MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christy Krol,
Appellant-Defendant,

v.

Anthony Krol,
Appellee-Plaintiff

August 24, 2023

Court of Appeals Case No. 22A-DC-2857

Appeal from the Lake Superior Court

The Honorable Alexis V. Dedelow, Magistrate

Trial Court Cause No. 45D03-2006-DC-348

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Christy Krol ("Wife") appeals the Lake Superior Court's order granting legal custody and shared physical custody of the parties' two children to Anthony

Krol ("Husband"). She also challenges several of the trial court's findings of fact, arguing that they are not supported by the evidence. Finally, Wife claims that the trial court abused its discretion by imputing income to her when calculating the parties' child support obligations.

[2] We affirm the trial court's custody order and the court's finding that Wife is voluntarily underemployed. However, the trial court's imputation of $1,644 income per week to Wife is not supported by the evidence. Therefore, we reverse the trial court's child support calculation and remand for proceedings consistent with this opinion.

Facts and Procedural History

[3] The parties were married in 2009 and two children were born to the marriage: A.K., born in October 2011, and J.K., born in May 2015. Both children suffer from severe food allergies, and A.K. has been diagnosed with ADHD. Wife insists that J.K. also suffers from ADHD. Much of the conflict between the parties exists due to their differing opinions on medical treatment for the children.

[4] In June 2020, Wife sought a protective order against Husband alleging that he was physically abusive. After a hearing in August, the trial court found that Wife's allegations were credible and granted Wife a protective order. Husband was not able to participate in the children's doctor's appointments because of the protective order. In May 2021, the trial court issued an order granting Husband permission to participate in the children's doctor's appointments. The

parties were also ordered to participate in any counseling the children's medical providers deemed appropriate.

[5] The day after Wife filed her petition for a protective order, Husband filed a petition for dissolution of marriage. The court provisionally awarded the parties' joint legal custody of the children over Wife's objection. Wife was awarded physical custody of the children. Also, pursuant to Husband's request, the court appointed a guardian ad litem ("GAL") for the children. The GAL issued her reports to the court in March 2022. Thereafter, the trial court held final hearings in this matter on several dates in March, April, May, and July 2022. During the hearings, both parties requested sole legal and sole physical custody. The protective order expired on August 2, 2022, while this matter was pending.

[6] The trial court issued the decree of dissolution and custody order on November 8, 2022. The court granted sole legal custody of the children to Husband and ordered the parties to share physical custody equally. The court also found that Wife was voluntarily underemployed and imputed income to Wife for the purposes of the child support calculation. In support of its order, the court issued the following pertinent findings of fact and conclusions of law:

> 20. The parties were married for eleven (11) years and attended marriage counseling throughout many of those years.
>
> 21. The parties continue to exhibit a high conflict relationship and rarely agree on anything regarding the care of minor children, especially their medical treatment. The parties currently communicate with one another via Our Family Wizard.

22. During the marriage, Husband worked full time and is currently employed as a controller for Elite Staffing. In the past, Husband also engaged in the reselling of items on eBay.

23. During the marriage, Wife was employed as a financial officer at Griffith Foods but stopped working in November 2018 to stay home and care for the parties' minor children. Wife is currently employed with the Lake Central School Corporation as an aide.

24. During the time when both parties were still working full time, maternal grandmother assisted with the care of minor children. At times maternal grandmother would arrive in the mornings and find Husband working on his eBay sales in the basement instead of tending to minor children.

25. Husband's eBay activities became a contentious issue between the parties with Wife alleging that Husband spent too much time on his eBay sales and not enough time helping with the care of the minor children and household chores. Husband argued that Wife was very rigid on the things that she wanted done around the house and with minor children.

26. With that in mind, Wife implemented a list of chores and child rearing duties for Husband to complete which included getting minor children up and ready in the mornings, cleaning the floors, garbage, cleaning half of the bathrooms, maintaining the outside and both parties alternating the children's bedtime procedures which included their baths.

27. Wife was responsible for taking minor children to their medical appointments. Husband became more involved with the children's medical appointments after the date of filing.

28. Wife reports that [children] have behavioral issues while in her care. Husband reports that [children] are well behaved in his care.

29. Wife insists that both children have ADHD and that both children need to be medicated for ADHD on a daily basis because she fears that if they are not properly medicated this can lead to reckless and impulsive behavior; including, but not limited to teen pregnancy and incarceration.

30. Husband does not agree with Wife regarding [J.K] having been diagnosed with ADHD or with [J.K.] being medicated for ADHD.

31. Husband questioned [A.K.'s] diagnosis of ADHD and whether [A.K.] should take medication for same. After more information and consultations with medical providers, Husband accepted [A.K.'s] diagnosis of ADHD but continued to question whether [A.K.] needs to take the ADHD medication 24/7.

