of parenting time with Child.

[3] On September 29, 2020, Mother filed an emergency verified petition to modify parenting time. She subsequently filed an amended emergency verified petition to modify parenting time on October 21, 2020. In response, on October 29, 2020, Father filed a verified petition for modification of custody, parenting time, and child support. Parents later selected Jessica L. Merkel to serve as Child's Guardian ad Litem ("GAL Merkel").

[4] GAL Merkel conducted a thorough investigation into the circumstances. As part of her investigation, GAL Merkel effected and reviewed a psychological evaluation of each parent, interviewed each parent, and interviewed Child. She also interviewed various educators and psychologists who had worked with the parties. After completing her investigation, on July 12, 2021, GAL Merkel submitted a thorough report informing the trial court of her findings and recommendations.

[5] On July 16, 2021, Mother filed a motion to dismiss both her original and amended petitions to modify parenting time. The trial court granted this motion three days later. The matter proceeded to an evidentiary hearing on Father's remaining motion to modify custody on July 23, 2021. GAL Merkel testified to her previously-reported findings and recommendations during the

evidentiary hearing. In both her report and her testimony, GAL Merkel opined that it was in Child's best interests for physical and legal custody to be modified and both awarded to Father.

[6] Following the evidentiary hearing, the trial court issued an order in which it granted Father's petition to modify custody. In doing so, the trial court concluded as follows:

3. A custody modification action is limited to a consideration of changes which have occurred since the issuance of the previous custody order, which in the present case is June 21, 2018.

6. In the present case, [Child] is a 6½ year old male child who has always resided under Mother's care, custody, and control, subject to Father's parenting time, which Father has routinely exercised, in spite of the intense co-parenting hostility between the parents.

7. Both Mother and Father desire to serve as [Child]'s primary custodial parent. [Child] is too young to make his own wishes regarding custody known to the court.

8. Both Mother and Father dearly love [Child], and [Child] is physically well-cared for in each parent's residence. Both Father and Mother maintain a stable, physically safe, and comfortable home.

9. There is no evidence to suggest any pattern of domestic or family violence by either parent, and there is no evidence that [Child] has ever been cared for by a *de facto* custodian.

10. In the present case the overarching factor in determining

whether a modification of physical custody represents [Child]'s best interest centers around [Child]'s mental health and emotional development, which has been thoroughly investigated by GAL Merkel and articulated in her written reports.

11. Every professional who has worked with [Child] in recent months has recognized that [Child] is academically gifted, but emotionally and socially delayed.

12. Mother contends that [Child]'s psychological/emotional development is normal for a high ability child. Mother further contends that [Child] would benefit from a gifted school or program where he can get the support he needs, both academically and socially, and with smaller class sizes; one on one attention; and, a social/emotional component which is built into the curriculum that is relevant to high ability children.

13. The court cannot overlook the number of significant and troubling concerns expressed by [Child]'s various administrators, teachers, and therapists, which, when examined in their totality, lead the court to conclude that Mother's obsession with [Child]'s academic achievements is having a detrimental effect on [Child]'s mental health and emotional wellbeing. A summary of these concerns [is] reiterated below:

a) **Todd Deckard** ([Child]'s Preschool Coordinator) generally describes [Child] as "precocious" and "intelligent," but "underdeveloped socially," noting that Mother had a tendency to make excuses for [Child], explaining that any errant behavior was a manifestation of [Child]'s high intelligence and boredom in the classroom. Mr. Deckard expressed concern that Mother's excuses will establish an undesirable precedent for [Child].

b) **Michelle Oxender** ([Child]'s previous 1st grade teacher) expressed concern that Mother obsession

with [Child]'s academics has negatively impacted [Child] emotionally and socially.

c) **Mary Gibbs Westbrook** ([Child]'s current 1st grade teacher) has observed [Child] experience difficulties in certain routine tasks to the extent she felt compelled to implement an “intervention plan” with [Child], which is normally reserved for special education students.

