MEMORANDUM DECISION

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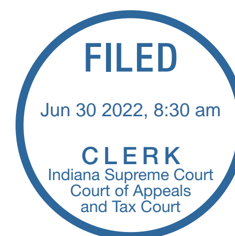

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IN THE COURT OF APPEALS OF INDIANA

Stephanie I. Pentland,
Appellant-Petitioner,

v.

Tony Pentland,
Appellee-Respondent

June 30, 2022

Court of Appeals Case No. 21A-DC-2682

Appeal from the Cass Circuit Court

The Honorable Stephen Roger Kitts II, Judge

Trial Court Cause No. 09C01-1910-DC-183

Crone, Judge.

Case Summary

[1] After their divorce, Stephanie I. Pentland (Mother) and Tony Pentland (Father) had joint legal and physical custody of their two children, and Father paid child support. Mother filed petitions to modify physical custody and child support, and Father filed two contempt citations against Mother. After a hearing, the trial court found Mother in contempt, awarded Father sole legal and primary physical custody of the children, and ordered Mother to pay child support. Mother appeals, arguing that the trial court erred in modifying custody and in calculating her child support obligation. We affirm.

Facts and Procedural History

[2] In January 2020, Mother and Father were divorced pursuant to a dissolution decree in which they agreed to joint legal and physical custody of their two sons: C.P., born in 2013, and J.P., born in 2018. The parties also agreed that Father would pay $105 in weekly child support, which was a "deviation" from the Indiana Child Support Guidelines but took "into consideration the shared parenting time arrangement and allocation of medical, educational, and extra-curricular expenses …." Appellant's App. Vol. 2 at 32. At the time of the divorce, both parents were gainfully employed, and Mother carried health insurance on the children. Mother lived in the marital residence in Logansport. Father lived in his grandparents' home in Logansport, where the children did not have their own bedroom and slept on the same air mattress. In the summer of 2020, Mother moved into her boyfriend's home in Winamac.

[3] Also that summer, Father informed Mother that C.P. was experiencing behavioral issues. Father arranged a meeting with school personnel, which Mother attended, and she exhibited a "lot of hostility" toward Father. Tr. Vol. 2 at 148. After the meeting, C.P. received assistance from a guidance counselor and a speech therapist. That fall, Mother arranged for C.P. to receive counseling from Jill Uceny without consulting Father. Mother told Uceny not to share any information regarding the counseling sessions with Father "other than appointment confirmations[.]" *Id.* at 55. Father found out about the sessions from the children's babysitter. Mother scheduled the sessions for 3:00 p.m., knowing that Father would be unable to attend them because of his work schedule. Uceny diagnosed C.P. with ADHD and prescribed him medication, and he has responded positively to the counseling and the medication.

[4] In November 2020, Father moved into his father and stepmother's home in Royal Center, where the children have their own bedroom and sleep in their own beds. That same month, Mother filed a petition for primary physical custody, a petition to modify child support in accordance with the Child Support Guidelines, and a petition to appoint a guardian ad litem (GAL) to "perform an investigation and submit a report with regard to custody in this matter." Appellant's App. Vol. 2 at 44. The trial court appointed Jeffrey Stanton as GAL.

[5] In April 2021, Father filed a contempt citation against Mother, alleging that her failure to communicate with him about C.P.'s counseling violated the joint

legal custody arrangement and the dissolution decree. In September 2021, Stanton submitted a twenty-page report with these concluding remarks:

