MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

In the Marriage of:

Ashley D. (Ramey) Day-Ping,

Appellant-Petitioner,

v.

Charles T. Ramey, III,

Appellee-Respondent.

April 27, 2022

Court of Appeals Case No. 21A-DR-2353

Appeal from the Johnson Circuit Court

The Hon. R. Kent Apsley, Special Judge

Trial Court Cause No. 41C01-1607-DR-432

Bradford, Chief Judge.

Case Summary

[1] Charles Ramey, III ("Father") and Ashley Day-Ping ("Mother") were married in 2014 and had their son P.R. ("Child") in November of that year. In 2016, Mother petitioned for dissolution of the marriage, and, as part of a settlement agreement, the parties agreed that Mother would have sole legal and physical custody of Child with Father's visitation phasing in over time.

[2] Beginning early in 2017, Mother and Father began accusing each other of suspected abuse of Child. At one point, Child was temporarily removed from Mother's care, and, at another point, Father's visitation was temporarily suspended. In August of 2019, Mother petitioned the trial court to order that Father's visitation be supervised, which motion the trial court granted. Mother, however, failed to complete the intake process at the visitation facility, and Father had no visitation with Child from November of 2019 to August of 2020, when the trial court found Mother to be willfully in contempt of court and ordered that she serve thirty days in jail if she did not allow visitation to resume.

[3] Meanwhile, Father had moved to modify custody in June of 2020, and, in February of 2021, the trial court granted the motion, awarding Father sole legal and primary physical custody of Child. Mother appealed, and, in August of 2021, we reversed the judgment of the trial court and remanded with instructions to reconsider the evidence. In October of 2021, the trial court again awarded Father sole legal and primary physical custody of Child and $9000.00 of attorney's fees on remand. Mother contends that the trial court abused its

discretion in awarding sole legal and primary physical custody of Child to Father and in awarding Father attorney's fees. Because we disagree with Mother's contentions, we affirm.

Facts and Procedural History

[4] Most of the underlying facts of this case were related in our opinion in *Day-Ping v. Ramey*, 175 N.E.3d 844 (Ind. Ct. App. 2021), *trans. denied* ("*Day-Ping I*"), which was handed down on August 20, 2021:

> [2] Mother and Father were married April 25, 2014. Child was born November 13, 2014. Mother filed for dissolution on July 18, 2016. On September 28, 2016, the Department of Child Services ("DCS") received a report that Mother was neglecting Child by allowing him to wander around Mother's hair salon and play with a bottle of hair dye. DCS investigated and found the report to be unsubstantiated. On January 17, 2017, the trial court accepted the parties' settlement agreement and granted dissolution of the marriage. As it pertained to Child's custody, the parties' settlement agreement provided, in relevant part:
>
> > The parties agree that [Mother] shall have sole legal and physical custody of [Child]. [Father] shall have parenting time the week of January 16, 2017 for two hours on Tuesday from 5:30 p.m. to 7:30 p.m. and two hours on Saturday from 12:00 noon to 2:00 p.m. Thereafter, [Father] shall have parenting time for two hours on Tuesday from 5:30 p.m. to 7:30 p.m. and six hours on Saturday from 12:00 noon to 6:00 p.m. for a period of six weeks ("The Phase-in Period"). Thereafter, [Father] shall have parenting time in accordance with Indiana Parenting Guidelines, including but not limited to the holiday schedule and ancillary provisions, with the exception that [Father's] overnights with [Child] shall not commence until [Child's] fourth birth date. The Indiana Parenting

> Guidelines, unless otherwise deviated from herein, are adopted in entirely [sic] by the parties. If [Father] does not exercise his parenting time, the schedule shall not progress. However, if [Mother] prevents [Father] from exercising his parenting time as set out herein, the schedule shall progress. During the Phase-in Period, [Father] shall provide direct eyesight supervision and care for [Child] during his parenting time and may not delegate this task to anyone else. [Father] shall not consume alcohol during his parenting time. [Father] shall not exercise his parenting time in any location where anyone present is engaging in illegal activity. [Father] shall not have unrelated third parties present during his parenting time. [Father] shall provide all transportation for his parenting time, which must comply with all legal requirements, including proper child restraints.

The parties also agreed Father would pay Mother $119 per week in child support.

[3] On July 27, 2017, Mother reported to DCS that Father had physically abused her and Child on multiple occasions in the past. On the same date, Mother reported to DCS that Child had returned from Father's care with injuries to his genitals. On August 5, 2017, Mother reported to DCS that she suspected Father had molested Child based on alleged injuries in Child's genital area. On August 6, 2017, Mother contacted DCS to report additional injuries in Child's genital area that she had discovered after Father's parenting time the previous day. On August 21, 2017, Mother contacted DCS to again report that Child returned from Father's care with injuries to his genital area. On August 28, 2017, DCS received a report that Mother was abusing Child based on a blister found in his genital area that was allegedly not present during Father's last exercise of parenting time. Following that report, DCS removed Child from Mother's care on an emergency basis and placed him with Father.

[4] DCS filed a petition alleging Child was a Child in Need of Services ("CHINS") based on Mother's neglect. The juvenile court held fact finding hearings on October 3 and 7, 2017. It ultimately denied the CHINS petition and ordered Child returned to Mother's care. Subsequently, Mother filed an action in federal court pursuant to 42 U.S.C. §1983 claiming the two DCS family case managers who investigated the CHINS allegations against her violated her civil rights. The claim settled out of court and Mother received a settlement in her favor for $988,000.00.

[5] From November 2017 through August 20, 2019, the parties filed numerous petitions and reports related to parenting time that are not relevant to the matter before us. On August 20, 2019, Mother filed a petition requesting modification of Father's parenting time and asked that Father's parenting time be supervised because Child was "very resistant" to going with Father when dropped off for Father's parenting time and Mother "opine[d] that [Child's] resistance to his Father is due to things that are said and done to [Child] during [Father's] parenting time." On December 11, 2019, the trial court held a hearing on Mother's petition to modify Father's parenting time. On December 14, 2019, Father filed a motion to, in relevant part, modify custody, parenting time, and child support.

[6] On December 26, 2019, the trial court ordered Father's parenting time, which consisted of two midweek visits lasting two hours each and one four-hour visit on alternating weekends, supervised by Youth Connections. The trial court ordered Mother to "leave the visitation site, including the building and parking lot, after she drops off [Child]. Mother shall not return to the visitation site until the end of Father's parenting time." Further, the trial court ordered Mother to ensure Child does not "wear any smart watch or similar device to Father's parenting time or during Father's parenting time." The order also required Mother, Father, and Child to submit to mental health and custody evaluations conducted by Dr. Linda McIntire.

[7] On January 10, 2020, Father filed a motion to modify the parenting time supervisor because Youth Connections was "unable to accommodate the requested visitation schedule." Father asked the court to change the parenting time supervisor to Mending Fences and requested that "the court order the parties [to] contact Mending Fences within 24 hours to schedule intake and complete their intake within 2 business days." On January 24, 2020, the trial court granted Father's request and changed the parenting time supervisor from Youth Connections to Mending Fences. The trial court ordered Mother and Father "to contact Mending Fences within 24 hours to schedule their intake and complete said intake within 2 business days." Mother never completed the intake with Mending Fences "for reasons that were disputed including the effects of the pandemic that started a few weeks later."

