MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joshua Haseman,
Appellant-Respondent,

v.

Kelly (Haseman) Peters,
Appellee-Petitioner.

January 10, 2024

Court of Appeals Case No. 23A-DR-827

Appeal from the Vigo Superior Court

The Honorable Lakshmi Reddy, Judge

Trial Court Cause No. 84D02-1607-DR-004630; 84D02-2202-PO-000926

Memorandum Decision by Judge Felix
Judges Bailey and May concur.

Felix, Judge.

Statement of the Case

[1] Joshua Haseman ("Father") appeals the trial court's modification of physical and legal custody over his minor children M.H. and N.H. (collectively, the "Children"), from Father and Kelly Peters ("Mother") jointly to Mother solely. Father also appeals the trial court's modification of his parenting time with the Children as well as the trial court's finding that he was in contempt of court for noncompliance with a court order. Father raises six issues for our review, which we restate as follows:

1. Whether the trial court denied Father due process at a hearing on February 16, 2022, by not allowing cross-examination and by allegedly not allowing Father the same opportunity to present evidence as Mother;
2. Whether the trial court denied Father due process by not holding an evidentiary hearing on parenting time and protective order issues until December 6, 2022;
3. Whether the trial court denied Father due process by allegedly exhibiting bias against Father;
4. Whether the trial court clearly erred in modifying Father's parenting time with the Children;
5. Whether the trial court clearly erred in modifying custody of the Children; and
6. Whether the trial court clearly erred in holding Father in contempt of court.

[2] Because Father's significant noncompliance with Indiana Appellate Rule 46 substantially impedes our review of all these claims, and because Father further waived his due process claims by failing to timely object, we hold that he has waived appellate review of all his claims. We affirm.

Facts and Procedural History

[3] Father and Mother (collectively, the "Parents") married in 2007, and divorced in 2017. They resided in Vigo County at the time of the divorce, but both later moved to Clay County. Following the divorce, the Parents shared joint legal and physical custody of the Children.

[4] On Tuesday, February 8, 2022, M.H. reported to a school counselor that she feared Father because of his temper and yelling; the school counselor contacted the Indiana Department of Child Services ("DCS"). Michelle Puckett, a DCS worker, investigated M.H.'s alleged fear of Father and created a safety plan with Mother that included not returning the Children to Father's care on Sunday, February 13, 2022, as would have otherwise been required by the Parents' agreed-upon parenting time schedule.

[5] On Thursday, February 10, 2022, Mother filed a Verified Petition to Modify Parenting Time (the "Parenting Time Motion") in Vigo County. The next day, she filed a Petition for an Order of Protection on behalf of M.H. (the "Protective Order Petition") in Clay County. The Clay County court granted the ex parte Protective Order Petition and subsequently transferred the case to Vigo County where it was consolidated with the Parenting Time Motion under the Parents' divorce cause number.

[6] On February 16, 2022, the trial court held a hearing on the Parenting Time Motion (the "February 2022 Hearing"). The Parents and Puckett all testified at this hearing, but the trial court did not allow Father's and Mother's attorneys to

question or cross-examine any of the three witnesses "[d]ue to limited time." Appellant's App. Vol. II at 49. Neither objected to proceeding in that manner. After the hearing, the trial court conducted individual in camera interviews with each of the Children.

[7] On February 22, 2022, the trial court issued an order (the "February 2022 Order") that, among other things, modified Father's parenting time with the Children and required Father to attend anger management counseling. In particular, Father's parenting time was reduced to supervised parenting time that was phased in as follows: one hour once per week for two weeks, then one hour twice per week for two weeks, and then two hours twice per week, all dependent upon how the Children handled the situation. This phase-in schedule was premised on having a review hearing quickly and the parties "complying and participating in the ordered services." Appellant's App. Vol. II at 55. The trial court also noted that Father's parenting time would be supervised "until he has adequately completed enough of the intensive anger management classes and possibly other services that may be required based upon the recommendation of professionals." Appellant's App. Vol. II at 54.