> Prior to the entry of the Decree, for much of [the children's] life, the parties agree that [Mother] was the primary care provider for the children. Sometime immediately prior to the entry of the Decree in 2019, nearly everyone remarked that [Father] "stepped up his game" became involved and is a very good Father to the boys, devoting much of his time to their care.
>
> Since the entry of the Decree, the parties have shared equally in the responsibilities for the care of [the children]. With that being said, it does appear that [Mother] was the primary parent addressing the children's medical, dental and more recently emotional (professional) care with Jill Uceny. As to Ms. Uceny's involvement, [Mother] did volunteer that she intentionally initially kept [Father] in the dark about Jill's involvement. [Mother's] decision concerns me greatly.
>
> [Father] raises concerns about [Mother's] excessive use of alcoholic beverages and her decision to allow her boyfriend, Zach, to become actively involved in disciplining the boys. I view this as a concern. The parents must recognize that it is their responsibility to discipline the children.
>
> What concerns me most is [Mother's] behavior in taking nearly every opportunity to disparage [Father] in front of everyone, especially the boys. Nearly every person I spoke to expressed this to me, including [C.P.'s guidance counselor, speech therapist, babysitter, and teacher] to name [a] few. This information was shared with me without prompting.

Id. at 91. Stanton recommended that the parties continue to share legal and physical custody of the children, with the following caveat: "If [Mother's]

behavior in undermining [Father] continues, … I would recommend a change of [custody] at that point." *Id*. at 92.

[6] Later that month, the trial court held a two-day hearing on the pending motions. On the first day of the hearing, Father filed a second contempt citation against Mother, alleging that her move to Winamac violated Indiana's relocation statute. *See* Ind. Code § 31-17-2.2-1 (providing that relocating parent must file notice of intent to move if relocation will result in increase of more than twenty miles' distance between parents' residences and/or result in change of child's school enrollment). Also, Father's counsel stated that he would be seeking a "custody order in [Father's] favor or in the alternative some continued shared arrangement the Court […] might think is appropriate." Tr. Vol. 2 at 5-6. Mother's counsel objected because Father had "no pleading on file." *Id*. at 6.

[7] During the hearing, Stanton testified, "I feel that [Mother], and this is based upon [C.P.'s speech therapist, guidance counselor, and babysitter, is] mean to [Father]. She says mean things that I would find, that would hurt my feelings if they were said to me." *Id*. at 27. He believed that "some of those communications [were] occurring in front of the children" and acknowledged that he had "never observed them," but he did not know why any of those people "would have any reason to lie about it[,]" and he noted that "they volunteered the information to [him]." *Id*. He opined that such disparagement "can have a negative impact on children" and "most likely" did so in this case. *Id*. 43. He also stated, "I think you can be a good care provider, you can be a

loving and affectionate mother, you can be a, a great mom in that respect, but you can be a horrible co-parent." *Id*.

[8] Uceny testified that she believed that Mother "was making a deliberate attempt to keep [Father] from receiving therapeutic information from [her.]" *Id*. at 55. She also opined that one parent disparaging another in a child's presence "can be very damaging [….] from a developmental standpoint" and that C.P., the older child, was currently "too young" to learn the coping skills to "understand some of the reactions and feelings [he's] having when the parent talks bad about the other parent in front of [him]." *Id*. at 65-66.

[9] Kimberly Schroder, C.P.'s guidance counselor, testified that she had seen Mother "attack" Father "a few times" during meetings when C.P. was present and that Father "just sits and takes it." *Id*. at 71, 72.

[10] Mother admitted that she did not consult with Father before she took C.P. to see Uceny and did not file notice of her intent to move to Winamac, which was more than twenty miles farther away from Father's residence at that time and in a different school district. She also denied belittling Father in front of the children and claimed that the reports of others to the contrary were not true.

[11] Father testified that if he "suggest[s] something" or "give[s his] input" and Mother "doesn't like it, there ain't no turning back. She gets hostile, she gets angry, she gets her way or the highway and that's pretty much it." *Id*. at 140. He stated that Mother had "spoken negatively about [him]" in the presence of the children, teachers, and counselors, and that her behavior is "[w]orse" when

she is not in "those people's presence[.]" *Id*. at 142. He expressed concerns about Mother's and her boyfriend's alcohol consumption, including around the children, and stated that he had stopped using tobacco and drinking alcohol since the divorce because he "needed to grow up and be a father[.]" *Id*. at 157. Father requested attorney fees as a contempt sanction.