32. Dr. Avva and Dr. Higgins have left the decision of whether [A.K.] should take a second dose of ADHD medication in the evening and on non-school days up to the parents, noting that the patient does not need to take [a] stimulant when school is done and on weekends. There is no weaning and patient does not need to take [a] stimulant if it is not needed.

33. The parties disagree as to how [A.K.'s] medication is to be administered with Husband giving [A.K.] breaks from the medication in the evenings and on his days off of school while in his care; and, with Wife giving [A.K.] his ADHD medication twice per day on a daily basis.

34. During the 2021-2022 school year, minor child, [A.K.], was ten (10) years old and in the fourth (4^{th}) grade. [A.K.] was doing well in school with good marks both for his academics and behavior.

35. However, during the start of the 2021-2022 school year, [A.K.'s] ADHD medication was being adjusted by Dr. Avva at Husband's request to see if a lower dosage would still aid with [A.K.'s] ADHD and allow [A.K.] to gain weight. During this two (2) week period of a lower dosage of medication for [A.K.], he did gain some weight but he also experienced some ADHD symptoms and anxiety in school leading to the ADHD medication being adjusted again which improved [A.K.'s] behavior in school.

36. [A.K.] had been on a 504 Plan at school but was removed for the 2021-2022 school year when the school found that it was no longer necessary because [A.K.] had improved and was well behaved. Wife was upset with the school's decision and felt that the school was setting [A.K.] up for failure.

37. [A.K.] is also treating with Dr. Higgins for ADHD and adjustment disorder with anxiety. [A.K.] appears to be benefiting from therapy sessions.

38. Following doctor's recommendations of physical/occupational therapy, [A.K.] was placed in occupational therapy. After some sessions, [A.K.] was released. It is unclear as to whether [A.K.] was also supposed to have physical therapy but Wife did schedule [A.K.] for physical therapy.

39. During the 2021-2022 school year, minor child, [J.K.], was six (6) years old and in kindergarten. According to school reports and teachers, [J.K.] is well behaved and a good student.

40. Wife was upset when [J.K.'s] school would not immediately give him a 504 Plan or IEP when he started kindergarten.

41. Wife was upset when Dr. Avva recommended that [J.K.] not be medicated for the start of kindergarten; so Wife went to a neurologist, Dr. Salberg, to have him prescribe medication for [J.K.].

42. Dr. Avva, who is located in Illinois, has recommended that [A.K.] continue treatment with Dr. Nisha Rao who is a psychiatrist who treats children and who is located in Dyer, Indiana.

43. [J.K.] was diagnosed with Adjustment Disorder with Anxiety and participates in therapy which appears to be beneficial for [J.K.] [J.K.] also suffers from a tic disorder.

44. During kindergarten year, [J.K.] had more than seventy (70) positive reports (referred to as "DOJOs" by the school) regarding [J.K.'s] classroom behavior and only four (4) negative DOJOs. Wife did not want to focus on the more than seventy (70) positive reports or to give [J.K.] credit for said reports. Instead, Wife insisted on focusing on the four (4) negative DOJOs as a way to prove that she was correct in her assessment of [J.K.] having behavioral problems in school and in need of daily medication for ADHD as well as a need to have a 504 Plan or an IEP.

45. Dr. Higgins is the children's psychologist who is treating [J.K.] individually and also treats both [A.K.] and [J.K.] in family therapy. [A.K.] sees a different individual counselor who is overseen by Dr. Higgins.

46. Following the GAL's initial report, Wife unilaterally decided that Dr. Higgins should no longer treat either child and Wife withdrew her consent for treatment. Wife was upset with Dr. Higgins for refusing to put [J.K.] on medication. Furthermore, Wife threatened to sue Dr. Higgins if [J.K.] hurts himself. Dr. Higgins wants to retest [J.K.] and do additional personality testing but is tentative in proceeding with the treatment of minor children due to Wife's threat of [a] lawsuit.

47. [J.K.'s] doctors and educators do not assess [J.K.'s] childhood behavior as inappropriate or risky behavior.

48. Wife does not look for alternative ways in which to work on what she perceives as [J.K.'s] risky behavior but continues to insist that [J.K.] be medicated for ADHD.

49. Husband focuses more on [J.K.'s] positive school reports ("DOJOs") and feels that the few negative DOJOs are normal for a child [J.K.'s] age.

50. When educators tell Wife that her children are doing well or that they are improving, she does not welcome this information. Instead, she goes in search of incidents that will prove that her children are misbehaving and engaging in risky behavior.

51. When medical providers tell Wife that [A.K.] may not need to be medicated on a daily basis or that [J.K.] does not need to be medicated for ADHD, Wife does not welcome this information. Instead, Wife goes in search of incidents to prove that if her children are not medicated on a daily basis, they will suffer injuries, hurt others and/or engage in risky behavior to the point where Wife submitted a spreadsheet as an exhibit to this Court chronicling minor children's childhood injuries since birth through March 2022, most of which this Court finds to be normal childhood injuries.

