

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re: the Paternity of J.H.

Jordan Taylor,
Appellant-Respondent,

v.

Kyle C. Hopper,
Appellee-Petitioner.

September 19, 2023

Court of Appeals Case No.
23A-JP-781

Appeal from the Miami Circuit
Court

The Honorable Timothy P. Spahr,
Judge

Trial Court Cause No.
52C01-1701-JP-3

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

- [1] In June of 2016, J.H. was born to Jordan Taylor (“Mother”) and Kyle Hopper (“Father”). In January of 2023, Mother was charged with and incarcerated for several drug-related crimes, and Father petitioned to suspend Mother’s visitation with J.H. Following a hearing, the trial court suspended Mother’s in-person visitation with J.H. but allowed her to continue to write to her and have one fifteen-minute telephone conversation with her per week. Mother contends that there is insufficient evidence to sustain the trial court’s ruling. Because we disagree, we affirm.

Facts and Procedural History

- [2] In June of 2016, J.H. was born to Mother and Father. At one point, Mother and Father had had joint legal and physical custody of J.H., but at no time between September 25, 2019, and August of 2021 had Mother exercised parenting time consistent with that arrangement, apparently due, at least in part, to Mother’s substance abuse. On one occasion, Mother, who had already had a history of substance abuse at the time, overdosed on heroin while at least one of her children was in the home. As a result of the incident, Mother was incarcerated and subsequently lived at Gilead House in Kokomo for six months. Only in August of 2021 did Mother begin exercising parenting time for full alternating weekends and weeknights.
- [3] In July of 2022, Mother’s husband was charged with two counts of Level 2 felony methamphetamine dealing, two counts of Level 3 felony methamphetamine possession, one count of Level 6 felony methamphetamine

possession, and one count of Level 6 felony illegal possession of a narcotic drug. In August of 2022, the trial court granted Father sole legal and primary physical custody of J.H. Mother was entitled to unsupervised standard parenting time of J.H. pursuant to the trial court's order, subject to the following conditions: that (1) Mother's husband not be present or have any contact with J.H. during parenting time; (2) Mother not be under the influence of illegal drugs, alcohol, or unauthorized prescriptions drugs during parenting time; and (3) Mother ensure that no illegal drugs or drug paraphernalia be present in her home at any time.

[4] On January 12, 2023, Mother was charged in two cause numbers with two counts of Level 2 felony methamphetamine dealing, Level 3 felony methamphetamine dealing, Level 3 felony methamphetamine possession, Level 4 felony methamphetamine dealing, Level 4 felony methamphetamine possession, Level 5 felony methamphetamine possession, Level 5 felony neglect of a dependent, and Level 6 felony methamphetamine possession. The same day, Mother's husband was charged with Level 2 felony methamphetamine dealing, Level 3 felony methamphetamine possession, Level 3 felony methamphetamine dealing, and Level 5 felony methamphetamine possession. In February of 2023, Mother's husband was charged with Level 2 felony methamphetamine dealing and Level 6 felony marijuana dealing in Howard County.

[5] Meanwhile, on January 18, 2023, Father had petitioned for modification of parenting time and support. At a hearing on February 15, 2023, Father

requested that the trial court take judicial notice of the charges against Mother and the associated probable-cause affidavits. The trial court granted Father's request to take judicial notice of the charging informations but declined to take judicial notice of the probable-cause affidavits. When questioned concerning the charges against her and her husband, Mother invoked the Fifth Amendment on advice of counsel but indicated that she had not yet been convicted of any of them. Mother indicated that she would like visitation with her daughter, that her mother had supervised visitation in the past, and that her mother would be willing to do so in the future. On March 13, 2023, the trial court issued its order, in which it suspended Mother's in-person parenting time with J.H. but allowed Mother to write to her and have one fifteen-minute telephone call with her per week, supervised by Father.

Discussion and Decision

[6] Mother contends that there is insufficient evidence to sustain the trial court's suspension of her in-person visitation with J.H. As an initial matter, we note that Father has not filed an appellate brief, and we will not undertake the burden of developing arguments for him. *State Farm Ins. v. Freeman*, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006). Under such circumstances, however, we do apply "a less stringent standard of review with respect to showings of reversible error" and "may reverse the lower court if the appellant can establish *prima facie* error." *Id.* "*Prima facie* is defined in this context as 'at first sight, on first appearance, or on the face of it.'" *Id.* (citation omitted). "The purpose of this rule is not to benefit the appellant. Rather, it is intended to relieve this court of

the burden of controverting the arguments advanced for reversal where that burden rests with the appellee.” *Id.* “Where an appellant is unable to meet that burden, we will affirm.” *Id.*

- [7] The right to be a parent is a fundamental right protected by the U.S. Constitution. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 59 (2000). Indiana Code section 31-17-4-2 provides as follows:

The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent’s parenting time rights unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development.