[12] Courtney Creviston, the children's babysitter, testified that Mother had been her best friend for several years, but that she ended their personal and professional relationship the previous week because Mother had repeatedly disparaged her and her babysitting business to others. She opined that Mother and her boyfriend are "toxic together." *Id*. at 179. Creviston stated that in January 2021, Mother called her from a rural roadside in the middle of the night and asked for a ride home. Mother had been drinking and was crying and upset. After Creviston picked her up, Mother's boyfriend called and started arguing with Mother. Creviston asked Mother to come home with her, but she ended up going home to her boyfriend. Mother claimed that this incident "never happened" and that she and her boyfriend "socially drink." *Id*. at 122, 121.

[13] In November 2021, the trial court issued an order in which it found that Indiana law did not require Father to file a written counter-petition to modify custody. The court also found Mother in contempt for failing to comply with the relocation statute, but it concluded that any resulting hardship to Father was

"de minimis." Appealed Order at 2 (italics omitted).[1] The court further found that the GAL's report

> did not cut in [Mother's] favor, and now [Mother] objects on the grounds that everyone interviewed by the [GAL] lied in the report and subsequently lied in court when they repeated their statements under oath, as part of a grand conspiracy against her.
>
> This is not credible and is unavailing.
>
> What the record established is that [Mother's] behavior toward [Father] has been wildly inappropriate, publicly, and in the presence of service providers. [Mother's] attempts to circumvent [Father's] active involvement in the lives of their children because she would prefer that her new husband were the father of her children[2] are not only inappropriate, but in direct contradiction to the observations and recommendations of the service providers around the family (hence, the conspiracy.)
>
> This is not behavior the Court can condone.

Appealed Order at 2. The court awarded Father sole legal and primary physical custody, subject to Mother's parenting time per the Indiana Parenting Time Guidelines. The court set Mother's child support obligation at "$71 per week, pursuant to submitted Child Support Obligation Worksheet." *Id*. at 3. Finally,

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[1] The trial court did not rule on Father's contempt citation regarding Mother's failure to communicate with him about C.P.'s counseling.

[2] According to Stanton's report, Father stated that Mother had "called him nothing but a 'sperm don[o]r'." Appellant's App. Vol. 2 at 75.

the court awarded Father $2,500 in attorney fees. Mother now appeals the trial court's custody ruling and its calculation of her child support obligation.

Discussion and Decision

Section 1 – Mother has failed to establish that the trial court abused its discretion in modifying custody in Father's favor.

[14] Mother asserts that the trial court erred in modifying custody in Father's favor, raising both procedural and substantive arguments. "We review custody modifications for an abuse of discretion, granting latitude and deference to the trial court." *Wills v. Gregory*, 92 N.E.3d 1133, 1136 (Ind. Ct. App. 2018), *trans. denied*. "An abuse of discretion occurs when the trial court misinterprets the law or the decision is clearly against the logic and effect of the facts and circumstances before the court." *Sandlin v. Sandlin*, 972 N.E.2d 371, 375 (Ind. Ct. App. 2012). "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.'" *McDaniel v. McDaniel*, 150 N.E.3d 282, 288 (Ind. Ct. App. 2020) (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)), *trans. denied*. "Therefore, on appeal we will not 'reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.'" *Id*. (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)). "'[I]t 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*. (alteration in *McDaniel*) (quoting *Kirk*, 770 N.E.2d at 307).