[8] On June 23, 2020, Father filed a motion to hold Mother in contempt, alleging, in relevant part:

> 3. [Mother] to date has failed to complete the intake per the order.
>
> 4. [Mother] changed her phone number on or about February 21, 2020. Mending Fences contacted [Mother's] counsel requesting [Mother] setup her intake.
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> 5. [Mother] called Mending Fences with her new telephone number on February 26, 2020. [Mother's] intake was scheduled for March 4, 2020. [Mother] arrived at her intake with her husband. [Mother] was previously advised via telephone that third parties were not permitted to attend the intake.
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> 6. [Mother] refused to sign the intake form and the intake was rescheduled for March 16, 2020.
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> 7. Mending Fences has reached out to [Mother] several times and [Mother] still has not scheduled her intake.
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> 8. At this point, Mending Fences is doubtful that visitations can occur in its facility.

9. [Father] has not had parenting time with [Child] since November 12, 2019.

On the same day, Father filed a motion to modify parenting time and a request for an expedited hearing.

[9] The trial court held hearings on Father's contempt motion on July 29 and August 3, 2020. On August 4, 2020, the trial court entered an order finding, in relevant part:

1. In the January 24, 2020 Order, both parties were ordered to: "... to contact Mending Fences within 24 hours to schedule their intake and complete said intake within 2 business days". [sic]

2. As of the August 3, 2020 hearing, [Mother] has still not completed the intake process. The service provider reported to the Court that they had "never had a case like this before". [sic] Further, they had wasted so much time and effort without even completing the intake process, that they would no longer be willing to accept the case for supervision.

3. Mother's obstinance effectively eliminated this service provider as a means to accommodate Father's court-ordered opportunity to visit with [Child].

4. [Mother] has engaged in a pattern of behavior clearly intended to frustrate this Court's Order, as well as the Court's efforts to reinitiate parenting time between Child and [Father].

5. Father has had no parenting time with [Child] since November 2019.

6. The Court, therefore, finds that [Mother] is in willful contempt of this Court's order.

7. The Court notes that previously, on June 6, 2017, [Mother] was strongly admonished by Judge Marla Clark that "... The Court reminds Mother that it expects Father's parenting time to take place as ordered and that she faces

> potentially serious sanctions for denying parenting time". [sic]
>
> 8. Father is no closer today to having regular (or any) parenting time with his son than he was in June of 2017.
>
> 9. [Mother] is hereby sentenced to serve thirty (30) actual days in the Johnson County Jail for her contempt.
>
> 10. The Court stays imposition of the sentence and will allow [Mother] the opportunity to purge her contempt. [Mother] may purge her contempt by henceforth abiding by the strict terms of this Court's parenting time order, without exception, excuse or subversion.
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> The trial court further ordered Father to have parenting time pursuant to the Indiana Parenting Time Guidelines, with Mother arranging transportation to and from Father's residence for the first ninety days. The trial court also ordered Mother to pay $1,000.00 of Father's attorney's fees and ordered Mother to refrain from sending Child to Father's house with a "'smart watch' or any other GPS device capable of tracking [Child] during Father's parenting time."
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> [10] On December 1, 2020, Dr. Linda McIntire submitted her custody evaluation to the trial court. On January 6, 2021, Mother made a motion for specific findings by the court pursuant to Indiana Trial Rule 52. On January 12 and January 15, 2021, the trial court heard evidence on Father's motion for modification of custody. On February 15, 2021, the trial court issued its order, which transferred sole legal and primary physical custody of Child from Mother to Father; ordered Mother to pay $137 in child support per week; ordered Mother to pay $9,000.00 of Father's attorney's fees; and appointed Father's girlfriend, Jordan McHenry ("Girlfriend"), as Child's temporary custodian in the event of Father's death.

Id. at 847–50 (footnotes and record citations omitted; all bracketed material in original). In *Day-Ping I*, we took judicial notice of a complaint Mother had filed in Johnson Superior Court under cause number 41D01-1908-CT-122 ("Cause

No. CT-122") against Father and Girlfriend for malicious prosecution and intentional infliction of emotional distress. *Day-Ping I*, 175 N.E.3d at 852. The lawsuit was based on Father and Girlfriend's August 28, 2017, report to DCS of their suspicions that Mother had been abusing Child, after which DCS removed Child from Mother's care on an emergency basis and placed him with Father for forty-four days. That civil case, which was resolved in June of 2021, or approximately four months after the custody order at issue in *Day-Ping I*, resulted in a jury awarding $100,750.00 each from Father and Girlfriend to Mother. *Id*.

[5] We reversed the award of sole legal and primary physical custody of Child to Father and remanded with the following instructions:

> We reverse the trial court's decision and remand for reconsideration of the evidence based on the entirety of the circumstances concerning these parties. Absent exigent circumstances, the court shall order the parties to revert to the terms of the original Settlement Agreement, entered into on January 16, 2017, and approved by the court on January 17, 2017, upon receipt of this opinion. This reversion shall remain in effect pending the outcome of a new hearing, which shall be conducted within thirty days from the date of this opinion.

Id. at 854–55.

[6] On September 14, 2021, the trial court held a hearing, at which it heard argument but no additional evidence, in accordance with *Day-Ping I*. On October 25, 2021, the trial court issued its custody order on remand, which provides, in relevant part, as follows:

10. Subsequent to [Child]'s return to Mother's custody, Father continued to have difficulty obtaining his parenting time.

11. The exchanges of [Child] for parenting time became difficult and Father was not receiving his parenting time.

12. In August 2019, Mother sought to modify Father's parenting time to supervised parenting time.

13. On December 11, 2019, this Court heard Mother's allegations against Father. Due to the nature of Mother's allegations against Father, the length of time since Father had received visitation, and in an effort to get some visitation going between father and son, the Court granted a temporary parenting time order that restricted Father's parenting time to supervised parenting time. Father's parenting time, initially, was to be supervised through Youth Connections.

14. At the December 11, 2019 hearing, this Court, on its own motion, ordered the parties and the minor child to submit to a mental health evaluation conducted by Dr. Linda McIntire.

15. This Court also, on its own motion, ordered Dr. Linda McIntire to conduct a custody evaluation regarding [Child].

16. Parenting Time never occurred at Youth Connections because they were not able to accommodate parenting time as ordered by the Court.

17. On January 24, 2020, the Court ordered that Mending Fences facilitate Father's supervised parenting time. The parties were ordered to contact Mending Fences within 24 hours to schedule their intake and complete said intake within two (2) business days. The Order of the Court was placed on the CCS on January 29, 2020 and sent to the parties' counsel on January 30, 2020.

18. Father contacted Mending Fences on January 30, 2020 and completed his intake on January 31, 2020.

19. Mother did not first contact Mending Fences until February 21, 2020.

20. Ultimately, Mother never completed her intake with Mending Fences.

21. Kelli Young at Mending Fences attempted several times to facilitate the completion of Mother's intake, but Mother provided multiple and varying excuses for her failure to comply with the Court's order. Mending Fences personnel testified they had "never had a case like this before". Further, that they had wasted so much time and effort without even completing the intake process that they would no longer be willing to accept supervision of the case.

22. Mother's testimony regarding her attempts to complete her intake and reasons for not completing the intake was not credible.

