## MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

Albert J. Strawbridge,
*Appellant-Petitioner,*

v.

Diana K. Strawbridge, n/k/a Diana K. Burnette,
*Appellee-Respondent.*

July 10, 2023

Court of Appeals Case No. 22A-DR-3014

Appeal from the St. Joseph Circuit Court

The Honorable William L. Wilson, Magistrate

Trial Court Cause No. 71C02-1310-DR-495

**Memorandum Decision by Judge Kenworthy**
Judge Crone and Senior Judge Robb concur.

**Kenworthy, Judge.**

## Case Summary

[1] When the marriage of Albert Strawbridge ("Father") and Diana Burnette ("Mother") was dissolved in 2016, Father was granted primary physical custody of their then five-year-old son ("Child"). In 2022, the trial court ruled on Mother's petition to modify and changed primary physical custody to Mother. Father appeals, claiming the trial court's modification decision is clearly erroneous. Because the limited record provided does not indicate the trial court clearly erred, we affirm.

## Facts and Procedural History

[2] Father filed for dissolution of his marriage to Mother in 2013 and requested a provisional order regarding Child's custody. The trial court provisionally granted the parties joint legal custody of Child with Father to have primary physical custody and Mother to have parenting time according to the Indiana Parenting Time Guidelines.

[3] In 2016, the parties entered a mediated agreement regarding, in part, parenting time. The agreement set out a non-Guideline parenting-time schedule but did not specifically mention custody. The Decree of Dissolution issued in October 2016 stated the parties had entered an agreement regarding "all child-related matters and issues," which the court found fair and equitable and incorporated into the decree. *Appellant's App. Vol. 2* at 41-42.

[4] In 2017, Mother relocated from St. Joseph County—where Father lived—to Tippecanoe County. Her notice of intent to relocate stated she was seeking

parenting time with Child per the Guidelines' provision for when distance is a major factor. And in 2020, Mother filed a petition to modify asking for primary physical custody of Child. The trial court appointed a guardian ad litem ("GAL"), who filed a report with the court in July 2021, recommending custody be modified to Mother.

[5] The court held a hearing on Mother's motion across four days beginning in November 2021 and concluding in June 2022. On June 6, 2022, the trial court issued a written order granting Mother primary physical custody of Child. In relevant part, the order states:

> The Court has considered the factors found in Indiana Code § 31-17-2-8, other evidence, as well as the credibility of the parties. The Court will not go through each of the Section 8 factors, and the Court's decision does not hinge on simply one or two items.
>
> There is much to be said in favor of maintaining the current custody arrangement. There is also much to be said in favor of changing the current custody arrangement. After considering the evidence, the Court finds that it is in [Child's] best interests that Mother's motion to modify custody be granted[.]

*Id.* at 24.

[6] The next day, the trial court issued a written Memorandum Regarding Order on Mother's Motion for Modification of Custody, expressing it "believes it will be helpful to the parties and their counsel if the Court provides more information regarding the reasons behind its order granting Mother's motion." *Id.* at 22. In pertinent part, the court explained:

> [T]he Court notes that there has been a substantial change in one of the factors found in Indiana Code § 31-17-2-8. Specifically, [Child] is now several years older since the dissolution decree was entered. In addition, Mother now has expressed her wishes to have custody by the filing of her motion. The Court has not found any other changes in the various Section 8 factors. The Court has also placed weight on the GAL's recommendation. . . .
>
> . . . [T]he Court is confident that [Child] would continue to do well in Father's custody. The issue, however, is what is *best* for [Child] at this time, not whether the status quo is sufficient. From all of the evidence, it appears that [Child] will do a little better in Mother's custody.

*Id.*

[7] Father filed a motion to correct error and a motion to stay the trial court's order. The trial court denied both motions. Father now appeals.

## Discussion and Decision

[8] We review a trial court's denial of a motion to correct error for an abuse of discretion, reversing only when the ruling is clearly against the logic and effect of the facts and circumstances before the court or the trial court has erred as a matter of law. *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). We also consider the standard of review for the underlying ruling. *See B.A. v. D.D.*, 189 N.E.3d 611, 614 (Ind. Ct. App. 2022), *trans. denied*. Here, the underlying order is the trial court's order granting Mother's petition to modify custody.

