MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Erik H. Carter
Carter Legal Services LLC
Noblesville, Indiana

ATTORNEY FOR APPELLEE

Tamara B. Wilson
Indiana Legal Services, Inc.
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Guardianship of R.M.

Randy Miles,

Appellant-Respondent,

v.

Johnissa M. Simms,

Appellee-Petitioner

November 21, 2023

Court of Appeals Case No. 23A-GU-1151

Appeal from the Marion Superior Court

The Honorable Geoffrey A. Gaither, Judge

Trial Court Cause No. 49D09-2204-GU-12899

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] Randy Miles (Father) appeals the trial court's denial of his petition to terminate an order designating Johnissa M. Simms as guardian of her young sibling, R.M. We affirm.

Facts and Procedural History

[2] In July 2020, Shanisha Davis gave birth to R.M., and Father was listed as the father on her birth certificate. In April of 2021, Davis filed a petition for a protective order restraining Father from contact with Davis and the members of her household, including R.M. The petition was granted in June 2021 and expired within six months. Father has had no contact with R.M. since she was one month old and has not financially supported her.

[3] In February 2022, Davis died and left behind six children: Simms plus five minors. Simms assumed responsibility for the care and supervision of her siblings and eventually filed a petition to name herself as their guardian. In June 2022, following a Webex hearing, the trial court granted Simms's petition. In support of its order appointing then-twenty-six-year-old Simms to be the guardian, the court found that Simms was the adult sister of all five siblings, that Davis was deceased, that the putative father of two of the siblings was deceased, that the father of two other siblings was incarcerated, that Father had not yet established paternity of R.M., and that the teenaged siblings of the deceased putative father consented to Simms's appointment. The trial court

found that guardianship in Simms was "necessary" and in the siblings' "best interests." Appellant's App. Vol. 2 at 19.

[4] In August 2022, Father filed a motion to modify parenting time and to terminate guardianship. A number of continuances were filed and granted. In January 2023, the trial court awarded parenting time to Father at an agency of his choosing and at his expense. During the following month, Father called one agency twice and was unable to set up any parenting time due to scheduling issues and his finances. Father did not attempt phone calls or video chats with R.M., who does not know him.

[5] R.M. has developmental delays related to walking (late and on her tiptoes), speaking, and calming herself. Tr. Vol. 2 at 96-98. Though described by Simms as a "breath of fresh air," R.M. exhibits problems with attention, focus, balance, and communication. *Id*. at 96-99. She requires physical therapy, occupational therapy, and speech therapy, with some sessions occurring in the home and others on Zoom. She regularly sees a pediatrician. R.M. participated in First Steps, qualifies for special education preschool, and is learning sign language. *Id.* at 96. Navigating service providers to manage R.M.'s needs takes continuous work, phone calls, patience, and technological competence. *Id*. at 103-05. R.M. lives in a three-bedroom townhouse with Simms, her siblings, and Simms's child. They are settled and bonded, and R.M. routinely sees her maternal grandparents.

[6] Sixty-one-year-old Father currently rents an apartment in a senior living community. *Id.* at 40, 85-86. His month-to-month lease requires that all lessees be fifty-five years of age or older and all occupants be eighteen or older. *Id*. at 85-86; Ex. Vol. 2 at 4. Father works forty hours per week as a school bus monitor and approximately twenty hours per week as an aid at an assisted living facility. He stated that while he works, his "spiritual godparents" could care for R.M. Tr. Vol. 2 at 125-26. Father had a past eviction. *Id.* at 87.

[7] At the end of February 2023, the trial court held a hearing regarding Father's petition to terminate guardianship. In an April 2023 order, the trial court denied the petition. Father appeals.

Discussion and Decision

[8] Father asserts that the trial court committed reversible error when it denied his petition to terminate guardianship. Guardianship proceedings are guided by Indiana Code Section 29-3-12-1(c)(4), which reads, "The court may terminate any guardianship if … the guardianship is no longer necessary[.]"

[9] We review the trial court's order in guardianship proceedings for an abuse of discretion, with a preference for granting latitude and deference to our trial judges in family law matters. *In re Guardianship of M.N.S.*, 23 N.E.3d 759, 765-66 (Ind. Ct. App. 2014). *See* Ind. Code § 29-3-2-4 ("All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article."). Where the trial court issues findings of fact and conclusions thereon, we typically employ a two-tiered standard of review,

determining first whether the evidence supports the findings and then whether the findings support the judgment. *In re Guardianship of L.R.T.*, 979 N.E.2d 688, 689 (Ind. Ct. App. 2012), *trans. denied* (2013). While we review the trial court's conclusions de novo, we will not set aside the findings unless they are clearly erroneous, meaning that our review of the record leaves us firmly convinced that a mistake has been made. *In re Guardianship of B.W.*, 45 N.E.3d 860, 866 (Ind. Ct. App. 2015). In conducting our review, we neither reweigh evidence nor reassess witness credibility but instead consider the evidence and reasonable inferences most favorable to the judgment. *In re Guardianship of A.Y.H.*, 139 N.E.3d 1050, 1052 (Ind. Ct. App. 2019). Trial courts are presumed to have considered the relevant factors and followed the applicable law, and the party challenging the trial court's conclusion must overcome this strong presumption. *Del Priore v. Del Priore*, 65 N.E.3d 1065, 1072 (Ind. Ct. App. 2016), *trans. denied* (2017).