52. During the two year pendency of this dissolution, Wife took children to hundreds of medical, therapy and/or counseling

sessions. Wife believes that minor children are in need of all of these medical appointments. Husband believes that Wife schedules too many unnecessary appointments for minor children.

53. Wife believes that Husband fails to properly supervise minor children while they are in his care and that Husband has a drinking problem.

54. There was an incident during the pendency of this matter where Husband took [A.K.] outside with him for twenty (20) to thirty (30) minutes while leaving [J.K.] in his home unattended. Husband admits to poor judgment in that incident.

55. There was an incident that happened when [J.K.] was a toddler, approximately four (4) years ago, when Husband gave [J.K.] a pistachio. Husband claims that the parties had been conducting food challenges in their home to rule out allergies; and, that is why he gave [J.K.] a pistachio. Husband took minor child to the hospital where [J.K.] was admitted overnight.

56. The Court finds minor lapses in judgment on Husband's part with minor children during the provisional period.

57. There is no evidence to indicate that Husband is currently abusing alcohol.

58. Wife believes that Husband has ADHD and that he needs to be medicated.

59. While during the marriage, Husband did take medication for ADHD at Wife's urging; however, Husband had not been tested for ADHD.

60. During the provisional period, Husband had a neuropsychological test completed at the Chicago ADHD Clinic and was not found to have ADHD.

61. [A.K.] and [J.K.] both suffer from allergies including nut, grass and pet allergies. The parties disagree on how? to treat the children's allergies.

62. During the marriage, the parties argued on how to treat [A.K.'s] nut allergy[,] going back and forth about a set amount of daily peanut powder versus peanut M&Ms to help reduce the severity of [A.K.'s] nut allergy.

63. At one point, during the pendency of this matter, Wife insisted that [J.K.] suffered from allergies to apples. Wife accused Husband of ignoring the apple allergy and would not let Husband take minor child for the allergy screening because she feared that Husband would give child allergy medication so that the allergy would not show up during the screening. Wife took [J.K.] for the allergy screening and [J.K.] was not allergic to apples.

64. Due to the high conflict and disagreements between the parties regarding medical providers and recommended treatments during the pendency of this dissolution, minor children have gone through several changes in physicians with either physicians recommending that [] parties seek treatment for minor children elsewhere or with Wife making unilateral decision to discharge medical provider as with Dr. Higgins.

65. During the pendency of this dissolution, Husband and Wife submitted to psychological evaluations at Partners in Psychotherapy and Assessment.

66. Wife's psychological evaluation was conducted by Dr. Choi, Psy. D., HSPP. Wife's evaluation showed a diagnosis of "Obsessive-Compulsive Personality Disorder." Dr. Choi recommended that Wife participate in psychotherapy to create more balance in her overall approach to life and to learn effective interpersonal skills that may allow her to reflect on her own shortcomings and/or communication style rather than projecting blame onto others, which may help Wife to de-escalate any anger, hostility, or frustration and, thus, help her navigate the co-parenting relationship in a more harmonious manner.

67. Husband's psychological evaluation was conducted by Dr. Choi, Psy. D. HSPP, Husband's evaluation showed a diagnosis of "Social Anxiety Disorder." Dr. Choi recommended that Husband participate in psychotherapy to address his interpersonal anxieties and feelings of insecurity, to help explore the underlying contributors to his social anxieties as well as help

> Husband to develop effective coping strategies and to help Husband address ways to resolve conflicts peacefully and learn ways to de-escalate arguments by regulating his own emotional reactions. There was no support of an ADHD diagnosis.
>
> 68. Wife has not taken Dr. Choi's recommendation for psychotherapy and does not feel she needs any individual counseling.
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> 69. Husband has taken Dr. Choi's recommendation for psychotherapy and has begun regular therapy sessions to address his social anxiety disorder.
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> 70. The Guardian Ad Litem has concerns with Wife having sole legal custody of minor children where the GAL believes that Wife consistently overstates and exaggerates the medical and behavioral issues of the children for the purpose of having minor children medicated. The GAL has further concerns that awarding Wife sole legal custody may create greater anxiety in the children, may damage the children's self-esteem and subject them to potentially unnecessary, invasive and costly testing.
>
> 71. On the other hand, the GAL has concerns that Husband may under-react regarding minor children's medical and behavioral issues, therefore, the GAL recommends that Husband should not be permitted to remove [A.K.] from ADHD medication unless two physicians agree on that course of action, or the Court orders the same.
>
> 72. The GAL believes that it is in the best interest of minor children that Husband be awarded sole legal custody and that the parties share joint physical custody.

Appellant's App. pp. 22-32.

[7] The trial court also issued the following conclusions of law pertinent to the issues raised in this appeal:

> 2. The parties each seek sole physical custody. Minor children are young, under the age of fourteen (14) years old, and have a

good relationship with each parent and are well bonded with each parent. Both parents worked full time outside of the home until 2018. Both parents share in the care of minor children during this time. After Wife stayed home to care for minor children, Wife became the primary caregiver for minor children.

