## MEMORANDUM DECISION




ATTORNEY FOR APPELLANT

Deborah K. Smith
Thorntown, Indiana

ATTORNEYS FOR APPELLEE

Kyle D. Gobel
Gobel, Justice & Pyle
Crawfordsville, Indiana

# IN THE COURT OF APPEALS OF INDIANA

In Re: The Paternity of N.P.

Tabor Culley,
*Appellant-Petitioner,*

v.

Paris Powell
*Appellee-Respondent*.

April 19, 2023

Court of Appeals Case No. 22A-JP-2430

Appeal from the Montgomery Circuit Court

The Honorable Wayne E. Steele, Senior Judge

Trial Court Cause No. 54C01-2110-JP-220

**Memorandum Decision by Judge Bailey**
Judges Brown and Weissmann concur.

**Bailey, Judge.**

# Case Summary

[1] Tabor Culley ("Father") appeals an order that Paris Powell ("Mother") have primary physical custody of N.P. ("Child") and that Father pay $45.00 weekly as child support. We affirm in part, reverse in part, and remand with instructions.

# Issues

[2] Father presents two issues for review:

I. Whether the award of Child's primary physical custody to Mother is clearly erroneous; and

II. Whether the trial court's calculation of child support is clearly erroneous.

# Facts and Procedural History

[3] On August 20, 2021, Child was born to sixteen-year-old Mother and sixteen-year-old Father. The State and Father, by his guardian S.C. ("Paternal Grandmother"), initiated proceedings to establish Child's paternity. Father was identified as Child's biological father. On November 22, 2021, Mother, by her guardian K.P. ("Maternal Grandmother"), petitioned to establish temporary custody and parenting time.

[4] On December 15, 2021, Mother and Father appeared in open court and submitted their temporary agreement that they equally share physical custody

of Child. Subsequently, the State was granted permission to withdraw. In February of 2022, Father petitioned to change Child's surname to Father's surname. Mother filed a petition for relief from judgment, on the grounds that she had been incompetent to consent to temporary custody, as she was less than eighteen years of age, and she had been unrepresented by counsel.

[5] On August 19, 2022, the trial court conducted a hearing on all pending matters. At the outset, the parties agreed that Mother's petition for relief from judgment was moot and evidence would be heard relative to Child's permanent custody. Mother, Father, Maternal Grandmother, and Paternal Grandmother testified at the hearing. Each parent opined that the other was a good parent. However, each admitted that there had been tension in exchanges of Child, which they primarily attributed to extended family members. Father advised the trial court that he was hoping for better educational and employment opportunities if he moved to Kentucky. He requested a 50/50 split of Child's physical custody and offered to provide all transportation for Child. Mother requested primary physical custody of Child, describing past difficulties with Child's return to her, and relating fears that Father's family would keep Child from her permanently if they moved to Kentucky with Child.

[6] The trial court entered its order of September 16, 2022, adopting Mother's findings of fact and conclusions thereon.[1] The order provides that: the parents have joint legal custody of Child; Mother has the primary physical custody of Child; Father is to pay $45.00 weekly as child support; and Child is to have Father's surname. Father now appeals.

# Discussion and Decision

## Standard of Review

[7] Where, as here, the trial court enters findings of fact and conclusions thereon without an Indiana Trial Rule 52 written request from a party, the entry of findings and conclusions is considered to be sua sponte. *Dana Companies, LLC v. Chaffee Rentals*, 1 N.E.3d 738, 747 (Ind. Ct. App. 2013), *trans. denied*. Where the trial court enters specific findings sua sponte, the findings control our review of the judgment only as to the issues those specific findings cover. *Id*. Where there are no specific findings, a general judgment standard applies and we may affirm on any legal theory supported by the evidence adduced at trial. *Id*.