23. Mother engaged in a pattern of behavior clearly intended to frustrate this Court's Order, as well as the Court's efforts to reinitiate parenting time between [Child] and Father.

24. As a result of Mother's obdurate conduct, Father's supervised parenting time at Mending Fences never commenced and Mending Fences was lost as [a] resource.

25. Father had no parenting time with [Child] from November 2019 to August 2020.

26. Mother was found to be in willful contempt of the Court's January 24, 2020 Order. The Court noted: "Petitioner/Wife has engaged in a pattern of behavior clearly intended to frustrate this Court's order, as well as the Court's efforts to reinitiate parenting time between [Child] and his father. Father is no closer today to having regular (or any) parenting time with his son than he was in June of 2017."

27. Previously, in 2017, Mother had been strongly admonished by Judge Marla Clark that: "… The Court reminds Mother that it expects Father's parenting time to take place as ordered and that she faces potentially serious sanctions for denying parenting time".

28. Father was ordered to receive parenting time pursuant the Indiana Parenting Time Guidelines with his first weekend parenting time to commence on Friday, August 14, 2020.

29. When [Child] was delivered for his first parenting time with Father, he arrived with a whistle and informed Father that Mother said [Child] needed the whistle to protect himself and that [Child] should blow the whistle in case he needed help. This, after the Court had previously ordered that the (five-year-old) child not be sent for visitation wearing a "smart watch" or other GPS device capable of tracking [Child] during Father's parenting time, as he had been before.

30. Mother's pattern of conduct, in effect, conveyed to [Child] the message that he was in danger from his own Father. Alternatively, [Child] became an instrumentality of Mother's own underlying mental/emotional health issues or her efforts to undermine the father-son relationship.

31. The parties participated in an independent court-ordered custody evaluation conducted by Dr. Linda McIntire. The evaluation included mental health evaluations.

32. At the conclusion of the custody evaluation, Dr. McIntire's report and recommendations were filed with the Court.

33. Dr. McIntire strongly recommends that Father be granted full legal custody and primary physical custody. Further, that "this change of custody should happen sooner, rather than later".

34. This recommendation is based upon several factors, including but not limited to:

a. [Child's] speech impairment that has gone unaddressed by Mother who has sole legal custody;

b. Mother's psychological issues and medical instability;

c. Mother's alienating behavior of [Child] towards Father;

d. Mother's significant elevation of paranoia and overwhelming belief that she is under attack;

e. Mother's specific coaching of [Child] to make allegations against Father;

f. Mother's undermining of Father and [Child]'s relationship;

g. Father's parenting style more appropriately addresses [Child]'s behavior than Mother's parenting style;

h. [Child] has enjoyed a good relationship with Father;

i. [Child] has a good relationship with Father's fiancé[e], Jordan McHenry;

j. [Child] has a good relationship with his half-sister[];

k. Father addressed [Child]'s speech problems when [Child] was placed with Father;

l. Father would facilitate a positive relationship between [Child] and Mother.

m. The harms [Child] is incurring in Mother's care which places him at greater risk for poor outcomes.

35. From 2017 to present, multiple individuals have observed "paranoid" behavior by Mother, including but not limited to, Dr. McIntire, Lee Heap (CASA) [("CASA Heap")], and [Mother's expert] Dr. [Randall] Krupsaw.

36. Mother's expert, Dr. Jenuwine, raised questions regarding Dr. McIntire's custody evaluation and her procedure for the same. Dr. Jenuwine did not personally examine or evaluate any of the parties involved.

37. The Court finds that Dr. Jenuwine's assessment was based in part, if not entirely, on documents provided by Mother's counsel and not based on the documents used by Dr. McIntire to complete her custody evaluation. Dr. Jenuwine could not

confirm that he actually received or reviewed the documents used by Dr. McIntire, other than the raw data from the psychological testing.

38. Dr. Jenuwine testified that Mother described that Dr. McIntire performed an ink blot (Rorschach) test on her as part of her evaluation. Dr. McIntire's report was criticized by Dr. Jenuwine for the use of such a test for purposes of a custody evaluation and for failing to reference it in her report.

39. On rebuttal, Dr. McIntire testified that not only did she not administer a Rorschach test to Mother, but that she has never administered one as part of a custody evaluation.

40. These statements by Mother call into question Mother's credibility, her mental status, and/or her ability to accurately recall and relate events.

41. Mother presented a second expert witness, Dr. Randall Krupsaw. Dr. Krupsaw had prepared a previous report in connection with other litigation. He also prepared a letter or report in connection with this proceeding. Dr. Krupsaw, did not conduct his own custody evaluation. He did not interview or evaluate Father. Dr. Krupsaw's second report relied upon documents and information provided by Mother or her counsel.

42. Dr. Krupsaw, among other things, opined that Dr. McIntire's evaluation was consistent with current basic professional practice guidelines/standards.

43. Dr. Krupsaw agreed that there are many unknowns around the harm that [Child] experienced surrounding the removal by the Department of Child Services.

44. Dr. Krupsaw was unable to state with certainty that any harm came to [Child] due to the removal by DCS or parenting time with Father.

45. As between the report and findings of the Court's appointed evaluator, Dr. Linda McIntire, and those of Mother's experts, Dr. Jenuwine and Dr. Krupsaw, the Court finds Dr.

McIntire's findings to be the more compelling, reasonable and consistent with the evidence.

46. Mother's unaddressed mental health issues have impacted [Child] negatively.

47. [CASA Heap] reviewed Dr. McIntire's report and stated it was reflective of her experience with the parties.

48. [CASA] Heap is in agreement with the recommendations of Dr. McIntire, noting that [Child]'s situation had gotten worse since her report to the Court in April 2018.

49. [CASA] Heap finds Father to be a kind, stable parent whose interactions with [Child] are loving.

50. Parenting time exchanges occur without issue when Mother is not involved in the exchanges.

51. Mother provided conflicting recitations of events to Dr. McIntire.

52. Mother provided conflicting recitations of events to [CASA Heap].

53. Mother was not credible during her testimony before this Court.

54. Mother has only recently commenced counseling for co-parenting and high conflict resolution.

55. As of the hearing, Mother had not engaged in the mental health counseling recommended by her medical providers and Dr. McIntire.

56. In short, the Court's own observations of Mother's demeanor and presentation, as well as her history of behavior throughout this case, are consistent with the conclusions of Dr. McIntire as to Mother's mental and emotional state.

57. Father's income is established at $1,280.00 gross per week.

58. Mother's income is imputed at $787.00 gross per week.

59. Both Father and Mother have a subsequent born child.

60. Father carries the health insurance for [Child] and the cost associated with said insurance is $123.69 per week.

61. Father incurred attorney fees in the amount of $18,587.50.

62. Mother incurred attorney fees (Ron Waicukauski only) and expenses in the amount of $72,906.95. Mother's documented fee request does not reflect the additional attorney fees incurred for counsel Linda Meier, Mark McNeely, and Grace Dillow.