3. Minor children get along well with one another; however, more recently, it appears that [A.K.] has begun to take it upon himself to report [J.K.'s] "misbehavior" to his mother, as a way in which to bond and/or please his mother.

4. The children are well adjusted to both parents' homes, their school and their community. Both parents reside in the same community, the children continue to attend the same school; and, are exposed to the same community as they were while their parents resided together prior to the dissolution.

5. The physical health of the family members is not a significant issue; however, according to the psychological evaluations, both Wife and Husband have some mental health issues that need to be addressed. Husband has started some therapy/counseling sessions. Wife has not stated any therapy/counseling sessions. It is in the children's best interest that the parents continue/commence with their respective therapy sessions as recommended by Dr. Choi.

6. There is some evidence of domestic or family violence that led to an Order of Protection against Husband on behalf of Wife. However, since the pendency of this dissolution, there are no outstanding domestic or family violence issues and no threat of same.

7. The Guardian Ad Litem recommends joint physical custody.

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10. The parties do not agree to an award of joint legal custody. The parties are unwilling and unable to communicate and cooperate with regard to their children's medical and educational

> needs as evidenced by their continued conflicts throughout the pendency of this dissolution. The children are very young and so the Court does not take their wishes into consideration at this time.
>
> 11. While the children have a close bond with both parents, and the parties live in close proximity of one another, Wife is very rigid when it comes to her expectations of minor children continuously focusing on what Wife believes is negative behavior even when medical and educational providers give her positive reports and/or feedback about her children's behavior. Wife often times fails to give minor children positive reinforcement. Wife prefers to concentrate on what she perceives to be inappropriate behavior and is intent on ensuring that both children receive medication for ADHD on a daily basis despite the recommendations of medical providers.
>
> 12. The Guardian Ad Litem recommends that Husband be awarded sole legal custody.

Id. at 29-31. The trial court then concluded that the best interests of the children would be best served by awarding sole legal custody to Husband and joint physical custody to the parties. The court also ordered Husband to maintain A.K.'s ADHD medication "unless two physicians agree" that A.K. no longer needed the medication "or the Court orders the same." *Id*. at 34.

[8] Finally, for the purposes of the child support calculation, the trial court imputed income to Wife of $85,000 per year. The court "utilized the median income for Wife from her earnings in 2017 and 2018[.]" *Id.* at 31. The trial court concluded that it was appropriate to impute income to Wife because she "failed to prove that she could not find employment in her field of accounting or that she needs any training to enter the accounting workforce." *Id*. And "Wife failed to prove

that employment in her field of accounting is not possible due to the needs of her minor children." *Id*.

[9] Wife now appeals the trial court's custody order and child support calculation. Additional facts will be provided as needed.

Standard of Review

[10] Pursuant to Husband's Trial Rule 52 request, the trial court entered findings of fact and conclusions of law. Therefore, we apply a two-tiered standard of review: first, whether the evidence supports the findings, and second, whether the findings of fact support the judgment. *Hamilton v. Hamilton*, 103 N.E.3d 690, 694 (Ind. Ct. App. 2018), *trans. denied*. We will set aside findings only if they are clearly erroneous, which occurs if the record contains no facts to support them either directly or by inference. *Id*. To determine that a trial court's findings or conclusions are clearly erroneous, this court's review of the evidence must leave it with the firm conviction that a mistake has been made. *Campbell v. Campbell*, 993 N.E.2d 205, 209 (Ind. Ct. App. 2013), *trans. denied*.

[11] Our review of family law matters is conducted with a preference for granting latitude and deference to our trial judges. *Anselm v. Anselm*, 146 N.E.3d 1042, 1046 (Ind. Ct. App. 2020), *trans. denied*.

> 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. 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." *Hamilton*, 103 N.E.3d at 694. "Accordingly, we will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment." *Id.*

The Challenged Findings of Fact

[12] Wife challenges several findings of fact, arguing that the findings are not supported by the evidence. We address each challenged finding in turn.

[13] In finding number 9, the trial court found that "Wife used the protective order as a way to keep Husband out of doctor's appointments, even virtual appointments." Appellant's App. p. 21. We agree with Wife that, under the terms of the August 2020 protective order, it was reasonable to conclude that Husband could not participate in person or online in any appointments that Wife attended with the children. The order was later modified to allow Husband to participate in the children's medical appointments. As requested by Wife, we will not consider this finding in our review of the evidence and findings supporting the child custody judgment.

[14] Next, Wife argues that findings 54 and 56 are not supported the evidence. These findings address Husband's lapses in judgment during the provisional

period when Husband left the parties' five-year-old child alone in his apartment while Husband and A.K. played a game outside. Wife argues that the evidence established this occurred approximately three times and it was not an isolated incident.