[8] A two-tier standard of review applies to the sua sponte findings and conclusions made by trial court: (1) whether the evidence supports the findings; and (2) whether the findings support the judgment. *Id.* A trial court's sua sponte

[1] We discourage, but do not prohibit, the practice of adopting verbatim a party's proposed findings and conclusions. *In re Adoption of A.S.*, 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), *trans. denied*. "The trial court is ultimately responsible for the correctness of the findings." *Id.*

findings and conclusions will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. *Id.* A judgment is "clearly erroneous" when our review of the record leaves us with a firm conviction that a mistake has been made. *Id.* In conducting our review, this Court considers only evidence favorable to the judgment and all reasonable inferences flowing therefrom. *Id.* We will neither reweigh the evidence nor assess witness credibility. *Id*.

## Custody

[9] Indiana Code Section 31-14-13-2 governs a custody determination in paternity actions, providing:

> 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.

[10] We observe that there is a well-established preference in Indiana "'for granting latitude and deference to our trial judges in family law matters.'" *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). In this regard, the Indiana Supreme Court has explained:

> 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. *D.C. v. J.A.C.*, 977 N.E.2d 951, 957 (Ind. 2012). Accordingly, we will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment. *Id*.

[11] Here, the trial court made factual findings regarding some past difficulties in the parental exchanges of Child, including: Mother spent hours waiting for Child's return on "between 5 and 10 occasions"; the police had become involved at some point; and the failure to promptly surrender Child appeared to be attributable to Paternal Grandmother. Appealed Order at 1. The findings with respect to Father's extended family include: the family had been evicted from a prior residence; they desired to relocate to Kentucky; Paternal Grandmother's marijuana use had ceased after DCS involvement; and Paternal Grandmother had struck Father hard enough to leave a handprint on his chest. With regard to Mother, the trial court observed that her contacts with the juvenile delinquency system had been two years earlier and credited her testimony that she was now sober. The court found that Maternal Grandmother had been sober for three years and was compliant with the requirements of her probation. As for Child, the trial court found that he had more familial contacts in Crawfordsville, Indiana than in Kentucky.

[12] The trial court entered conclusions upon the findings of fact, determining that Mother was able to provide a safe and sober home for Child and that her fears of custodial interference were well-founded in light of prior conflicts. The court

concluded that Father's family had experienced instability in the past and had formulated a vague plan to relocate without specific employment.

[13] For the most part, Father does not contend that the findings are unsupported by the evidence. However, he challenges the finding that Mother was forced to wait for Child on up to ten occasions; he points to Mother's testimony that there were "around five" occasions. (Tr. Vol. II, pg. 21.) Our review of the record causes us to agree with Father that the number of occasions is somewhat overstated in the findings of fact. That said, there is evidence to support the premise that Child was not promptly delivered to Mother on multiple occasions.

[14] Father observes that the custody order does not specifically indicate that the trial court considered each of the relevant statutory factors. According to Father, the trial court "cherry-picked" facts favorable to Mother and ignored undisputed facts favorable to Father. Appellant's Brief at 25. At bottom, Father contends that the findings and conclusions are inadequate to support the custody determination it made and Father requests remand with instructions that the trial court order joint physical custody of Child.

[15] The purpose of the trial court making findings of facts and conclusions thereon is to provide the parties and the reviewing courts with the theory upon which the case was decided. *Sandoval v. Hamersley*, 419 N.E.2d 813, 816 (Ind. Ct. App. 1981). Such findings effectively preserve the right of review for error. *Id.* A trial court is required to "consider" statutory factors, not to make a finding

regarding each one in particular. *Matter of Paternity of A.R.S.*, 198 N.E.3d 423, 431 (Ind. Ct. App. 2022). Here, because the parents are themselves minors under the control of their parents, the trial court's findings relative to Child's custodial placement necessarily focused significantly upon the extended family.

[16] The testimony of record indicates that, commendably, each of the young parents pursued additional education and obtained employment. Father has completed his high school education and works construction jobs with Paternal Grandfather. Mother enrolled in on-line high school coursework and is employed at a sandwich shop. Each parent has been primarily responsible for Child during his or her parenting time, and Child was, by all accounts, well cared for. Each parent opined that the other was a good parent. Both agreed that there had been some conflict in their co-parenting, and each expressed the opinion that the other had been unreasonable at times. At the same time, they articulated concern for each other's well-being and addressed the importance of each parent having significant time with Child.