Generally, parenting time decisions are reviewed for an abuse of discretion. *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). We will not reweigh evidence or reassess the credibility of witnesses. *Id.* We will review a trial court’s decision for an abuse of discretion, reversing only where the judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs as a matter of law. *Id.* The burden of proof rests on the party seeking to restrict parenting time to establish that the visitation would endanger the child’s physical health or significantly impair the child’s emotional development. *McCauley v. McCauley*, 678 N.E.2d 1290, 1292 (Ind. Ct. App. 1997), *trans. denied*.

- [8] Mother contends that there is insufficient evidence to sustain the trial court’s suspension of her in-person parenting time with J.H., specifically its finding that parenting time might endanger J.H.’s physical health or significantly impair

J.H.'s emotional development. We have little hesitation in concluding otherwise. Mother's argument is based on her claim that the trial court based its ruling on nothing more than the fact that she is currently incarcerated and facing criminal charges, but the record clearly demonstrates that this was not the case.

[9] First, the trial court specifically noted evidence of Mother's history of substance abuse, which includes at least one substance-abuse-related criminal conviction. Second, Mother repeatedly invoked her Fifth Amendment right to remain silent when questioned regarding her and her husband's pending criminal charges during the hearing on Father's petition. Mother invoked the Fifth Amendment when asked if she had dealt methamphetamine with J.H. in the car with her, how many times she had dealt methamphetamine with J.H. in the car, how long she had been dealing methamphetamine, if she had been dealing methamphetamine prior to the trial court's last order in the case, and if she had been aware of the contents of a Howard County storage unit she had rented with her husband.

[10] "Generally, in any proceeding—civil or criminal—the Fifth Amendment protects an individual from being compelled to answer questions when the answers might be used in a future criminal proceeding." *Matter of Ma.H.*, 134 N.E.3d 41, 46 (Ind. 2019). "Yet, in civil proceedings, a court can draw a negative inference from a claim of the Fifth Amendment privilege against self-incrimination." *Id.* at 48. Under such circumstances, "the court [can] then 'infer what [the] answer[s] might have been.'" *Id.* (quoting statement of trial

court with approval; third set of brackets in original). The trial court was therefore free to infer that, had Mother answered the questions truthfully, those answers would have indicated that she had dealt methamphetamine multiple times in the presence of J.H. and been aware of the contents of the Howard County storage unit and that those contents had had something to do with criminal activity.

[11] Finally, the trial court heard evidence that J.H.’s visitation with Mother had negatively affected J.H.’s physical and mental health. Father testified that, when J.H. was having visitation with Mother, she would vomit during dinner and bite her fingernails and was having problems at school, all of which had “basically” stopped after Mother’s arrest. Tr. Vol. II p. 15. Father also testified that J.H.’s stress levels and anxiety had “[d]efinitely” decreased. Tr. Vol. II p. 15. In summary, the record contains ample evidence to sustain the trial court’s ruling. The trial court heard evidence of Mother’s prior criminal and substance-abuse history and that J.H.’s health had suffered when she had had in-person parenting time with Mother.

[12] Mother relies on our opinion in *Rickman v. Rickman*, 993 N.E.2d 1166 (Ind. Ct. App. 2013), in which we reversed the trial court’s denial of Rickman’s petition to modify an order terminating his visitation rights to his child. *Id.* at 1167. The order to terminate Rickman’s visitation had been issued before his convictions for eight counts of Class A felony child molesting, Class C felony child molesting, and Class C felony criminal confinement, and his petition to modify had been filed afterwards. *Id.* We reversed and remanded with

instructions for further proceedings on the basis that the trial court had neither held a hearing on Rickman's petition nor made any finding that parenting time might endanger the child's physical health or significantly impair the child's emotional development. *Id.* at 1168, 1169. Here, in contrast, the trial court did make such a finding, supported by ample evidence. Consequently, *Rickman* is easily distinguished and does not help Mother.

[13] We affirm the judgment of the trial court.

Riley, J., and Weissmann, J., concur.