[15] We agree with Wife that the trial court's characterization of this evidence does not support the finding that the multiple occurrences were an "isolated" incident. Husband admitted that he left J.K. alone in his apartment more than one time and this demonstrated a significant lapse in judgment when the incidents occurred. However, these incidents occurred early in the provisional period and DCS investigated the incidents. Husband stated that he no longer leaves J.K. alone while playing outside with A.K., and it was within the discretion of the trial court to determine the weight of Father's mistakes and Father's credibility on this issue.

[16] Wife challenges Finding 69, in which the trial court found that Husband has begun "regular" therapy sessions to address his social anxiety disorder. Wife argues that the evidence does not support the court's finding that Husband's therapy sessions were "regular" because Husband could have only attended two appointments after resuming therapy at the time of his testimony. Husband testified that he was seeing his therapist every two weeks and he would continue to do so in the future. Tr. Vol. 4, p. 77. This evidence supports the finding that Husband had *begun* regular therapy appointments. Wife's argument concerning this finding is a request to reweigh Husband's testimony, which we will not do.

[17] Wife also challenges the findings of fact concerning her ability to find employment as an accountant and the court's decision to impute income to her. These findings will be addressed in our discussion of Wife's more general challenge to the court's imputation of income to her. And Wife's separate challenges to specific conclusions of law are better addressed in our resolution of the remaining issues she presents on appeal.

Custody Determination

[18] Wife argues that the trial court erred when it awarded sole legal custody of the children to Husband and joint physical custody between the parties.

[19] First, we address Wife's argument that the court did not consider the issue of domestic violence in its custody determination. The trial court heard evidence that both parties engaged in volatile behavior in their home during the marriage. Husband's behavior was physically violent towards Wife on at least one occasion, and as a result, the trial court issued a protective order to Wife. Any physical or emotional abuse between spouses or between parents and children is horrific and intolerable. Because the trial court's findings only address the issue of the domestic violence Husband inflicted on Wife to note that a protective order was issued, Wife understandably questions whether the trial court considered that evidence in issuing its custody order.[1]

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[1] Indiana Code 31-17-2-8 instructs the court to consider each factor before making its custody determination, but the statute does not require findings of fact as to each factor. And although we would prefer that the trial

[20] After reviewing the record and the court's findings and conclusions, we are confident that the trial court considered the domestic violence Husband inflicted on Wife in determining which parent should have legal and physical custody of the children. In its conclusions, the court noted that "[t]here is some evidence of domestic or family violence that led to an Order of Protection against Husband on behalf of Wife. However, since the pendency of this dissolution, there are no outstanding domestic or family violence issues and no threat of same." Appellant's App. p. 30. There is no evidence that Husband engaged in abusive physical behavior while the dissolution was pending for two years.

[21] We now turn our attention to Wife's argument concerning the trial court's order awarding sole legal custody to Husband. In an initial custody determination, both parents are presumed equally entitled to custody, and the trial court shall "enter a custody order in accordance with the best interests of the child." Ind. Code § 31-17-2-8. In determining the best interests of the child, the court shall consider all relevant factors, including the following factors pertinent to this appeal:

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court make findings addressing each statutory factor after a party makes a request for Trial Rule 52(A) findings, failure to do so does not equate to reversible error. *See Anselm*, 146 N.E.3d at 1047. The purpose of Trial Rule 52(A) findings is "'to provide the parties and the reviewing court with the theory upon which the trial judge decided the case[.]'" *M.M. v. M.H.* (*In re Paternity of S.A.M.*), 85 N.E.3d 879, 885 (Ind. Ct. App. 2017) (quoting *Carmichael v. Siegel*, 670 N.E.2d 890, 891 (Ind. 1996)). The trial court's findings clearly provided the parties with the theory upon which the trial court decided the case. And the trial court made findings concerning the protective order and the impact Husband's past violent behavior had on its custody decision. *See* Appellant's App. pp. 21, 34.

(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 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.

Id.

[22] Pursuant to Indiana Code section 31-17-2-15, the trial court must also consider the following to determine whether joint legal custody is in the best interests of the children.

…[T]he court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

> (1) the fitness and suitability of each of the persons awarded joint custody;
>
> (2) whether the persons awarded joint 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 custody;
>
> (5) whether the persons awarded joint custody:
>
> (A) live in close proximity to each other; and
>
> (B) plan to continue to do so; and
>
> (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

[23] The evidence presented at the final hearing supports the trial court's decision to award sole legal custody to Husband. The parties cannot communicate without hostility and are unable to agree on issues surrounding their children's medical care and schooling. Given the parties' contentious relationship, there is nothing in this record which would support an award of joint legal custody.