63. Neither party asked for reallocation of the fees paid to Dr McIntire. In addition to the above prior Findings, after remand and further hearing, the Court now makes the following additional FINDINGS:

64. The Court of Appeals took judicial notice of the following facts, which facts this Court, therefore, adopts: During the pendency of this proceeding, Mother filed a complaint in the Johnson Superior Court against Father and Girlfriend for malicious prosecution and intentional infliction of emotional distress. Subsequent to the judgment (this Court's Order on Petition to Modify Custody and Related Issues), the Johnson Superior Court held a five-day trial on Mother's complaint against Father and Girlfriend[.] […] The jury in that case awarded Mother $90,750.00 each from Father and Girlfriend in compensatory damages, and $10,000.00 each from Father and Girlfriend in punitive damages. (Order, 41D01-1908-CT-122, June 19, 2021.)

65. As noted, the trial court was not aware, and could not have been aware, of the civil judgment noted above, as it had not yet happened as of the date of the custody modification hearing herein. Little evidence was referenced as to this matter by the parties.

66. Petitioner/Father notes that, notwithstanding Ind. Evidence Rule 201(e), he was not given an opportunity to be heard prior to the Court taking Judicial Notice of subsequent facts.

67. Each of the parties have been the subject of unsubstantiated DCS reports.

68. [Child], is a male child. He is now six (6) years old, four (4) years older than at the time of the original decree and settlement agreement.

69. Mother wishes to retain custody of [Child].

70. Father wishes that he be awarded legal and physical custody of [Child]. His wishes have changed since the prior settlement agreement.

71. The child neither testified, nor was he interviewed in camera.

72. The child expressed a desire to remain with Mother during Dr. McIntire's interview and custody evaluation.

73. Given [Child]'s tender age, as well as the pressures exerted upon him, the Court gives little weight to [Child]'s wish as expressed to Dr. McIntire.

74. The child has a positive and loving relationship with [Father] and [Father]'s fiancé[e]. This, despite periods in the past where Father's parenting was interrupted and actively interfered with by [Mother]. [Child] is not fearful of his father.

75. [Child] and Mother are bonded and love each other. Their interaction and interrelationship, however, is not strictly a healthy one from a mental and emotional standpoint.

76. Mother and [Child] are enmeshed to a disturbing degree. Their interaction and interrelationship negatively impacts [Child]'s mental and emotion[al] health and well-being.

77. Mother has exhibited fear-inducing behaviors toward [Child]. She has actively attempted to alienate [Child] from his father, to the point where she has been admonished by

the Court and ultimately held in contempt of court for interfering with court ordered parenting time.

78. The custody evaluation characterized Mother's behavior as "alienating", which the other evidence supports.

79. [Child] has siblings in both his mother's and his father's home. At his father's, [Child] has a strong resilient relationship with his older sister[.] He also has a baby sister, toward whom he displays "sweet affection". At his mother's home [Child] has a younger half-brother [] with whom he is also strongly bonded. [Child] is protective of his little brother and, in turn, [his younger half-brother] admires [Child]. [Child] enjoys spending time with all his siblings and has positive relationships with all his siblings.

80. Based upon past history, further interruption of Father's parenting time with [Child] will interfere with [Child]'s relationship with his siblings in his father's home.

81. A change of custody from Mother's home would not significantly harm [Child]'s relationship with his half-sibling there. This conclusion is supported by Dr. McIntire's custody evaluation.

82. The child has positive relationships with his stepfather.

83. [Child] has positive relationships with his extended family on both sides.

84. The child is well adjusted in each parent's home.

85. The child was well adjusted in school generally, however, struggles with getting along with other students. [Child]'s grades for the first semester at Trader's Point indicate that he was meeting or exceeding grade level. The COVID pandemic caused the need for distance learning since.

86. [Child] was, as of the hearing, relatively new to his community. With his young age and the ongoing COVID conditions, his interactions in the community were limited.

87. Mother has a history of mental health issues and instability. Testing reveals her to have significant levels of paranoia. Dr. Jenuwine offers that this is possibly "situational in nature". Previously, she was diagnosed with ADHD, depression, and panic attacks. She has consistently neglected or refused to genuinely engage in mental health treatment in the past.

88. Mother's mental health issues are serious. They have impacted [Child] negatively. […] Dr. McIntire[] strongly opines that Mother's condition places [Child] at serious risk.

89. [Child] has a speech impediment that has gone untreated in Mother's care. The speech impediment negatively affects [Child]'s healthy development and also interferes with his social interactions with other children and fellow students.

90. Father did provide speech therapy for [Child] when [Child] was placed with him in 2017. If custody were to change [Child] would attend Cloverdale Elementary School. The school has a licensed speech pathologist. The school also has behavioral therapy available through the Cummings Program.

91. Mother alleges domestic violence. Father denies domestic violence.

92. Dr. McIntire notes: that MMPI tests can be indicative of abuse. In this case, there is no evidence of domestic abuse, but it cannot be ruled out. Dr. McIntire points out that Mother indicated to [a Riley Hospital Social Worker] that Father had been arrested for abusing her while pregnant. This was found to be untrue. Mother indicated Father had been substantiated on physical abuse by DCS. This was found to be untrue. Mother indicated to her that Father had been arrested for battery with injury on a child, also found to be untrue.

93. Dr. McIntire did not utilize any other psychological tests to assess for domestic violence. Father did not meet the criteria for any such assessment. Any such test would have been professionally inappropriate because Father has never been adjudicated for any offense involving violence.

94. In performing her custody evaluation Dr. McIntire utilized appropriate validity scales calculated to validate the credibility of information provided by the subjects, as well as attempts to present themselves in a more favorable light, or to otherwise skew tests results.

95. Mother and Father are each physically healthy.

96. Mother has been unwilling to communicate and cooperate with Father regarding parenting matters. Father indicates his ability and willingness to do so.

97. Father is a fit and proper person to have physical and legal custody.

98. Dr. Jenuwine (Mother's expert) testified that he only spoke to Mother in order to coordinate payment of his fees. Nevertheless, in direct contradiction, Dr. Jenuwine later testified that he spoke to Mother about Dr. McIntire (the court appointed custody evaluator) conducting a Rorschach test.

99. Dr. Jenuwine put great stock in the impropriety of the use of a Rorschach test in the context of Dr. McIntire's custody evaluation and in his criticism of Dr. McIntire's conclusions.

100. Dr. McIntire, on rebuttal, testified that no reference to a Rorschach test is contained in her lengthy report, because no such test was, in fact, administered.

101. Dr. Jenuwine criticized Dr. McIntire's methodology in not conducting a joint session with both Mother and Father. However, both Dr. McIntire and Dr. Krupsaw (Mother's second expert) testified joint sessions would not be appropriate where domestic violence is alleged.

102. As the result of not being able to conduct a joint session with the parents, Dr. McIntire met with them separately. While Dr. McIntire met with [Father] first, [Mother] had provided her with a substantial amount of information prior to that meeting. Dr. McIntire then met with Mother. Dr. McIntire testified that with regard to any effect of "primacy bias": " ...

while I agree with that literature, I'll point out that [Mother] had the first word in this evaluation".

103. The effects of "primacy" versus "recency" were presumably considered by Dr. McIntire in reaching her professional conclusions. She testified as to her familiarity with the concept and what, if any, affect it had on her outcomes. Someone had to be interviewed first and someone second. This process did not substantially undermine the process or the evaluator's conclusions. Dr. Jenuwine acknowledged that he could not say with certainty that Dr. McIntire's meeting with Father first had any impact on her report.

104. The Court weighs the testimony of experts as it does any other witness. When faced with competing experts, the Court must decide whether their testimony can be reconciled, if not, which it will choose to believe or disbelieve. The Court considers, among other things, the source of the witness's information, any bias, prejudice, or interest, as well as their manner of testifying.