d) **Dr. Amanda Targgart** ([Child]'s school principal) opines that Mother's single-minded focus on [Child]'s academics is potentially detrimental to [Child]'s social and mental wellbeing.

e) **Chris Hamm** ([Child]'s school psychologist) expressed concern that [Child] is internalizing Mother's high expectations of him.

f) **Therapist Rebecca Peters**, LMHC described Mother as being single-mindedly focused on [Child]'s intellect, possibly to the detriment of [Child]'s overall wellbeing. She also noted that Mother genuinely desires to protect [Child], but her overprotective nature has warped [Child]'s impression of Father.

g) **Therapist Lindsey Salts**, LCSW described [Child] as a bright, but possibly a “socially underdeveloped child.” Most notably Therapist Salts expressed concern for [Child]'s mental health if he remained with Mother.

h) **[Therapist] Melissa Truax**, LCSW described Mother as “quick to anger,” “paranoid,” and “prone to self-victimization.” She noted that Mother routinely speaks negatively about Father, and she expressed concern over the fact that [Child] and

Mother appear emotionally and/or psychologically enmeshed in an unhealthy way.

14. The court also finds it highly disconcerting that Mother continues to make uncorroborated assertions that Father has sexually perpetrated [Child].... [T]here have been three (3) separate DCS investigations and two (2) forensic interviews which have yielded no evidence whatsoever in support [of] Mother's allegations, yet Mother continues to maintain that Father has acted in a sexually inappropriate manner with the Child.

15. The court gives considerable weight to GAL Merkel's expressed concerns about Mother, which are briefly noted below:

a) Mother's seemingly unchecked animus toward Father.

b) Mother's "gatekeeper" approach to parenting, as manifested by Mother not communicating well with Father, and Mother making statements to Father that are demanding and/or threatening.

c) Mother's failure to inform Father on matters that involve [Child] if Mother does not believe Father needs to know.

d) Mother's anger, paranoia, and self-victimization, which threaten [Child]'s long-term mental and emotional health.

19. While GAL Merkel's final recommendation that Father be awarded custody (physical and legal) is in no way dispositive, the court gives GAL Merkel's recommendation due consideration.

20. Ultimately, the court concludes that there have been

substantial changes since the 2018 order, particularly noting the decline in [Child]’s mental health and emotional wellbeing. The court finds that [Child]’s best interest is represented by Father assuming the role of custodial parent. The court generally agrees with GAL Merkel that Father can provide a physically safe and emotionally stable presence for [Child].

21. Mother’s anger, paranoia, and self-victimization, combined with what appears to be an unhealthy obsession with [Child]’s academics, as well Mother’s fixated animus towards Father, have worked in conjunction to be detrimental to [Child]’s psychological/emotional development and wellbeing.

Appellant’s App. Vol. II pp. 33–36 (cleaned up). The trial court ordered that “Father shall immediately assume the role of [Child]’s primary physical custodial parent and sole legal custodial parent, subject to Mother’s parenting time[.]” Appellant’s App. Vol. II p. 37.

Discussion and Decision

[7] Mother contends that the trial court abused its discretion in granting Father’s petition to modify custody. “A modification of custody is a determination that rests in the sound discretion of the trial court.” *In re Marriage of Sutton*, 16 N.E.3d 481, 484 (Ind. Ct. App. 2014). “When reviewing the trial court’s decision, we may neither reweigh evidence nor judge the credibility of witnesses.” *Id.* “We consider only the evidence favorable to the trial court’s judgment and all reasonable inferences derived from it.” *Id.* Where, as here, the juvenile court enters findings of fact and conclusions thereon, we “apply the following two-tiered standard of review: we first determine whether the

evidence supports the findings of fact and then determine whether the findings of fact support the judgment.” *Hamilton v. Hamilton*, 103 N.E.3d 690, 694 (Ind. Ct. App. 2018). “We will set aside findings if they are clearly erroneous, which occurs only when the record contains no facts to support them either directly or by inference.” *Id.*

[8] “We further note that there is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters.” *Id.* (internal quotation omitted). This is so because “[a]ppellate 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.’” *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)). It is not enough on appeal 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.” *Kirk*, 770 N.E.2d at 307. Further, “[t]he party seeking to modify custody bears the burden of demonstrating the existing custody should be altered.” *Steele-Giri*, 51 N.E.3d at 124.