[24] Both parties underwent psychological evaluations while the dissolution was pending. Wife's diagnosis was "obsessive-compulsive personality disorder" and the evaluating psychologist found that Wife has "limited psychological insight" and might be "reluctant to accept psychological causes for her problems." Appellee's App. p. 144. Wife is also likely to be "rigid and inflexible" in her approach to solving problems. *Id.* Wife catastrophizes events and turns minor

incidents into major obstacles. *Id*. The GAL witnessed behavior consistent with the psychologist's findings. And Wife did not participate in therapy although the psychologist recommended that she do so. The GAL also observed that Wife's behavior had a negative impact on the children. *Id*. at 145. Further, Mother insists on providing her own diagnoses for her children, such as her belief that J.K. has ADHD, and when medical professionals disagree with her, she finds new doctors to evaluate the children.

[25] The GAL recommended that Husband have sole legal custody of the children because of the parties' hostile relationship and her concerns that

> [Wife's] Obsessive Compulsive Personality Disorder, and past behavior would continue. [Wife] seems to consistently overstate and exaggerate the medical and behavioral issues of the children. This GAL has fears that awarding [Wife] sole legal custody would create greater anxiety in the children, may damage the children's self-esteem and subject them to potentially unnecessary, invasive and costly testing.

Id. at 152.

[26] The trial court considered the GAL's recommendation to award Husband sole legal custody and the factors enumerated in Indiana Code section 31-17-2-15. The court concluded:

> While the children have a close bond with both parents, and the parties live in close proximity of one another, Wife is very rigid when it comes to her expectations of minor children continuously focusing on what Wife believes is negative behavior even when medical and educational providers give her positive reports and/or feedback about her children's behavior. Wife

> often times fails to give minor children positive reinforcement. Wife prefers to concentrate on what she perceives to be inappropriate behavior and is intent on ensuring that both children receive medication for ADHD on a daily basis despite the recommendations of medical providers.

Appellant's App. p. 31.

[27] Much of Wife's argument challenging the trial court's award of sole legal custody to Husband focuses on her challenges to the findings noted above.[2] We are not persuaded that any error in those findings requires reversal in this case. And considering the evidence in light of the deference we are required to afford the trial court in family law matters, we cannot say that the trial court erred when it awarded sole legal custody to Husband.

[28] Turning now to Wife's arguments concerning joint physical custody, the trial court awarded joint physical custody to the parties after recognizing that the children are bonded to both parents and would be best served by spending equal time with their parents. Wife initially argues that there is no legal authority for awarding joint physical custody to both parents. But Indiana Code section 31-

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[2] Wife also argues that the trial court's custody order should be reversed because the court did not consider the wishes of the children. The trial court expressly declined to consider the children's wishes because of their young ages. Appellant's App. p. 35. The children were six and ten on the date the court issued its order. The court did not abuse its discretion when it denied Mother's request to conduct an *in-camera* interview with the children. *See McClendon v. Triplett*, 184 N.E.3d 1202, 1211 (Ind. Ct. App. 2022) (noting that a trial court's decision whether to conduct an in-camera interview with children is within the court's discretion and our court frowns "upon parents calling their minor children as witnesses in custody proceedings that 'pit' a child against the other parent"). And the trial court heard evidence from the parties and the GAL about the children's relationships with Husband and Wife. We cannot conclude that the trial court committed reversible error when it declined to consider the wishes of the children under the facts and circumstances of this case.

17-2-14 authorizes joint and equal division of physical custody by implication. *See also Clark v. Madden*, 725 N.E.2d 100, 109 (Ind. Ct. App. 2000) (explaining that split physical custody is not prohibited by statute) (citing Ind. Code § 31-17-2-8)).

[29] Wife also argues that the trial court should not have awarded joint physical custody because of the parties' hostile relationship. Wife directs our attention to the Parenting Time Guidelines and Commentary suggesting that joint physical custody is particularly appropriate when the parties are able to work well together and share similar parenting styles. *See* Appellant's Br. at 36-37 (citing Ind. Parenting Time Guid., § IV and cmt.). Noting that many of the trial court's findings address the conflict and hostility between the parties, Wife states that "the trial court's findings of fact demonstrate that shared parenting is a mistake in this particular family." *Id*. at 37.

[30] Much of the parties' disagreement and conflict centers around the children's medical appointments and ADHD diagnoses.[3] The trial court has granted Husband authority to make those decisions by awarding him sole legal custody

[3] Mother also argues that the trial court failed to address the physical and mental health issues of the children in its conclusions of law. But the trial court's numerous findings and its custody order clearly demonstrate that the trial court considered these issues in making the custody determination. The court ordered Husband not to make any changes to A.K.'s ADHD medication without the consent of two physicians or a court order. The court also ordered the children to remain in counseling and ordered the parties to participate in counseling as recommended by the children's doctor. The trial court concluded that "[t]he physical health of the family members is not a significant issue," but in the context of the court order, it is clear the court meant that no family member has a health condition that might impact the court's custody decision. *See* Appellant's App. p. 35.

subject to certain limitations in the court's custody order. *See* Appellant's App. p. 39. This will both limit the parties' interactions and should eliminate disagreement and conflict about the children's treatment plans. Moreover, the court ordered both parties to participate in individual therapy as recommended in the psychological evaluations and to participate in the children's counseling as recommended by their counselor.