[10] Father seems to argue that there was no finding that a guardianship was "necessary" or that he was "impaired or deficient in his ability to care for" R.M. either when the guardianship was originally established[1] or when he petitioned to terminate the guardianship. Appellant's Br. at 9. He also blames Simms for "any negative that the [trial court] found to be a detriment" to his "receiving the immediate custody" of R.M. *Id*. He claims that Simms and her

[1] The present appeal is not an appeal from the original establishment of guardianship, per se, but rather a challenge to the denial of the petition to terminate guardianship.

family "deliberately withheld" information regarding R.M.'s special needs and prevented him from attending any evaluations or treatment sessions. *Id*. at 12.

[11] As we consider whether the trial court's findings support the denial of the petition to terminate guardianship, we are mindful that Father's appeal involves a parent seeking to gain custody of his child, who has been under the guardianship of a third party/nonparent. Indiana courts have long held that even when a parent files an action to reobtain custody of a child that has been in another's custody, the burden of proof does not shift to the parent. *Matter of Guardianship of I.R.*, 77 N.E.3d 810, 813 (Ind. Ct. App. 2017). The burden of proof is always on the third party. *Id*. Moreover, a strong presumption exists that a "child's best interests are ordinarily served by placement in the custody of [a] natural parent." *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002). A parent's burden to show that a modification of custody is justified has been described as "minimal." *M.N.S.*, 23 N.E.3d at 766. Once the parent meets the minimal burden of persuasion to terminate a guardianship, the third party must prove the child's best interests are substantially and significantly served by placement with the third party. *See I.R.*, 77 N.E.3d at 813. In a proceeding to determine whether a child should continue placement with a "person other than the natural parent, evidence establishing the natural parent's unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would of course be important, but the trial court is not limited to these criteria." *B.H.*, 770 N.E.2d at 287. "Ultimately, the court's determination must rest on 'whether the important and strong

presumption that a child's interests are best served by placement with the natural parent is clearly and convincingly overcome' by the third party's evidence concerning the child's best interests." *A.Y.H.*, 139 N.E.3d at 1054 (quoting *B.H.*, 770 N.E.2d at 287).[2]

[12] Here, there is no dispute that Father has established paternity of R.M., so we need not address findings to that effect. Finding 4, which states that Father "is employed and works about 60 hours a week although his hours" fluctuate, finds plenty of support within Father's own testimony. Appealed Order at 1; Tr. Vol. 2 at 41, 126-27. Likewise, Finding 5, which states that Father "currently lives in a senior living facility" is supported by Father's testimony. Appealed Order at 1; Tr. Vol. 2 at 86. Finding 6, which states that Father is "unsure if children can live at his current residence," finds support in both his testimony as well as in his lease, which specifies that lessees must be at least fifty-five years of age and additional occupants must be eighteen years of age or older. *Id.*

[13] Finding 7 states that Father has "intermittent contact with the child." Appealed Order at 2. This actually seems generous, given that Father's contact occurred during R.M.'s first month of life but not thereafter, even though he was granted visitation in January 2023. Findings 8 through 10 note that R.M. is slightly developmentally delayed, requires speech, physical, occupational, and play therapy, and is in both home-based and virtual therapy. The record more than

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[2] We disagree with Father's assertion that the "legal standard is that children belong with a biological parent unless that parent is dangerous or incapable of raising the child." Appellant's Br. at 12.

supports these findings. The record also supports Findings 11 through 13, that R.M. lives with siblings and Simms, that she refers to Simms as her mother, and that Simms has been R.M.'s primary caregiver since January 20, 2022.

[14] The trial court further found that Father had not shown that he was aware of R.M.'s special needs, let alone that he was capable of providing for those needs and raising her in a residence that does not allow children. To the extent that Father attempts to blame Simms for keeping information from him, there was conflicting evidence on this point, and it is the trial court's job to weigh such evidence. Moreover, had he exercised visitation, Father would have been more familiar with R.M. and her needs and might have had a relationship with her. At this point, however, we cannot say that Father met even his minimal burden to justify terminating guardianship.

[15] Even if Father had met his burden, the trial court also explicitly found in its written order that the "appointment of a guardian is necessary as a means of providing care, treatment and supervision of" R.M. and that the "best interests of the child are served by the child remaining in the care and custody" of Simms. Appealed Order at 3. Again, Simms began raising R.M. after their mother became ill and not long after the expiration of the protective order filed against Father. Simms provides R.M. with food and necessities in a home that has no rule against children occupying it. Beyond such basics, Simms coordinates myriad required special needs appointments, works with R.M. to improve her physical, emotional, and speech delays/challenges, secures appropriate services and schooling, and ensures that R.M. is bonded with all

her siblings and her grandparents. Tr. Vol. 2 at 53, 101. Currently, R.M. does not know Father, who has neither recently visited her nor supported her. The evidence presented concerning R.M.'s best interests clearly overcame any presumption that her interests would be best served by placement with her biological father.

[16] Considering only the evidence and inferences favorable to the judgment, we see no clear error in the findings. The findings, in turn, support the judgment. Although the trial court reached a decision contrary to Father's desired outcome, we are not convinced that a mistake has been made, and we find no abuse of discretion. Accordingly, we affirm the denial of Father's petition to terminate the guardianship.[3]

[17] Affirmed.

Riley, J., and Mathias, J., concur.

[3] In reaching this conclusion, we note that Father is not precluded from financially supporting R.M., communicating with and/or visiting with R.M. using proper channels and procedures, or securing housing that would permit a child occupant.