[9] Father requested a modification of custody pursuant to Indiana Code section 31-14-13-6, which provides that “[t]he 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 2.” Section 2 provides that

The court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including 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 sibling; and
 - (C) any other person who may significantly affect the child's best interests.
- (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.
- (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.

Ind. Code § 31-14-13-2.

A. Physical Custody

[10] In arguing that the trial court erred by granting Father primary physical custody of Child, Mother asserts that

[the] trial court did not make a finding as to the cause of [Child's] social delay. Instead, the trial court only found that the social delay existed. The importance of this is that, without finding that Mother was the cause of [Child's] social delay, the fact that [Child] is socially delayed, in and of itself, cannot support a modification. This is due to the fact that, if Mother is not the cause for [Child's] social delay, then there is no reason to believe [Child's] situation would improve by modifying physical custody.

Appellant's Br. pp. 13–14 (internal record citations omitted). Mother further asserts that

there was no evidence presented, or findings of fact made, that this social delay did not exist prior to the trial court's 2018 order (i.e., the last modification order). Without evidence or findings that this social delay did not exist prior to the trial court's 2018 Order, then it cannot be reasonably assumed that this has only developed since 2018.

Appellant's Br. p. 14.

[11] However, as Father points out,

neither [Child's] social delay nor the cause or the duration of the social delay were the main concern of the [trial court]. Instead, Mother's behaviors and actions in response to [Child's] academic performance, social delays and overall situation, in addition to how she handles other relationships involving [Child], led to the [trial court's] conclusion that there was a change in circumstances to warrant a modification of custody.

Appellee's Br. p. 11. We agree with Father's characterization of the trial court's order and note that the trial court's findings focused on Child's educational and

mental health needs, the impact of Mother's behavior on said needs, Mother's repeated unsubstantiated accusations against Father, and her failure to include Father in decisions relating to Child.

[12] The trial court found that Child was underdeveloped socially and experienced difficulty in processing failure and completing routine tasks and his academic performance was complicated by Mother's seemingly persistent and over-involved nature. The trial court made the following additional findings:

- One of Child's teachers told GAL Merkel that Mother tended to make excuses for Child's failures/behavioral shortcomings.
- Another told GAL Merkel that "when [Child] incorrectly answered a question, Mother would immediately email [the teacher] to defend and/or make an excuse for [Child]" and made the inappropriate request "that [the teacher] not correct [Child] when he made a mistake in order that Mother herself could correct him." Appellant's App. Vol. II p. 27.
- Child's school principal reported to GAL Merkel that Mother "had emailed the school with such frequency that [the school principal] had to restrict Mother to only one (1) email to the school per day." Appellant's App. Vol. II p. 28.
- Mother threatened legal action against Child's school after it determined that a 504 Plan was more appropriate for Child than an Individualized Education Plan.
- Mother indicated to GAL Merkel that she planned to disenroll Child from his current school and enroll him at a "high achieving" school, a plan that was not supported by

Father, the administrators at Child's current school, or GAL Merkel.

GAL Merkel's report supports the trial court's finding that Child's teachers expressed concerns that Mother's obsession with Child's academics negatively affected Child both emotionally and socially.