[31] The children are well adjusted to both parents' homes, their school and their community, and the parties live in the same community. The children also share a close bond with both parents. The GAL recommended joint physical custody for the following reasons:

> [A]lthough [Wife] has been the primary parent, [Husband] has played an involved role in the children's lives. Likely due in large part to [Wife's] personality disorder [she] has behaviors that are negatively impacting the children. It is in the children's best interest to spend more time with [Husband]. This GAL fears that even 50% of the children's time spent with [Wife] may negatively impact the children's social and emotional development. [A.K.] tries to be perfect creating overwhelming anxiety and tattles on [J.K.] to endear himself to [Wife]. [J.K.s'] behavior is markedly worse in [Wife's] presence and this GAL fears that [Wife's] flawed perception of [J.K.] being sick/troubled/less than will negatively impact his self-esteem. However, given the magnitude of change that a transfer of primary custody to Father would create [sic] cannot in good conscious [sic] make that recommendation.

Appellee's App. p. 153. The trial court found it was in the children's best interests to share equal time with their parents, and we must give significant

deference to that decision. If the trial court's decision to allow both parents to spend equal time with the children proves to be unworkable and the statutory requirements in Indiana Code chapter 31-17-2 are met, the parties are free to seek a modification of custody.

[32] For all of these reasons, we affirm the trial court's award of sole legal custody to Husband and joint physical custody to the parties.

Imputed Income

[33] Finally, Wife argues that the trial court abused its discretion when it imputed income to her in its child support calculation. A trial court's calculation of child support is presumptively valid. *Bogner v. Bogner*, 29 N.E.3d 733, 738 (Ind. 2015). We will reverse a trial court's decision regarding a parent's unemployment or underemployment and imputation only for an abuse of discretion. *In re Paternity of Pickett*, 44 N.E.3d 756, 762 (Ind. Ct. App. 2015).

[34] First, Wife claims that the trial court improperly placed the burden of proof on her to prove imputing potential income was not appropriate. Wife argues that Husband bore the burden to establish employment available to her and to prove that she met the requirements for those positions. Husband contends that "[t]he absence of any assigned burden of proof is not rare in family law cases." Appellee's Br. at 48. For example, in an initial custody determination there is no burden of proof but a presumption that both parents are equally entitled to custody. *Id*. (citing *Kondamuri v Kondamuri*, 852 N.E.2d 939, 945 (Ind. Ct. App. 2006)).

[35] Here, Husband presented evidence that Wife was underemployed. He described Wife's educational background and employment history to the trial court. Tr. Vol. 4, pp. 92-93. Husband testified that Wife was a senior accountant when she resigned from Griffith Laboratories. *Id*. at 92. The trial court also admitted Husband's exhibits into evidence establishing Wife's income the last two years she was employed as an accountant. *See* Ex. Vol. 8 pp. 195-96. Wife then bore the burden to rebut that evidence with evidence supporting her claim that she is not underemployed. It is reasonable for the party who is underemployed to present evidence for the reasons he or she is unable to obtain employment in that field and/or the steps the party has taken to attempt to find employment. And, for the purpose of the child support calculation, it is reasonable to require the party who is underemployed or unemployed to prove to the trial court why he or she continues to remain underemployed or unemployed. For these reasons, we do not agree with Wife that Husband was required to present evidence proving what steps Wife had taken to obtain employment as an accountant.

[36] Turning now to imputation of income, we observe that the Indiana Child Support Guidelines provide that a parent's child support obligation is based upon his or her weekly gross income, which is defined as "actual weekly gross income of the parent employed to full capacity, potential income if unemployed or underemployed, and the value of 'in-kind' benefits received by the parent." Child Supp. G. 3(A)(1). Regarding imputing potential income, the Guidelines provide:

> If a court finds a parent is voluntarily unemployed or underemployed without just cause, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's employment and earnings history, occupational qualifications, educational attainment, literacy, age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community.

Child Supp. G. 3(A)(3).

[37] Before Wife left employment in 2018 to remain at home to care for the children, she was employed as an accountant earning over $80,000 per year. She has an undergraduate degree and master's degree in accounting. When she returned to employment, in September 2021, Wife obtained a job as an aide for the Lake Central School Corporation and earns $18,270 annually. The trial court issued the following findings concerning Wife's employment during the pendency of these proceedings:

> 77. Wife asserts that she cannot find employment with a salary comparable to her earnings from 2018 because she needs training on computer software updates; and, because she needs to be more available for minor children's medical appointments and needs.
>
> 78. Wife did not provide any proof of any training she is in need of or any training that she sought during the two (2) year pendency of this dissolution. Furthermore, Wife did not provide any proof that she even applied for any comparable accounting jobs that would utilize her education or her work experience in that same field.