105. As to the experts who testified in this case:

a. Dr. McIntire was appointed by the court to conduct an independent custody evaluation.

b. Drs. Jenuwine and Krupsaw were retained and paid by Mother.

c. Dr. McIntire personally interviewed all interested parties and conducted relevant testing.

d. Neither Dr. Jenuwine, nor Dr. Krupsaw met with any of the interested parties in connection with this matter.

e. Dr. McIntire testified in a straightforward professional manner. On being recalled, she effectively refuted any and all criticisms and misrepresentations of her work.

f. Dr. Krupsaw, in the end, did not substantially refute Dr. McIntire's findings. Among other things, he

acknowledged Dr. McIntire's work to be consistent with current basic professional practice guidelines and standards.

g. Dr. Krupsaw also testified that he himself did not follow the practice of conducting joint sessions with the parties when conducting custody evaluation. He preferred a "leapfrog" kind of style. This being one of the methodologies criticized by Mother's other expert, Dr. Jenuwine because of the "primacy'' effect.

h. Dr. Jenuwine testified in a manner[] which the Court found to be evasive, condescending, and unconvincing.

106. The award of attorney fees to Father is reasonable, given the nature of the litigation, the conduct of the parties, Mother's unreasonable attempts to limit Father's parenting time, the shear [*sic*] volume of the pleadings in the matter, and the number and length of the hearings to date. The $9,000.00 awarded represents less than 1/8 of the amount paid by Mother to only one of her four attorneys, which strikes the Court as a fair measure of reasonableness.

107. Mother's 2019 tax return reflects her family gross income to be $122,860.00. While the Court does not consider her spouse's income in determining the award of attorney fees, the Court does consider that her husband supports her and that Mother is voluntarily unemployed. Petitioner previously operated her own business, which she later sold. She is capable of gainful employment. Her financial circumstances simply allow her not to have to work.

CONCLUSIONS AND JUDGMENT

[….]

The Court has thoroughly reviewed the evidence relating to allegations of domestic violence between the parties. The Court considers such evidence, it's [*sic*] potential impact on [Child], as well as any effect on the validity of the custody evaluation performed.

The Court has thoroughly reweighed all the evidence in this matter, including the veracity of the witnesses, in light of all the facts and circumstances, including the civil judgment entered in favor of Petitioner/Mother and against Respondent/Father and his then fiancé[e], subsequent to this Court's original custody modification order.

The Court has thoroughly reweighed the methodologies, conclusions, and opinions of the expert witnesses considering the behavior of all the parties in this matter and specifically those of the Father and Girlfriend in the independent lawsuit and judgment.

The Court does find the independent finder of fact's Judgment in [Cause No. CT-122] informative as to the matters before this Court.

The Court does not believe that the jury's conclusion in that independent matter mandates a particular result in this case. Rather, it is a factor to be considered, in light of all the evidence.

Mother asks the Court to take judicial notice of other matters, including attachments to subsequent pleadings, emails, and her therapy records for treatment subsequent to this Court's child custody modification order. Those matters were submitted to the Court outside of any hearing. They have not been subjected to cross examination by the opposing party. The opposing party is entitled to be heard prior to the trial court taking judicial notice of any fact. Ind. Evid Rule 201 (e). Moreover, the Indiana Court of Appeals has specifically directed that this court reconsider the evidence in this matter and that ''No new evidence shall be introduced at the hearing, only argument regarding the current evidence before the trial court for reconsideration in accordance with the analysis in this Court's opinion." It would be fundamentally unfair to consider only subsequent evidence or judicially noticed facts favorable to one party without the opposing party being allowed the same opportunity or at least the occasion for cross examination.

Dr. McIntire relied extensively on her own interviews with the relevant parties, her personal observations, and standardized psychological testing performed, as well as medical and mental health records received from previous providers. Her decision not to consider "numerous filings, work product/documents and depositions" provided directly by one parties' [*sic*] attorney appears consistent with her function, which was to provide an independent unbiased evaluation.

While the Court gives due consideration to the testimony of each of the expert witnesses, as it does with all witnesses, the Court's determination in this matter reflects the Court's independent determination, based upon all the evidence.

The Court gives significant weight to the testimony of [CASA Heap].

The Court concludes there has [been] substantial and continuing change in circumstance warranting a modification of the current custody order including, but not limited to, the following:

1. Mother's ongoing mental health issues and instability,
2. Mother's refusal to address the same,
3. The impact of Mother's unaddressed mental health issues on [Child],
4. Mother's fear inducing behavior toward [Child],
5. Mother's alienating behaviors toward Father,
6. Mother's pattern of conduct frustrating Father's parenting time,
7. The effect of deprivation of quality parenting time with both parents on [Child],
8. Father is more likely to address [Child]'s need for treatment of his speech impediment, as well as his mental/emotion health,
9. Father will facilitate a positive relationship with Mother.

Modification of custody and parenting time are in the best interest of [Child].

The Court specifically notes that this modification of custody and parenting time is not intended to be punitive in nature, or as a sanction, rather it is genuinely in [Child]'s best interest.

Father is hereby granted sole legal and primary physical custody of [Child], effective immediately.

Mother is hereby awarded parenting time according to the age-appropriate Indiana Parenting Time Guidelines (as amended).

Transportation of [Child] shall continue to be provided by a responsible third-party for Mother.

Mother is not to be present during any parenting time exchanges or during the transportation period.

The parties shall sign up for Our Family Wizard within ten (10) days from the date of this Order. The parties shall use this platform for all communication except emergency communication.

Parenting Time exchanges shall continue to take place at the TA Travel Center at I-70 and S.R. 39.

The parties shall cease any and all communication regarding court proceedings and this matter with [Child]. The parties shall not allow any third party to discuss these matters with [Child].

The parties shall encourage [Child] to have a positive relationship with both parents and their household members.

[….]

Father's request for attorney fees is granted. Mother shall pay reasonable attorney fees in the amount of $9,000.00 to Attorney Heather George Myers within sixty (60) days from the date of this Order.

Mother's request for attorney fees and expenses denied.

Order pp. 3–22

[7] On October 25, 2021, Mother filed her notice of appeal and filed an emergency motion to stay the trial court's order pending appeal the next day, which we granted the day after that. We denied Father's motion to reconsider the stay on November 24, 2021. Meanwhile, on October 4, 2021, Father had petitioned for transfer in *Day-Ping I*, which petition the Indiana Supreme Court denied on January 11, 2022. *See Day-Ping v. Ramey*, 180 N.E.3d 934 (table).

Discussion and Decision

I. Sole Legal and Primary Physical Custody

[8] Mother contends that the trial court abused its discretion in awarding Father sole legal and primary physical custody of Child. Indiana Code section 31-17-2-8 provides as follows:

> The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no 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 parent or 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 parent or parents;
>
> (B) the child's sibling; and

(C) any other person who may significantly affect the child's best interests.

(5) The child's adjustment to the child's:

(A) home;

(B) school; and

(C) 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 8.5(b) of this chapter.

(9) A designation in a power of attorney of:

(A) the child's parent; or

(B) a person found to be a de facto custodian of the child.