[15] First, we address Mother's argument that the trial court was precluded from awarding legal and physical custody to Father because he did not file a written counter-petition requesting such an award. Mother cites no case or statute that imposes such a requirement.[3] More generally, "we have long held that a trial court is not precluded from entering a custody arrangement not specifically advanced by either party so long as that custody arrangement is in the child's best interests." *Id*. at 290 (citing *Richardson v. Richardson*, 34 N.E.3d 696, 704 (Ind. Ct. App. 2015)), *trans. denied*. Here, Mother's petition put custody at issue, and the trial court was not precluded from awarding legal and physical custody to Father in the absence of a written counter-petition so long as it was in the children's best interests, which we address below. *See Meneou v. Meneou*, 503 N.E.2d 902, 905 (Ind. Ct. App. 1987) (holding that awarding custody to father, who "never filed a formal request for sole custody" in response to mother's petition to modify custody, "was not an abuse of discretion solely because he did not file a counter-petition").

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[3] Mother does cite Indiana Trial Rule 6(D), which provides, "A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not less than five [5] days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court." This rule governs the deadline for serving written motions, but it does not require the filing of a written counter-petition to modify custody. *See Carter-McMahon v. McMahon*, 815 N.E.2d 170, 175 (Ind. Ct. App. 2004) (in construing a trial rule, "it is just as important to recognize what it does not say as it is to recognize what it does say").

[16] Next, we consider Mother's arguments relating to the custody modification statute. Indiana Code Section 31-17-2-21 provides that a court may not modify a child custody order unless the modification is in the child's best interests and there is a substantial change in one "or more of the factors that the court may consider" when making an initial custody determination under Indiana Code Section 31-17-2-8; the court "shall consider" those factors in determining whether to modify custody. Section 31-17-2-8 provides that in making a custody determination in accordance with the child's best interests, "[t]he court shall consider *all* relevant factors, *including*" the age and sex of the child, the wishes of the child and the child's parents, the interaction and interrelationship of the child with his parents and others "who may significantly affect [his] best interests[,]" the child's adjustment to his home, school, and community, the mental and physical health of all individuals involved, and evidence of a pattern of domestic or family violence by either parent. (Emphases added.) In other words, the list of factors available for the trial court's consideration is nonexclusive.

[17] Neither party requested special findings under Indiana Trial Rule 52(A), and the trial court entered its findings sua sponte. "As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment." *McDaniel*, 150 N.E.3d at 289 (quoting *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014)). "The trial court's findings or judgment will be set aside only if they are clearly erroneous. A finding of fact is clearly erroneous when there are no facts or inferences

drawn therefrom to support it." *In re Marriage of Sutton*, 16 N.E.3d 481, 485 (Ind. Ct. App. 2014) (citation omitted). "We review any remaining issues under the general judgment standard, where the judgment will be affirmed if it can be sustained on any legal theory consistent with the evidence." *McDaniel*, 150 N.E.3d at 289. "[W]e may look both to other findings and beyond the findings to the evidence of record to determine if the result is against the facts and circumstances before the court." *Id.* (alteration in *McDaniel*) (quoting *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013)).

[18] To begin, we address Mother's complaint that the trial court's findings regarding her "wildly inappropriate" behavior toward Father are unrelated to any of the factors listed in Indiana Code Section 31-17-2-8. As previously stated, that list of factors is nonexclusive, so the trial court was well within its discretion to consider Mother's demeaning behavior toward Father as a relevant factor in determining whether to modify custody. In any event, her repeated disparagement of Father, especially in the children's presence, directly and negatively affected the children's interaction and interrelationship with their parents, the children's adjustment to their home(s), and the mental health of all individuals involved, and it demonstrated a pattern of verbal and psychological abuse, if not outright "domestic or family violence," on Mother's part. Ind. Code § 31-17-2-8(4)-(7).