[8] In the February 2022 Order, the trial court set two hearings: (1) a hearing on the Protective Order for March 9, 2022, and (2) a review hearing on Father's restricted parenting time and the progress of counseling services on April 27, 2022. Sometime thereafter, Father requested the trial court continue the

Protective Order hearing so he could obtain a new attorney;[1] the trial court granted this request. Father then requested another continuance for both hearings, which the trial court also granted. Both hearings were set for May 17, 2022. On May 17, 2022, after speaking with counsel for both of the Parents, the trial court conducted a review hearing instead of an evidentiary hearing on the Protective Order and parenting time restrictions, to which neither party objected. In the resulting order, the trial court scheduled the evidentiary hearing on those issues for September 13, 2022. Neither party objected to this new date.

[9] On September 7, 2022, Mother requested a continuance of the evidentiary hearing; the trial court granted that request over Father's objection and reset the hearing for November 1, 2022. Thereafter, the Guardian Ad Litem (the "GAL") requested a continuance of the evidentiary hearing; the trial court also

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[1] We initially observe that Father failed to include several documents in his Appendix that he was required to include pursuant to Appellate Rule 50(A)(f) because those documents are necessary for our review of Father's claim that the delays in the evidentiary hearing violated his due process rights. The missing documents include the following:

1. Father's three motions for continuances;
2. Mother's motion for a continuance;
3. Father's opposition to Mother's motion for a continuance;
4. the trial court's order granting Mother's continuance;
5. the GAL's motion for a continuance;
6. the trial court's order granting the GAL's continuance;
7. the trial court's order concerning the October 20, 2022, attorney conference; and
8. the trial court's order rescheduling the evidentiary hearing to December 6, 2022.

To the extent necessary, we have taken judicial notice of the content of these documents pursuant to Appellate Rule 27.

granted that request and reset the hearing for December 15, 2022. During an attorney conference on October 20, 2022, the trial court requested the Parents find a new date for the full evidentiary hearing because Mother's counsel had a conflict on December 15, 2022. When neither party contacted the trial court within a week of the attorney conference, the trial court sua sponte rescheduled the evidentiary hearing for December 6, 2022.

[10] On December 1, 2022, Mother filed a Verified Motion to Modify Custody and Child Support (the "Custody Petition"). On December 6, 2022, the trial court held a hearing on only the Protective Order and parenting time restrictions. After hearing testimony from the doctor who oversaw the first attempt at family counseling between Father and M.H., a visit supervisor, Mother, and the GAL, the trial court dismissed the Protective Order. The trial court did not lift the restriction of requiring Father's parenting time to be professionally supervised and required Father to complete four sessions of anger management counseling before he could restart family counseling with the Children. The trial court memorialized its rulings on these issues in a subsequent order (the "December 2022 Order").

[11] On March 9, 2023, Mother filed a Verified Motion for Rule to Show Cause (the "Show Cause Motion"), which requested attorneys' fees related to Father's months-long noncompliance with the trial court's order requiring Father to participate in anger management counseling. (Appellee's App. Vol. II at 18–19.) On March 16, 2023, the trial court held a hearing on Mother's Custody Petition and Show Cause Motion. The hearing lasted for approximately 14

hours and included testimony from 14 witnesses. In its corresponding order (the "March 2023 Order"), the trial court awarded Mother sole legal custody and primary physical custody, and the trial court set forth a detailed parenting time schedule for Father that allowed him to have unsupervised parenting time if he participated in and completed family counseling sessions. The trial court also found that Father was in contempt for failing to promptly participate in court-ordered services, Appellant's App. Vol. II at 197, 200, and, instead of awarding attorney fees, it sanctioned Father by allowing Mother to claim the Children on her 2024 taxes.

[12] Father now appeals the February 2022 Order, the December 2022 Order, and the March 2023 Order.

Discussion and Decision

Father Waived All His Claims on Appeal by Failing to Comply with Appellate Rule 46

[13] Father raises several issues on appeal regarding due process and sufficiency of the evidence. However, we cannot address those claims due to Father's significant noncompliance with Appellate Rule 46. Although we have a well-established preference for deciding cases on their merits rather than on procedural grounds like waiver, *Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015) (quoting *Roberts v. Cmty. Hosps. of Ind., Inc.*, 897 N.E.2d 458, 469 (Ind. 2008)), if a party's failure to comply with the Appellate Rules is "sufficiently substantial to impede our consideration of the issue raised," we will not address the merits of that issue, *id.* (quoting *Guardiola v. State*, 375 N.E.2d 1105, 1107 (Ind. 1978)).

