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IN THE
COURT OF APPEALS OF INDIANA

G. S., Jr.,
Appellant,

v.

H. L.,
Appellee.

January 10, 2022

Court of Appeals Case No.
21A-JP-1382

Appeal from the Hendricks
Superior Court

The Honorable Karen M. Love,
Judge

Trial Court Cause No.
32D03-1908-JP-135

Bailey, Judge.

Case Summary

- [1] G.S., Jr. (“Father”) appeals an order granting A.L. (“Stepfather”) sole legal and primary physical custody of J.S. (“Child”), who was born to H.L. (“Mother”), Stepfather’s ex-wife. We affirm.

Issues

- [2] Father presents two issues for review:
- I. Whether there is sufficient evidence to rebut the presumption that the best interests of Child require his placement with a biological parent as opposed to a de facto custodian; and
 - II. Whether the trial court failed to engage in an appropriate analysis of the best interests of Child.

Facts and Procedural History

- [3] Mother and Stepfather were married and had a child, D.L. They divorced and Mother moved in with Father. In 2012, Child was born and Father executed a paternity affidavit at the hospital acknowledging that he is Child’s biological father. Shortly thereafter, Mother and Father ended their relationship and Father moved out of the shared residence. Father saw Child on a few occasions within a “couple of weeks” in 2012 and also exercised parenting time for approximately one and one-half months in 2014. (Tr. Vol. II, pg. 16.)

- [4] Meanwhile, Stepfather met Child when Stepfather came to Mother's residence to pick up D.L. for parenting time. Stepfather soon decided to "take [Child] under his wing" and bring Child along with D.L. for parenting time. (*Id.* at 53.) Mother and Stepfather decided to reconcile and live together when Child was less than one year old. When Mother moved out in 2017, Child and D.L. remained with Stepfather. With the exception of eight weeks when Child was in his maternal grandmother's home, Child has lived with Stepfather continuously since late 2012.
- [5] In 2019, a division of the Indiana Department of Child Services ("DCS") investigated Mother upon allegations that she had provided marijuana to D.L., who was then a teenager, and had personally used illegal substances. Mother admitted that she had used methamphetamines and provided marijuana to D.L. As part of an informal adjustment, Mother agreed that Stepfather would retain custody of Child.
- [6] DCS contacted Father, as he had been identified by Mother as Child's biological parent. Paternity testing was conducted, confirming Father's parentage, and Father began to exercise regular parenting time with Child. On August 26, 2019, Mother petitioned the trial court for an order to "Maintain Status Quo" with respect to Child's custody. (App. Vol. II, pg. 19.) A guardian ad litem was appointed on November 13, 2019. The trial court entered orders regarding interim parenting time for Mother and Father while Child remained in Stepfather's custody.

- [7] A final hearing to determine child custody, parenting time, and child support was held on May 18, 2021. Father and Stepfather each sought custody of Child; Mother did not. Mother testified that she had achieved sobriety but believed it to be in Child’s best interests to remain with Stepfather and D.L. The guardian ad litem recommended custody be awarded to Stepfather. Father and his wife testified, describing Child’s positive adjustment in their family, which included Child’s two older half-siblings.
- [8] On June 9, 2021, the trial court entered an order awarding Stepfather legal and physical custody of Child, with Mother and Father each having substantial, unsupervised parenting time.¹ Mother and Father were each ordered to begin providing child support for Child’s benefit. Father now appeals.

Discussion and Decision

Standard of Review

- [9] The trial court entered an order consisting of sixty-two paragraphs, some of which are factual findings and some of which are legal conclusions. Where an action is “tried upon the facts without a jury,” the trial court is obligated to enter special findings and conclusions upon a party's “written request ... prior to the admission of evidence.” Ind. Trial Rule 52(A). Here, no such written request was made; thus, although the court ultimately entered special findings

¹ Mother and Father were to alternate weekends with Child. By agreement of the parties, school breaks were divided in thirds. Holidays with Child were to be rotated among the three adults.

and conclusions, it was not obligated to do so. In such instances, we regard the trial court's findings as sua sponte findings, see *Faver v. Bayh*, 689 N.E.2d 727, 730 (Ind. Ct. App. 1997), and apply a two-tiered standard of review to any issue covered by the findings, *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). That is, we look to “whether the evidence supports the findings, and whether the findings support the judgment.” *Id.* “Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence.” *Id.* at 123–24.

[10] In conducting our review, we “consider only the evidence and reasonable inferences that are most favorable to the judgment,” *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016), giving “due regard ... to the opportunity of the trial court to judge the credibility of the witnesses,” T.R. 52(A). Moreover, we “shall not set aside the findings or judgment unless clearly erroneous.” *Id.* A trial court's findings are clearly erroneous when the record contains no facts to support them either directly or by inference; a judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1198 (Ind. 2016). Ultimately, we will reverse only upon a showing of clear error: “that which leaves us with a definite and firm conviction that a mistake has been made.” *Egly v. Blackford Cty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992).