[9] The trial court may modify a child custody order only if it determines "(1) the modification is in the best interests of the child; and (2) there is a substantial

change in one . . . or more of the factors that the court may consider under section 8 . . . of this chapter." Ind. Code § 31-17-2-21(a) (1999). A "more stringent standard" is required for a modification of custody than for an initial custody determination because "permanence and stability are considered best for the welfare and happiness of the child." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *Lamb v. Wenning*, 600 N.E.2d 96, 98 (Ind. 1992)). We defer to our trial court judges in matters of family law because their unique, direct interactions with the parties put those judges "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).

[10] The custody-modification statute does not require the trial court to make findings and the record contains no indication either party filed a written request for findings under Indiana Trial Rule 52(A), so the special findings in the trial court's order modifying custody and supplemental memorandum were entered *sua sponte*. Pursuant to Trial Rule 52(A), we will "not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." We review issues covered by the trial court's *sua sponte* findings by asking whether the evidence supports the findings, and the findings support the judgment. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). A judgment is clearly erroneous when the findings fail to support the judgment, or the trial court applies the wrong legal standard to properly found facts. *In re K.I.*, 903 N.E.2d 453, 457 (Ind.

2009). We review any issue not covered by the findings under the general judgment standard, *see* Ind. Trial Rule 52(D), meaning we will affirm based on any legal theory supported by the evidence, *S.D.*, 2 N.E.3d at 1287.

[11] To begin, we note Father did not request a Transcript of the modification hearing be prepared in his Notice of Appeal and, therefore, none has been provided. Indiana Appellate Rule 9(F)(5) requires the Notice of Appeal to include "[a] designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal." Appellate Rule 9(F)(5) also specifies, "If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence." Father states he does not contest the trial court's findings of fact—indeed, he claims to "embrace[] those findings[.]" *Appellant's Br.* at 8. Instead, Father contends the trial court applied the incorrect legal standard in determining Child's best interests.

[12] Despite Father's invocation of the "incorrect legal standard" language, his argument is essentially a challenge to the sufficiency of the evidence supporting the trial court's best-interests determination. Father asserts stability is "the overriding factor . . . guiding modification of custody," *id.* at 9, and contends the trial court erred by ignoring the "prominent role stability plays in close decisions on modification of custody," *id.* at 8. He invites us to consider that if he were to retain primary physical custody, Child "would be able to remain in the school he has always attended, with his current friends, engaging in his

current activities, all within the stability of the custodial parent [Child] had been accustomed to for over seven years." *Id.* at 10.

[13] But we cannot assess whether the evidence about the stability of Child's living situation with Father or the circumstances of his potential living situation with Mother supports the trial court's best-interests determination because Father did not request a transcript of the modification hearing for us to review. *See In re Guardianship of A.Y.H.*, 139 N.E.3d 1050, 1052–53 (Ind. Ct. App. 2019) (noting where a party failed to provide a copy of the pertinent transcript, the party "waived any allegations of error pertaining to the accuracy . . . of the findings"). We can only assess from the face of the order whether the trial court's findings support its judgment.

[14] The standard for a custody modification is that set forth in Section 31-17-2-21(a): the court may modify custody if there has been a substantial change in one or more of the Section 31-17-2-8 custody factors and modification of custody is in the child's best interests. Here, the trial court considered the appropriate custody factors and found a substantial change in two of them.[1] The trial court also found a change in custody would be in Child's best interests. Thus, the trial court made the necessary findings to support its

[1] Several times in his brief, Father states the trial court found a substantial change in "only" two custody factors. *See*, *e.g.*, *Appellant's Br.* at 6 ("The trial court specifically found that there was a change in only two circumstances[.]"). To the extent Father's statements imply these two changes are insufficient, we note the custody modification statute requires a change in at least one factor, I.C. § 31-17-2-21(a)(2), and the factors are not inherently weighted or ranked, *see* I.C. § 31-17-2-8(1)–(9) (2017).

decision to grant Mother's modification petition. And because the underlying modification order is not clearly erroneous, the trial court did not abuse its discretion in denying Father's motion to correct error.

## Conclusion

[15] Based on the record presented to us, Father has not shown the trial court's decision to modify custody was clearly erroneous, and we therefore affirm the trial court's order granting Mother's petition to modify.

[16] Affirmed.

Crone, J., and Robb, Sr. J., concur.