[19] Mother also asserts that her behavior was not a "substantial change" for purposes of Indiana Code Section 31-17-2-21, but this assertion runs counter to the foregoing facts most favorable to the judgment and the inferences that can

be drawn therefrom. Mother's attempts to minimize her behavior are essentially invitations to reweigh evidence and reassess witness credibility, which we may not do.[4] To be sure, Mother did not explicitly accuse Father and the other sworn witnesses at the hearing of orchestrating a "grand conspiracy against her[,]" as the trial court put it, Appellant's App. Vol. 2 at 106, but when Father's counsel asked Mother if their testimony was true, she responded, "No." Tr. Vol. 2 at 116. Those same witnesses had volunteered their concerns about Mother's abusive behavior to Stanton, who saw no reason for them to lie; the trial court obviously agreed with this assessment, and we may not second-guess the court's credibility determination.

[20] Finally, Mother contends that modification of the custody order is not in the children's best interests, quoting *Montgomery v. Montgomery* for the proposition that "permanence and stability are considered best for the welfare and happiness of the child." 59 N.E.3d 343, 350 (Ind. Ct. App. 2016) (quoting *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016)), *trans. denied* (2017). Here, the evidence most favorable to the trial court's judgment establishes that preserving the status quo would negatively impact the children, both of whom were too young at the time of the hearing to learn the coping skills necessary to

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[4] Among other things, Mother claims that "[t]here was nothing in the record … suggesting that [she] continued to disparage Father after the GAL completed his investigation in the late Spring and early Summer of 2021 …." Appellant's Br. at 23. This is simply not true. *See* Tr. Vol. 2 at 141-42 (Father describing Mother's behavior in the present tense and as a "daily" occurrence and agreeing with Stanton's characterization of Mother as "always on the attack"). Mother also points to Stanton's custody recommendation without acknowledging either the aforementioned caveat or that the trial court was not obligated to follow Stanton's advice.

deal with Mother's unrelenting disparagement of Father. But regardless of the children's ages, under these circumstances, modification of the custody order is clearly in their best interests. *See Carmichael v. Siegel*, 754 N.E.2d 619, 635 (Ind. Ct. App. 2001) ("[I]f the parties have made child-rearing a battleground, then joint custody is not appropriate.") (quoting *Periquet-Febres v. Febres*, 659 N.E.2d 602, 605 (Ind. Ct. App. 1995), *trans. denied* (1996)); Tr. Vol. 2 at 43 (Stanton's observation that a parent can be a "loving and affectionate mother" but a "horrible co-parent"). Mother has failed to establish that the trial court abused its discretion in modifying custody in favor of Father, and therefore we affirm that ruling.[5]

Section 2 – Mother has failed to establish that the trial court committed reversible error in calculating her child support obligation.

[21] Mother also contends that the trial court erred in setting her child support obligation at $71 per week "pursuant to submitted Child Support Obligation Worksheet." Appealed Order at 3. Mother notes that she filed a worksheet showing a recommended support obligation for Father of $200.21 per week and that Father did not file a worksheet.

[22] "A trial court's determination of child support obligations is presumptively valid and given broad deference upon appeal." *In re Marriage of Blanford*, 937

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[5] Mother suggests that the trial court modified custody to punish her for failing to inform Father about C.P.'s counseling. We find this suggestion meritless, especially since the court did not address this issue in its order.

N.E.2d 356, 360 (Ind. Ct. App. 2010). "It is a cardinal rule of appellate review that the appellant bears the burden of showing reversible error by the record, as all presumptions are in favor of the trial court's judgment." *Marion-Adams Sch. Corp. v. Boone*, 840 N.E.2d 462, 468 (Ind. Ct. App. 2006). Mother's calculation of Father's support obligation was premised on her being awarded primary physical custody of the children, with Father receiving credit for parenting time for ninety-eight overnights. Appellant's App. Vol. 2 at 103. Mother does not challenge the parties' income figures that she herself included on the worksheet, and she has failed to overcome the presumption that the trial court's calculation of her support obligation, using that worksheet, with Father as the primary physical custodian, was an abuse of discretion. We decline Mother's invitation to remand for the trial court to "show its work," when Mother herself has failed to carry her burden of showing reversible error. Accordingly, we affirm.

[23] Affirmed.

Vaidik, J., and Altice, J., concur.