[13] The trial court further found that Child has been involved with four different therapists over a three-year span and that GAL Merkel opined that Child would benefit from consistent and prolonged therapy and that Child "should not be removed from a particular therapist simply because the therapist is not in agreement with a parent." Appellant's App. Vol. II p. 31. One therapist indicated that Mother's characterization of the world into "good" and "bad" categories, with her representing the "good" and Father representing the "bad" as well as Mother's overprotective nature has "warped" Child's impression of Father. Appellant's App. Vol. II p. 30. Another therapist expressed concern that Mother had self-diagnosed Child as being autistic and did not follow recommendations, claiming that she "knew better." Appellant's App. Vol. II p. 30. Child only saw the third therapist for a short period of time before Mother abruptly discontinued sessions with this therapist without informing Father. The fourth therapist noted that Mother was "quick to anger;" "paranoid;" prone to self-victimization; spoke negatively about Father; and, at least on one occasion, was untruthful when communicating with Child. Appellant's App. Vol. II p. 31. The fourth therapist also perceived that Child had heard "many

inappropriate things” from Mother, which had negatively influenced his worldview. Appellant’s App. Vol. II p. 31.

[14] The trial court also found that Mother had continued to claim that Father had touched Child in a sexually inappropriate manner despite the fact that her allegations remained unsubstantiated after three separate DCS investigations and two forensic interviews with Child. The trial court noted GAL Merkel’s opinion that Mother’s anger, paranoia, and self-victimization threaten Child’s long-term mental and emotional health.

[15] Mother does not challenge any of the trial court’s specific findings, which, as a result, “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (providing that unchallenged findings must be accepted as correct). In making these findings, the trial court noted that it was only considering evidence relating to incidents that occurred since the issuance of the court’s prior custody order. We conclude that the trial court’s findings support its conclusions that “there have been substantial changes since the 2018 order” and that Child’s “best interest is represented by Father assuming the role of custodial parent.” Appellant’s App. Vol. II p. 36.

B. Legal Custody

[16] In arguing that the trial court erred in granting Father sole legal custody of Child, Mother asserts that “the trial court put much focus on [Parents’] general resentment towards one another. Yet two parent’s distaste towards the other is nothing new in these sort of proceedings, and should not be the determinative

factor in deciding whether joint legal custody is appropriate.” Appellant’s Br. p. 17.

[17] Indiana Code section 31-14-13-2.3 provides that a trial court “may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.” “In 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.” Ind. Code § 31-14-13-2.3(c). The court shall also consider:

- (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;
- (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.

Ind. Code § 31-14-13-2.3(c).

[18] In awarding Father sole legal custody, the trial court concluded that Parents “have proven wholly incapable of communicating and cooperating with each other to advance the Child’s welfare. Thus, the physical custodial parent must also be placed in the position of [Child’s] sole legal custodial parent.” Appellant’s App. Vol. II p. 36. In support of this conclusion, the trial court gave considerable weight to GAL Merkel’s concerns relating to Mother’s “seemingly unchecked animus toward Father;” her “‘gatekeeper’ approach to parenting, as manifested by Mother not communicating well with Father, and Mother making statements to Father that are demanding and/or threatening;” and Mother’s “failure to inform Father on matters that involve [Child] if Mother does not believe Father needs to know.” Appellant’s App. Vol. II p. 35.

[19] We agree with Father that “there was ample evidence to support the [trial court’s] decision to award sole legal custody to Father.” Appellee’s Br. p. 15. In her report, GAL Merkel opined that “[j]oint legal custody, if ordered, would only exacerbate existing tensions, likely resulting in a complete communication breakdown. In this high conflict setting, it would be better to vest Father with primary legal custody, giving him the legal right to unilaterally make the biggest decisions for [Child].” Ex. Vol. p. 41. GAL Merkel further testified that she did not “get the impression that [Mother] is a collaborative individual” and that a recommendation for joint legal custody “would have just been setting [Parents] up for failure.” Tr. Vol. II p. 74. To the extent that Mother points to evidence which she claims shows that she and Father could work together with regards to Child, Mother’s assertion amounts to nothing more than an

invitation to reweigh the evidence, which we will not do. See *In re Marriage of Sutton*, 16 N.E.3d at 484.

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

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