[9] In cases where a modification of custody is sought, the following also applies:

(a) The court may not modify a child custody order unless:

(1) the modification is in the best interests of the child; and

(2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 […] of this chapter.

(b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

(c) The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 […] of this chapter.

Ind. Code § 31-17-2-21.

[10] "A change in circumstances must be judged in the context of the whole environment, and the effect on the child is what renders a change substantial or inconsequential." *In re Marriage of Sutton*, 16 N.E.3d 481, 485 (Ind. Ct. App. 2014). While the trial court must consider all the factors listed in Ind. Code section 31-17-2-8, it only has to find one substantial change in the factors to warrant a modification of custody. *Kanach v. Rogers*, 742 N.E.2d 987, 989 (Ind. Ct. App. 2001). In general, a custody modification should not be used to punish a parent's noncompliance with a custody order. *Montgomery v. Montgomery*, 59 N.E.3d 343, 350 (Ind. Ct. App. 2016), *trans. denied.* "However, '[i]f one parent can demonstrate that the other has committed misconduct so egregious that it places a child's mental and physical welfare at stake, the trial court may modify the custody order.'" *Id.* (quoting *Maddux v. Maddux*, 40 N.E.3d 971, 979 (Ind. Ct. App. 2015), *trans. denied*).

[11] Finally,

> [a] child custody determination falls within the sound discretion of the trial court, and its determination will not be disturbed on appeal absent a showing of abuse of discretion. *In Re Guardianship of R.B.*, 619 N.E.2d 952, 955 (Ind. Ct. App. 1993). We are reluctant to reverse a trial court's determination concerning child custody unless the determination is clearly erroneous and contrary to the logic and effect of the evidence. *Id.* We do not reweigh evidence nor reassess witness credibility, and we consider only the evidence which supports the trial court's decision. *Wallin v. Wallin*, 668 N.E.2d 259, 261 (Ind. Ct. App. 1996).

Spencer v. Spencer, 684 N.E.2d 500, 501 (Ind. Ct. App. 1997). "[A]ppellate 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." *B.L. v. J.S.*, 59 N.E.3d 253, 259 (Ind. App. 2016) (citations and internal quotations omitted), *trans. denied*.

A. Substantial and Continuing Change in Circumstances

[12] Mother contends that the trial court erred in concluding that there had been a substantial and continuing change in circumstance such that a change in custody was warranted. Mother challenges the trial court's conclusions regarding her interference with Father's parenting time, her fear-inducing and alienating behaviors, her mental-health, and likely future behavior of the parents with regard to Child.

1. Parenting Time

[13] While Mother does not claim that she has no history of impeding Father's exercise of parenting time, she argues that the trial court erred in considering it on the basis that whatever issues may have existed have been resolved. The evidence Mother uses to support this argument is that Father has had regular visitation with Child since August of 2020, or since the trial court found her in willful contempt for denying Father visitation and ordered her incarcerated if she continued to do so. We have little hesitation in rejecting this argument. It is worth remembering that (1) prior to the trial court's contempt finding, Father had not had any visitation with Child for approximately nine months due to Mother's "pattern of behavior clearly intended to frustrate" the trial court's

parenting-time order and (2) the trial court had to threaten Mother with thirty days of incarceration before visitation resumed. Order p. 4. Under the circumstances, we cannot say that the trial court's reliance on Mother's pattern of obstructive behavior as a factor justifying a change in custody is clearly erroneous, even if she has been temporarily deterred by the threat of incarceration.

2. Fear-Inducing and Alienating Behaviors

[14] Mother argues that the trial court erred in relying on evidence of her fear-inducing and alienating behaviors. While Mother does not deny such behavior, she argues that, even if it did occur, it should be disregarded because it has not succeeded in actually causing Child to fear and hate Father. To support this argument, Mother cites to Dr. McIntire's observation that Child does not demonstrate any fear of Father, CASA Heap's observation that Child exhibits no fear of Father or Father's family, and Father's testimony that he generally has a good relationship with Child and that Child shows no signs of fearing him. There is, however, also evidence of Child's frequent outbursts over the years when leaving Mother for visitation with Father, which Mother argues have been caused by separation anxiety.

[15] While it is not disputed that transfers from Mother to Father have greatly distressed Child—and seems reasonable to cite separation anxiety as the cause—it certainly does not follow that none of this has anything to do with Mother's behavior. Dr. McIntire's report includes the following evidence

regarding Mother's alienating behavior, which we believe is worth relating at length:

> [T]he interaction of [Mother's] persecutory ideation and enmeshment with [Child] have resulted in a concerning pattern of behaviors which have alienated [Child] from his father and caused intermittent acute fear of [Father]. [Child] demonstrated vast knowledge of Mother's allegations, dating back to prior to his birth and his infancy which—whether true or not—he never should have known. He has knowledge of the most recent court hearing, including that Mother was sentenced to jail, that this "surprised" Mother, and that the Judge "doesn't listen" to [Mother and her husband]. He repeats claims that he is allergic to Father's pets and that [Father] "won't let" him play soccer, "tricks" him with toys, "is mean," cut his hair and that he had a cut on his eye and "couldn't talk when my mom got me" (all of which Mother alleges occurred following [the] 2017 removal), and that "[Father and Girlfriend] tried to hit my mom on purpose" in a vehicle. He freely reported that his mother told him many of these things, but also that some was revealed "in email to my mom." Whether [Child] actually overhead all of these statements over the years (as Mother claimed) or was told directly by his mother is immaterial, as she is fully responsible to maintain an appropriate boundary with her child, rather than tell and/or expose him to information which induces fear, reduces his ability to feel safe, and undermines his ability to trust others, including but not limited to his father.
>
> Additionally, there is evidence that she made fear-inducing statements to him about this evaluator before he had to spend time with her in Mother's absence. These included that she is "friends with the Judge" who is a "bad Judge" and doesn't "listen to" the Pings, and that she is "bad Linda" who will "trick" him. This set [Child] up for at least discomfort, if not a traumatic experience.
>
> Finally, [Mother] has engaged in a series of actions which convince [Child] he is not safe without her. One example is the

GPS/recording watch which [Child] was to wear on parenting time. Independent of Father's allegation that [Child] was told by [Mother] that it was to keep him safe and he was not to take it off, Mother clearly sent it, continued insistence upon it after being asked not to, and created a situation in which [Child] felt fear and anger when it was taken, such that he subsequently tried to hide the watch. It is likely that her insistence on the watch, as well as reporting to this evaluator that one of her primary issues with [Father] is his alleged "secrecy of where he's taking him," emanate from a real fear that [Father] will steal [Child], despite lack of evidence to support this notion. This also accounts for the Fall Break fiasco which preceded a sharp increase in [Child]'s distress and the end of visits in fall 2019. Sadly Mother's paranoid actions have shaped an identical fear in [Child]. Sending him recently with a whistle recapitulates this lesson. There are multiple reports of [Mother] following [Child] in a vehicle after he has been exchanged to Father or his representative, and evidence that that this happened at least twice: once when she found them on a visit in a friend's apartment and once when, per her own admission, she and her mother-in-law followed [Girlfriend] to her place of work, where her mother-in-law got out of her car, approached [Girlfriend's car], and start[ed] a verbal altercation. Again, these are behaviors that not only upset [Child], but triangulated him into adult conflicts and reinforced a perception that he is in danger. Finally, [Mother]'s efforts "to have long extended good-byes" (per Adult & Child visit logs) were addressed with her in 2017 because this emotional clinging increases [Child]'s distress about separation. Yet even in late 2019 (after Fall Break) Mother had [Child] in her lap in the front seat at exchanges, was cuddling him, and made no effort to remove him from the car or her lap.