[14] The purpose of our appellate rules—especially Appellate Rule 46 governing the content of briefs—"is to aid and expedite review and *to relieve the appellate court of the burden of searching the record and briefing the case*." *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023) (emphasis added) (quoting *Dridi v. Cole Kline LLC*, 172 N.E.3d 361, 364 (Ind. Ct. App. 2021)). For instance, a party's analysis of an issue on appeal must be supported in relevant part by citations to the Appendix or parts of the Record on Appeal upon which the party relies. Ind. Appellate Rule 46(A)(8)(a). We will not search the record to find a basis for the party's argument. *Carter ex rel. CNO Fin. Grp., Inc. v. Hilliard*, 970 N.E.2d 735, 755 (Ind. Ct. App. 2012) (citing *Nealy v. Am. Family Mut. Ins.*, 910 N.E.2d 842, 845 n.2 (Ind. Ct. App. 2009), *trans. denied*). Parties must also state the relevant facts in accordance with the relevant standard of review. App. R. 46(A)(6)(a). Moreover, a party's arguments must be supported by cogent reasoning. App. R. 46(A)(8)(a). "We will not step in the shoes of the advocate and fashion arguments on his behalf, 'nor will we address arguments' that are 'too poorly developed or improperly expressed to be understood.'" *Miller*, 212 N.E.3d at 657 (quoting *Dridi*, 172 N.E.3d at 364).

[15] In his opening brief, Father includes only one citation to the record, *see* Appellant's Br. at 60, in his Argument, *see id.* at 46–64, and Father does not support with citations to the record approximately 34 statements in his Statement of the Facts, *see id.* at 8, 12, 20, 24–26, 28–30, 32, 33, 35–40, 42, 44. Although Father includes citations to the record in his reply brief, many of those citations do not conform to Rule 22(C); in particular, both Father and

Mother submitted appendices here, and Father does not specify to which appendix he cites: Appellant's or Appellee's. *See* Appellant's Reply Br. at 16–20, 22, 23, 26, 29, 30, 37–39. Father also fails to include citations for some statements of law in his briefs. *See id.* at 24; Appellant's Br. at 56. Again, we will not search the record to find a basis for a party's argument. *Hilliard*, 970 N.E.2d at 755 (citing *Nealy*, 910 N.E.2d at 845 n.2).

[16] Father also does not set forth the proper standard of review for four of his claims, which violates Appellate Rule 46(A)(8)(b). Father states we must apply the clearly erroneous standard of review "[i]n reviewing the trial court's February, December, and March 52(A) findings." Appellant's Br. at 46. The trial court did not enter Trial Rule 52(A) findings and conclusions in any of these orders, and neither party requested the trial court to enter such findings and conclusions. Rather, the trial court entered findings and conclusions sua sponte. Under these circumstances, we review "issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment." *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016) (citing *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014)). We review any issue not covered by the findings "under the general judgment standard," which means we will affirm "on any legal theory supported by the evidence." *Id.* at 123–24 (citing *S.D.*, 2 N.E.3d at 1287).

[17] Our review of the trial court's decisions concerning parenting time and custody in this case also must be in accord with the following pronouncement from the Indiana Supreme Court:

> [T]here is a well-established preference in Indiana "for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind. 1993). Appellate 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." *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)). "On appeal it is not enough 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." *Id.* "Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (citations omitted).

Steele-Giri, 51 N.E.3d at 124. Father does not discuss these considerations in his statement of the applicable standard of review.

[18] As a result, Father fails to state many of the facts in accordance with the relevant standard of review explained above, which is in violation of Appellate Rule 46(A)(8)(b). Regarding Father's claims that the trial court's decisions to modify his parenting time and his custody of the Children are not supported by the evidence, Father focuses on evidence that favors him. For example, Father presents his girlfriend's testimony regarding his parenting skills and interactions with the Children as proven fact, *see* Appellant's Br. at 9–10, despite the trial court finding that Father's girlfriend was likely "aware of more than she was

willing to testify" and that her testimony was "biased" due to her relationship with Father, Appellant's App. Vol. II at 184–85.