[17] But the record is replete with evidence that the young parents' extended family members fostered animosity. For example, Father's parents required that he record Mother – against her wishes – during exchanges of Child. Rather than timely surrendering Child to Mother, Paternal Grandmother took Child and disappeared without Father's permission. Paternal Grandmother struck Father with such force that he photographed his injury and reported the incident to Mother. Mother's uncle and brother each threatened Father with bodily harm and Mother was placed in the position of admonishing her relatives to refrain

from such behavior. It is with this background that the trial court was tasked with assessing witness credibility and determining which of the parental/grandparental settings would be most stable and least disruptive to Child.

[18] The trial court made findings which have evidentiary support. There is testimony that Paternal Grandmother withheld Child from his parents; Paternal Grandmother perpetrated domestic violence upon her son; Father's family planned to move to Kentucky after some housing instability; and Mother and Maternal Grandmother had complied with court-ordered services. Where the evidence or legitimate inferences support the trial court's custody determination, we will not substitute our judgment. *D.C.*, 977 N.E.2d at 957. The award of primary physical custody of Child to Mother is not clearly erroneous.

## Child Support Calculation

[19] Father asks that his child support obligation – which is based upon attributing $290.00 weekly gross income to each parent – be reduced from $45.00 weekly to $33.00 weekly. A trial court's calculation of child support is presumptively valid, and we will reverse the trial court's decision only if it is clearly erroneous or contrary to law. *Saalfrank v. Saalfrank*, 899 N.E.2d 671, 674 (Ind. Ct. App. 2008).

[20] Father contends that his child support order is over-inflated because the trial court failed to give him credit for a sufficient number of overnights with Child.

Indiana Child Support Guideline 6 provides: "A credit should be awarded for the number of overnights each year that the child(ren) spend with the noncustodial parent."

[21] With respect to Father's parenting time, the order at issue provides:

> The Father shall be entitled to parenting time with the child pursuant to the Indiana Parenting Time Guidelines. As long as the Father is living in Frankfort, Indiana, because the Father has exercised significant care responsibilities, the father shall be entitled to parenting time per the Guidelines schedule for a child 3 years of age and older.
>
> With respect to holidays, special days, and extended parenting time, the parties shall follow the Indiana Parenting Time Guidelines. With respect to extended parenting time, until the child turns 5 years old, the parties shall follow the guidelines schedule for a child 3 through 4 years old.
>
> In all other respects, the parties shall follow the Indiana Parenting Time Guidelines.

(Appealed Order at 4.)

[22] Child is one year old, but Father is permitted to exercise parenting time consistent with the schedule of an older child, contingent upon Father remaining in Frankfort. Also, Father is permitted to exercise extended parenting time as if Child were older. In calculating Father's obligation, the trial court gave Father credit for 52-55 overnights, which would be consistent

with no more than regular parenting time for a child 3 years of age and older. Ind. Parenting Time Guideline II.D.1.

[23] Guideline II.D.2. relates to extended parenting time of a child 3 through 4 years old, and provides that, upon 60 days advance notice of the use of a particular week, the non-custodial parent shall have "up to" four non-consecutive weeks of parenting time during the year. Father may provide notice and exercise parenting time in excess of the "regular parenting time," whereupon he would be entitled to additional credit. The trial court order contemplates alternative scenarios for parenting time. We remand to the trial court for a calculation of parenting time credit consistent with the time actually exercised by Father. In turn, this may require a revised child support order.

# Conclusion

[24] The order awarding Mother the primary physical custody of Child is not clearly erroneous. We remand for calculation of Father's parenting time credit based upon actual parenting time exercised.

[25] Affirmed in part, reversed in part, and remanded with instructions.

Brown, J., and Weissmann, J., concur.