Overall, there is a pattern of alienating behaviors which not only undermine [Child]'s relationship with [Father] but cause him fear, distress, and increased dependence on and continued enmeshment with his mother. While her goal is likely to reduce [Child]'s immediate distress and is rooted in fears she truly

> experiences, over time these behaviors have an opposite, greater, and detrimental effect. [Mother] is increasing the likelihood of greater, more enduring stress for [Child], as well as adjustment issues and impairment as he matures.

Ex. Vol. VII pp. 242–43. To the extent that Child suffers from separation anxiety, the trial court was free to infer from the above that Mother's actions are primarily—if not entirely—responsible. The trial court did not err in citing Mother's fear-inducing and alienating behavior as supporting a change in custody.

3. Mother's Mental Health

[16] Mother challenges the trial court's identification of her refusal to address ongoing mental-health issues as a circumstance supporting a change of custody. Mother claims that she is doing all that is necessary to address whatever mental-health issues she might have, which she also seems to characterize as overblown. This challenge is not supported by the record. As far back as September of 2017, clinical psychologist Dr. Janine Miller found that Mother "may present with a paranoid orientation." Appellant's App. Vol. II p. 8. As for Dr. McIntire, she opined in her custody evaluation that

> [Mother] has a lengthy psychiatric history including multiple diagnoses (ADHD, Depression, Panic Disorder, Generalized Anxiety Disorder) and medicinal management of symptoms, but she has refused referrals to therapy. This evaluation and the 2017 report additionally reveal significant levels of chronic paranoia which, while likely characterologically based, may become more severe under acute stress. Finally, she demonstrates themes of somatization including but not limited to stress-related nonepileptiform seizures.

> No professional can retroactively determine if the marital violence Mother reports ever happened, though at least some aspects of her claims are infeasible.
>
> However, there is evidence that her pattern of claiming harm to herself and [Child] since the divorce are typically exaggerated, inconsistent, and/or overtly false; they are rooted in her persecutory ideation and anxiety. While at times she appears to volitionally lie or maneuver circumstances, there is evidence that she believes many of the accusations she has made. There is no evidence across this evaluation that supports her various claims of abuse of [Child] (sexual and physical abuse, neglect, and cruelty) by [Father].

Ex. Vol. VII p. 67. Dr. Krupsaw agreed that Mother's symptoms were consistent with paranoia.

[17] Mother's paranoia is further displayed in her reports to Riley Hospital, the DCS, CASA Heap, and Dr. McIntire. During the custody evaluation, Mother made paranoid accusations when she accused Dr. McIntire of "turning up the thermostat to make her uncomfortable so [Dr. McIntire] could say [Mother] was flushed." Tr. Vol. II p. 112. Mother also stated Dr. McIntire hung "a print in the waiting room to intimidate [Child]." Tr. Vol. II p. 113.

[18] There is also ample evidence that Mother's paranoia has negatively affected Child. Dr. McIntire found that "Mother's paranoid actions have shaped an identical fear in [Child]." Ex. Vol. VI p. 243. Mother's mental-health issues have created an enmeshment between Mother and Child that "creates discomfort, if not distress, for both of them when they must separate." Ex. Vol. VII p. 25. Further, Mother's anxiety "bleeds off onto" Child and creates distress in Child. Tr. Vol. II pp. 120, 211. CASA Heap also expressed concerns

about Mother's mental health. In CASA Heap's opinion, Child's situation has gotten worse since she completed her report in April of 2018. While Child is bonded to Mother and her family, CASA Heap opined that the harm caused to Child by Mother's unaddressed mental-health issues outweighs the bond between them.

[19] Moreover, Mother has repeatedly failed to act upon suggestions from her providers to seek counseling. Dr. McIntire opined that "[u]nfortunately, people who are paranoid are usually not willing to go to therapy because they don't trust anybody. So there is a double bind with trying to get them what they need." Tr. Vol. II pp. 113–14. At the time of the evidentiary hearing in January of 2021, Mother had not engaged in the type of counseling recommended by Dr. McIntire, specifically, "therapy with a doctoral-level clinician who is informed that the purpose of therapy is to address paranoia, separation difficulties, and parental alienation, rather than focus on alleged victimization." Ex. Vol. VII p. 69. Dr. McIntire recommended that the therapist receive and review a copy of the custody evaluation. Dr. McIntire concluded that "changing custody, without reducing the psychopathology that has driven this case, will not eliminate the ongoing psychological harm to [Child.]" Ex. Vol. VII p. 69.

[20] Mother testified that she began seeing Joseph Kowalow to "continue refining myself and to continue seeking peace and promoting peace in a co-parenting relationship and outside[.]" Tr. Vol. III p. 151. Mother, however, had had only one session with Dr. Kowalow as of the date of the hearing, and it had

been the day before. Moreover, Mother had not provided Dr. Kowalow with a copy of Dr. McIntire's report as recommended by Dr. McIntire.

[21] While Mother sought to discredit Dr. McIntire's custody evaluation through the testimony of Drs. Krupsaw and Jenuwine, it is well-settled that "the fact-finder is not required to accept the opinions of experts regarding custody." *Maddux*, 40 N.E.3d at 980 (citing *Clark v. Madden*, 725 N.E.2d 100, 109 (Ind. Ct. App. 2000)). In any event, Dr. Krupsaw found Dr. McIntire's custody evaluation "'to be consistent with current basic professional practices guidelines/standards[.]'" Tr. Vol. III p. 106. As for Dr. Jenuwine, while he raised questions regarding Dr. McIntire's custody evaluation and her methods, he had neither personally examined or evaluated any of the parties nor performed a custody evaluation himself.

[22] Here, the trial court found that Dr. Jenuwine testified "in a manner[] which the Court found to be evasive, condescending, and unconvincing." Order p. 16. Additionally, the trial court found that "Dr. McIntire [had] testified in a straightforward professional manner" and that she had "effectively refuted any and all criticisms and misrepresentations of her work." Order p. 15. As for Dr. Krupsaw's testimony, the trial court found that "in the end, [it] did not substantially refute Dr. McIntire's findings." Order p. 15. Consequently, the record supports the trial court's conclusion that Mother's ongoing and apparently worsening mental-health issues and instability, Mother's refusal to address these issues, and the effect of Mother's unaddressed mental-health

issues on Child are all substantial changes that warrant a modification of custody to Father.

4. The Trial Court's Conclusions Regarding Likely Future Behavior

[23] Finally, Mother challenges the trial court's conclusions that Father is more likely to address Child's health issues and would facilitate a positive relationship with Mother. Although these are, of course, predictions regarding future behavior, Mother argues, without citation to authority, that they cannot be used to justify a custody change. It seems to us, however, that predictions of future behavior will *always* factor into such decisions. The whole point, after all, is to fashion a custody arrangement that will benefit Child moving forward. With this in mind, we conclude that the trial court's findings in this regard have ample support in the record.