Sufficiency of the Evidence

[11] “Child custody determinations fall squarely within the discretion of the trial court and will not be disturbed except for an abuse of discretion,” which occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it, or the reasonable inferences to be drawn therefrom. *In re B.H.*, 770 N.E.2d 283, 288 (Ind. 2002).

[B]efore placing a child in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement. The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child.

Id.

[12] In making its determination, the trial court is not limited to specific criteria, although “evidence establishing the natural parent’s unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would of course be important.” *Id.* Furthermore, the presumption in favor of the natural parent will not be overcome merely because a third party could provide better things in life for the child. *Id.* Moreover, a trial court’s “generalized finding” is inadequate to support a determination that “placement other than with the natural parent is in a child’s best interests.” *Id.* Rather, the trial court must make “detailed and specific findings.” *Id.* Whether the presumption is overcome ultimately “falls within the sound discretion of our trial courts, and their judgments must be afforded deferential review.” *Id.*;

see also Steele-Giri, 51 N.E.3d at 124 (acknowledging the “well-established preference in Indiana” for giving deference to trial judges in family matters).

[13] Here, the trial court entered thorough findings concerning its decision to place Child with Stepfather, including findings that “Father exercised no parenting time and had no contact with Mother or the Child from late 2014 through late 2019”; “from summer 2017 until this action was filed in August 2019, the Child resided with Stepfather the majority of the time, with Mother only exercising weekend parenting time with the Child and Father exercising no parenting time with the Child”; “from summer 2017 until this action was filed, Stepfather provided for the Child’s housing, food, clothing, and medical expenses and tended to the Child’s educational needs [and] neither Mother nor Father provided Stepfather any financial assistance during this time period”; “Father’s long acquiescence and voluntary relinquishment of the Child has led to Stepfather becoming the de facto custodian of the Child”; “the lives and affections of the Child and Stepfather are completely interwoven”; and “a strong emotional bond has formed between the Child and Stepfather.”
Appealed Order at 2-4. The trial court further found that severing the custodial relationship “would seriously mar and endanger the future happiness of the Child.” *Id.* at 4.

[14] The evidence indicates that Stepfather has been the stabilizing force in Child’s life for many years during Father’s absence and Mother’s struggles. By all accounts, these years of stability have permitted Child to forge a strong bond with D.L. and with Stepfather. The guardian ad litem opined that, although

Child was developing a continually growing bond with Father, it would be “difficult” for him to leave Stepfather’s custody. (Tr. Vol. II, pg. 6.) She based her concern upon Child’s emotional attachment to Stepfather and “the time frame,” observing that Father was “not part of the day-to-day for a long time.” (*Id.* at 12, 15.) Mother testified that Child was thriving in his current environment and she believed he would be “better off” to remain with his stepfather, his half-brother, and his school. (*Id.* at 23.) Stepfather testified that he had previously allowed Child’s grandmother to care for Child on a full-time basis, but after a few weeks, Child’s grandmother called to opine that the arrangement “was doing more damage than good.” (*Id.* at 54.) Stepfather testified that his wife works in the cafeteria at Child’s school and has a completely compatible schedule with that of Child. As a town employee, Stepfather has frequently stopped in the school to have lunch or connect with Child.

[15] We accordingly conclude that there is evidence sufficient to overcome the presumption in favor of Father.

Best Interests

[16] Here, the trial court found Stepfather to be Child’s de facto custodian. Indiana Code Section 31-14-13-2.5(d) provides: “The court shall award custody of the child to the child’s de facto custodian if the court determines that it is in the best interests of the child.” According to Father, “after finding that Mother and Stepfather overcame the presumption in favor of Father by clear and convincing

evidence, the trial court failed to properly engage in a general ‘best interests’ analysis.” Appellant’s Brief at 13.

[17] Indiana Code Section 31-14-13-2 provides:

The court shall determine custody in accordance with the best interests of the child. In determining the child’s best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child’s 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 parents;
 - (B) the child’s siblings; and
 - (C) any other person who may significantly affect the child’s best interest.
- (5) The child’s adjustment to home, school, and community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.

(8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

[18] In turn, Indiana Code Section 31-14-13-2.5(b) sets forth the following factors:

(1) The wishes of the child's de facto custodian.

(2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.

(3) The intent of the child's parent in placing the child with the de facto custodian.

(4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent seeking custody to:

(A) seek employment;

(B) work; or

(C) attend school.

[19] These statutes contain no requirement that the trial court articulate its reasoning with respect to each factor. That said, the order herein is replete with references to Child's age, adjustment to home and community, interrelationships with the parties and siblings, wishes of the parties, circumstances surrounding Mother's placement of Child with Stepfather, and Stepfather's historical provision of care

and support to Child. There is no indication that the trial court failed to engage in an appropriate best interests analysis.

Conclusion

[20] Father has not persuaded us that the trial court abused its discretion by awarding custody of Child to Stepfather.

[21] Affirmed.

Mathias, J., and Altice, J., concur.