Appellee's App. p. 32. The trial court concluded that Wife failed to prove that she could not find employment as an accountant or that she required additional training to re-enter the accounting workforce. *Id*. at 36. The court also concluded that "Wife failed to prove that employment in her field of accounting is not possible due to the needs of her minor children." Appellant's App. p. 31. Therefore, it imputed income to her of $85,000 for the purpose of calculating child support, which is the median income Wife earned in 2017 and 2018. *Id*.

[38] Wife argues that these findings and conclusions are not supported by the evidence and cites to her own testimony as proof that she requires additional training to return to the accounting field and that she applied for employment in that field. Wife was unemployed the last eighteen months of the marriage because the parties agreed that she would stay home to take care of the children. After the dissolution was filed and while it was pending for two years, Wife did not attempt to obtain any additional training and could not testify specifically what training was needed or the cost of the training. Tr. Vol. VI, pp. 120-21. The trial court did not credit Wife's testimony that she made a sincere attempt to find employment as an accountant or obtain the training she claims she needs. We must defer to the trial court's credibility determination and affirm the court's finding that Wife is underemployed.

[39] Wife observes that our court has held that "child support orders cannot be used to force parents to work to their full economic potential or make their career decisions based strictly upon the size of potential paychecks." *In re Paternity of E.M.P.*, 722 N.E.2d 349, 351-52 (Ind. Ct. App. 2000). In *E.M.P.*, our court

reversed the trial court's conclusion that the father was voluntarily underemployed because the father changed employment due to the physical demands of his job as a garbage collector, concerns over father's health if he continued to be employed as a garbage collector, and the father's new employment offered better benefits and the ability to increase his salary the longer he was employed.

[40] The father in *E.M.P.* presented compelling reasons for being voluntarily underemployed and he also presented evidence that his salary would likely increase over time. Wife has not presented compelling reasons that would support her voluntary underemployment in this case.

[41] Finally, Wife argues that the amount of potential income imputed to her for the purpose of calculating her child support obligation is not supported by the evidence. In support of her argument, she relies on our court's opinions in *Walters v. Walters*, 186 N.E.3d 1186 (Ind. Ct. App. 2022), and *Miller v. Miller*, 72 N.E.3d 952, 954 (Ind. Ct. App. 2017).

[42] In both of those cases, our court affirmed the trial court's finding that the parent was voluntarily underemployed but concluded that the amount of income imputed to the parent was not supported by the evidence. *Walters*, 186 N.E.3d at 1193; *Miller*, 72 N.E.3d at 957. In both cases, the trial court imputed income to the parent without considering evidence of prevailing job opportunities and earnings levels in the community as required by Child Support Guideline 3(A)(3). *Id.* In each case, the trial court imputed income based solely on the

parent's prior earning ability. Therefore, in both cases, our court reversed the portion of the child support order imputing income to the underemployed parent and remanded for evidentiary hearings on those two factors and to recalculate the parties' child support obligations if necessary. *Id.*

[43] Citing to her own testimony that the only employment she was offered in the field of accounting was a part-time job paying $15 per hour, Wife argues that this is the only evidence presented to the trial court of prevailing job opportunities and earnings levels in the community. We do not agree that Wife's testimony is evidence of job opportunities and earnings levels in the community. Wife's testimony, if credited, is only evidence of part-time employment Wife sought and we may reasonably conclude that the trial court did not believe that Wife's effort to find full-time employment in the field of accounting was sincere.

[44] However, Husband bore the burden to present evidence of the employment opportunities and earnings levels in the community. *See Walters*, 186 N.E.3d at 1193. And Husband does not respond to Wife's argument that the income the trial court imputed to her is incorrect because the court did not hear evidence of those factors during the dissolution hearing. The trial court therefore abused its discretion when it only considered Wife's median income from her last two years of full-time employment as an accountant when it imputed income to her. The trial court was also required to consider available job opportunities and earnings levels, which should be considered in light of Wife's absence from the accounting field while she stayed at home to care for the children. We therefore

reverse the portion of the trial court's order imputing $1644 per week to Wife and remand for an evidentiary hearing on these two factors. If, after the hearing, the trial court determines that a revision of Wife's imputed income is appropriate, the trial court should recalculate its child support order. *See Miller*, 72 N.E.3d at 957.

Conclusion

[45] The trial court's legal and physical custody orders are supported by its findings of fact and conclusions of law. Wife is not entitled to any relief sought concerning the trial court's decision to award sole legal custody of the children to Husband and joint physical custody to the parties. The trial court's finding that Wife is voluntarily underemployed is also supported by the evidence. However, the trial court did not consider evidence of all required factors when it imputed $1644 per week to Wife as income for the purpose of calculating the parties' child support obligations. Therefore, we reverse and remand this case to the trial court for the limited purpose of holding an evidentiary hearing for the reasons discussed above and for a recalculation of the parties' child support obligations if a revision is warranted.

[46] Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

Vaidik, J., and Pyle, J., concur.