[24] As for addressing Child's medical issues, most notably a speech impediment, there is ample evidence to support a conclusion that this is an issue that Mother has not properly acknowledged and that Father would do more to address. Dr. McIntire's report indicates that while Child's "speech and language are obviously impaired [and] a barrier for him and a source of frustration[,]" Mother denies that there is a problem and "has never acknowledged or treated this growing handicap." Ex. Vol. VII. p. 242. In contrast, Child's developmental delay "is an expressed concern of [Father,]" Ex. Vol. VII p. 23, who at one point had set up an evaluation for Child. As it happened, Mother never took Child to the evaluation, afterwards telling Child's pediatrician that he *had* been evaluated and had been found not to need speech therapy. The

trial court did not err in concluding that a change in custody would likely result in Child receiving the medical care he needs for his speech impediment and associated developmental delay.

[25] As for whether Father would facilitate a positive relationship with Mother, there is ample evidence to support that conclusion as well. Mother's history of alienating behavior has already been discussed. In contrast, Dr. McIntire testified that throughout her entire evaluation she had not found any evidence that Father had ever told Child inappropriate things about the litigation between Father and Mother and that she had not witnessed any behaviors from Father that would lead her to believe that Father would not encourage a relationship between Child and Mother. CASA Heap described Father as a "kind, stable parent" who is loving toward Child. Tr. Vol. II. p. 186.

[26] We have explicitly endorsed the principle that "[p]ast behavior is a valid predictor for future conduct" in at least one custody case, *Arms v. Arms*, 803 N.E.2d 1201, 1210 (Ind. Ct. App. 2004), and we do so here. With this in mind, we cannot say that the trial court erred in taking Mother's and Father's past behavior into account here. We conclude that the trial court did not err in making a finding of substantial and continuing change in circumstances warranting a change in custody. In the end, much of Mother's argument on

this point amounts to nothing more than an invitation to reweigh the evidence, which we will not do. *See Spencer*, 684 N.E.2d at 501.[1]

B. The Effect of Cause No. CT-122 on This Litigation

[27] Mother argues that awarding Father custody of Child would be to allow him to benefit from his own wrongdoing, specifically the actions that led to the civil judgment in favor of Mother against Father and Girlfriend in Cause No. CT-122. "Actions for and incidental to divorce are essentially equitable in nature." *Pierce v. Pierce*, 620 N.E.2d 726, 731 n.3 (Ind. Ct. App. 1993). "Equity dictates that a right cannot arise to anyone out of his or her wrong." *Id.* Accordingly, "[a] parent may not sow seeds of discord and reap improved custody rights." *Id.* at 731. "When a parent requests a modification of custody, the substantial change in circumstances cannot be the result of that parent's misconduct with regard to custody." *Meade v. Levett*, 671 N.E.2d 1172, 1177 (Ind. Ct. App. 1996).

[28] The trial court drew the following conclusions regarding the litigation in Cause No. CT-122:

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[1] Mother also argues that the trial court erred in concluding that a change in custody was in Child's best interests. We see nothing in this argument to distinguish it from her argument regarding the trial court's finding that there was a substantial and continuing change warranting a change in custody, as it consists entirely of Mother's challenges to the evidence she challenged in this section and further invitations to reweigh evidence in her favor. Put another way, the same evidence that supports that trial court's conclusion that a change in custody is warranted supports a conclusion that a change in custody is in Child's best interests. Because this ground has been adequately covered, we do not address it again in a separate section of this memorandum decision.

> The Court does find the independent finder of fact's Judgment in [Cause No. CT-122] informative as to the matters before this Court.
>
> The Court does not believe that the jury's conclusion in that independent matter mandates a particular result in this case. Rather, it is a factor to be considered, in light of all the evidence.

Order p. 18.

[29] We agree with the trial court's observation that the judgment in Cause No. CT-122 does not require a particular result in this case. At most, the result of that case establishes nothing more than that Father and Girlfriend knowingly made one false report against Mother.[2] While we certainly do not condone such behavior, the trial court correctly viewed the false report as a factor to be considered in light of the entirety of the evidence before it. That evidence paints a picture of an extremely contentious custody battle in which, unfortunately, both sides have leveled what the trial court found to be false allegations of abuse against the other, among many other things. In light of this, and the entirety of the other evidence (which has already been discussed in detail), we cannot say that the trial court abused its discretion in concluding that Father and Girlfriend's one false report did not require it to deny Father's petition for a change of custody.

[2] The record contains evidence of false allegations of abuse by Mother in February of 2017 that resulted in the temporary suspension of Father's parenting time.

II. Attorney's Fees

[30] A trial court may award reasonable attorney fees in a dissolution matter pursuant to Indiana Code § 31-17-7-1. "When making such an award, the trial court must consider the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and to earn adequate income and other factors that bear on the reasonableness of the award." *Hanson v. Spolnik*, 685 N.E.2d 71, 80 (Ind. Ct. App. 1997) (citing *In re the Marriage of Lewis*, 638 N.E.2d 859, 861 (Ind. Ct. App. 1994)), *trans. denied*. "Additionally, misconduct that directly results in additional litigation expenses may be properly taken into account in the trial court's decision to award attorney's fees." *Id.* Reversal of an award of attorney fees is proper only where the trial court's award is clearly against the logic and effect of the facts and circumstances before the court. *In re Marriage of Julie C.*, 924 N.E.2d 1249, 1261 (Ind. Ct. App. 2010) (citing *Claypool v. Claypool*, 712 N.E.2d 1104, 1110 (Ind. App. 1999), *trans. denied*).

[31] The trial court made the following findings regarding the award of attorney's fees to Father:

> 106. the award of attorney fees to Father is reasonable, given the nature of the litigation, the conduct of the parties, Mother's unreasonable attempts to limit Father's parenting time, the shear [*sic*] volume of the pleadings in the matter, and the number and length of the hearings to date. The $9,000.00 awarded represents less than 1/8 of the amount paid by Mother to only one of her four attorneys, which strikes the Court as a fair measure of reasonableness.

> 107. Mother's 2019 tax return reflects her family gross income to be $122,860.00. While the Court does not consider her spouse's income in determining the award of attorney fees, the Court does consider that her husband supports her and that Mother is voluntarily unemployed. Petitioner previously operated her own business, which she later sold. She is capable of gainful employment. Her financial circumstances simply allow her not to have to work.

Appellant's App. Vol. II p. 69.

[32] We cannot say that the trial court abused its discretion in awarding Father $9000.00 in attorney's fees. The trial court was entitled to conclude that Father's decision to further litigate by moving for a change of custody was essentially forced upon him by Mother's interference with his parenting time, which had not occurred for approximately nine months when Father filed. Under the circumstances, it is reasonable to infer that Father moved for a change of custody because he feared he might not see Child again for quite some time—if ever—if he did not. Moreover, the evidence regarding Mother's resources indicate that she is well able to pay the award, with her husband supporting her and earning over $120,000.00 per year and the large amounts she has spent on her own representation. Consequently, we conclude that the trial court's award of $9000.00 in attorney's fees was not unreasonable given Mother's available resources, the income of her husband, Mother's actions which increased the cost of litigation, and Mother's ability to be gainfully employed.

Conclusion

[33] We conclude that the trial court did not abuse its discretion in awarding sole legal and primary physical custody of Child to Father. We further conclude that the trial court did not abuse its discretion in awarding Father $9000.00 in attorney's fees.

[34] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.