[19] Similarly, Father discusses the testimony of several visit supervisors to show that he does not exhibit angry, aggressive, or abusive behavior. Appellant's Br. at 26–27. However, the trial court found the visit supervisors' testimony to not be "all that helpful" because

> [n]one of them are considered by this Court to be experts in the area of abuse. . . . For the most part, the visits went well and there were no significant problems. As the GAL observed, what this shows is that Father can control his behavior when required to.

Appellant's App. Vol. II at 185. Because we view the evidence most favorably to the judgment, do not reweigh the evidence, and do not reassess witness credibility, these statements, along with many others, are not presented in accordance with the standard of review set forth above. *See Steele-Giri*, 51 N.E.3d at 124 (quoting *Best*, 941 N.E.2d at 502).

[20] Father also did not provide the standard of review for his claim that the trial court was biased against Father such that the trial court denied Father due process. The Indiana Supreme Court has explained that in reviewing a claim of judicial bias, we presume that a judge is "unbiased and unprejudiced." *L.G. v. S.L.*, 88 N.E.3d 1069, 1073 (Ind. 2018) (citing *Carter v. Knox Cnty. Off. of Fam. & Children*, 761 N.E.2d 431, 435 (Ind. Ct. App. 2001)). To overcome this presumption, Father "must establish that the judge has personal prejudice for or

against" him. *Id.* (citing *Carter*, 761 N.E.2d at 435). "Such bias or prejudice exists only where there is an undisputed claim or the judge has expressed an opinion on the merits of the controversy before him," *id.* (citing *Carter*, 761 N.E.2d at 435), and "[a]dverse rulings and findings by a trial judge are not sufficient reason to believe the judge has a personal bias or prejudice," *id.* (citing *Thomas v. State*, 486 N.E.2d 531, 533 (Ind. 1985)).

[21] Based on the foregoing, Father significantly violated Appellate Rules 46(A)(6)(a) and (b) as well as 46(A)(8)(a) and (b), and those violations substantially impede our review of his claims. Therefore, Father waived all his claims on appeal.

[22] In addition, Father routinely and blatantly mischaracterizes the record, including the trial court's written orders. This is also a violation of Appellate Rules 22(C) and 46(A)(8)(a), both of which require a party's statements of the relevant facts be supported with citation to the record; that is, a party's statements of the relevant facts must accurately reflect the record. For instance, in support of his argument that the trial court denied him due process, Father asserts that the February 2022 Hearing lasted for only 30 minutes, Appellant's Br. at 53, but the record clearly indicates that the hearing lasted for approximately 50 minutes, not including the trial court's in camera interviews of the Children, Tr. Vol. II at 2, 44.

[23] Further regarding the February 2022 Hearing, Father states that he "objected several times about the lack of a hearing or evidence at the conclusion of the

May Hearing, the September and November Motions to Modify, and the December Hearing." Appellant's Reply Br. at 26. A review of the transcript of the May and December hearings reveals the following: at the end of the hearing held on May 17, 2022, Father's counsel and the trial court discussed only the procedure for getting the protective order lifted, Tr. Vol. II at 60, and at the December 2022 Hearing, Father's counsel agreed with the trial court that Father had not yet called or cross-examined witnesses regarding the protective order and parenting time issues because of the continuances Father requested, *id.* at 67. A review of Father's verified motions requesting the trial court to modify its February 2022 Order requiring Father to participate in anger management counseling reveals that neither motion raises any objection to the manner in which the trial court conducted the February 2022 Hearing. *See* Appellant's App. Vol. II at 69–76, 82–99.

[24] Likewise, regarding Father's opposition to participating in court-ordered anger management services, Father claims that in the March 2023 Order, the trial court "ruled that [Father]'s insistence on an evidentiary hearing meant that he 'refused to accept that services have been necessary for the welfare of the [C]hildren.'" Appellant's Reply Br. at 19–20 (citing Appellant's Br. at 44; Appellant's App. Vol. II at 195). The full quote from the March 2023 Order is as follows:

> Because Father has shown an inability to acknowledge how his behavior and actions have contributed to the current situation and has refused to accept that services have been necessary for the welfare of the [C]hildren, the Court has concerns that he will

> return to his prior behavior and that lengthy periods of time with Father may have a damaging effect on the [C]hildren.

Appellant's App. Vol. II at 195. At no point in the 18-page order does the trial court make any statement regarding Father's alleged "insistence on an evidentiary hearing" concerning anger management services. **(*Id.* at 183–200.)**

[25] These are just three examples out of many of Father's misstatements of the record. While the line between advocacy and mischaracterization may be murky at times, Father's misstatements clearly cross that line and are clearly outside the bounds of advocacy.

Father Waived His Due Process Claims on the Merits

[26] Father's waiver of all his claims for failure to comply with Appellate Rule 46 notwithstanding, Father also waived his procedural due process claims by not preserving those issues for appeal. It is well established that issues raised for the first time on appeal are waived, including constitutional issues. *Hite v. Vanderburgh Cnty. Off. of Fam. & Children*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006) (citing *McBride v. Monroe Cnty. Off. of Fam. & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003)); *see Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) ("[A]ppellate review presupposes that a litigant's arguments have been raised and considered in the trial court.").

[27] At the February 2022 Hearing, Father did not object to him, Mother, and the FCM providing testimony without an opportunity for cross-examination. Father also did not object to the length of the hearing or request to present his

own witnesses or evidence. Additionally, Father's own continuances contributed to the delay in the evidentiary hearing regarding parenting time restrictions and the Protective Order. Prior to this appeal, the only time Father objected to the date of the evidentiary hearing was when Mother filed a motion for a continuance. He did not object to the GAL's later motion for a continuance. Notably, discovery was ongoing when Mother and the GAL filed their motions. Father did not object to having a review hearing instead of an evidentiary hearing on May 17, 2022. Therefore, Father waived his procedural due process claims regarding the February 2022 Hearing and the delay in the December 2022 Hearing, so we will not reach the merits of those claims.[2]

Mother Is Entitled to Attorneys' Fees Pursuant to Appellate Rule 66(E)

[28] Finally, we address Mother's request for an award of appellate attorney fees under Appellate Rule 66(E), which provides: "The Court may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees. The Court shall remand the case for execution." We limit application of Appellate Rule 66(E) to "instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Gallo v. Sunshine Car Care, LLC*, 185 N.E.3d 392 (Ind. Ct. App.) (quoting *Wagler v. W. Boggs Sewer Dist., Inc.*, 29 N.E.3d 170, 174 (Ind. Ct. App.

[2] Because Father waived all issues for our review, we do not address Mother's arguments that Father's appeal of the February 2022 Order and the December 2022 Order is untimely and moot.

2015)), *trans. denied*, 194 N.E.3d 599 (Ind. 2022). "We must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right to appeal." *Id.* (alteration omitted) (quoting *Wagler*, 29 N.E.3d at 174). Thus, we do not impose sanctions to punish mere lack of merit; rather, we do so when faced with something more egregious. *Bousum v. Bousum*, 173 N.E.3d 289, 293 (Ind. Ct. App. 2021) (quoting *Troyer v. Troyer*, 987 N.E.2d 1130, 1148 (Ind. Ct. App. 2013), *trans. denied*).

[29] There are two categories of claims for appellate attorneys' fees: (1) substantive bad faith and (2) procedural bad faith. *Duncan v. Yocum*, 179 N.E.3d 988, 1005 (Ind. Ct. App. 2021) (citing *Boczar v. Meridian Street Found.*, 749 N.E.2d 87, 95 (Ind. Ct. App. 2001)).

> To prevail on a substantive bad faith claim, the party must show that the appellant's contentions are utterly devoid of all plausibility. Procedural bad faith, on the other hand, occurs when a party flagrantly disregards the form and content requirements of the rules of appellate procedure, omits and misstates relevant facts appearing in the record, and files briefs written in a manner calculated to require the maximum expenditure of time both by the opposing party and the reviewing court. Even if the appellant's conduct falls short of that which is deliberate or by design, procedural bad faith can still be found.

Id. (internal citations and quotation marks omitted).

[30] In light of Father's procedural bad faith, as discussed above, we conclude that Mother is entitled to appellate attorneys' fees, and we remand to the trial court to determine the proper amount of the attorneys' fees.

Conclusion

[31] For the foregoing reasons, we affirm the trial court's orders, grant Mother's request for appellate attorneys' fees, and remand for a determination of Mother's reasonable appellate attorneys' fees.

[32] Affirmed and remanded.

Bailey, J., and May, J., concur.