## MEMORANDUM DECISION




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# IN THE
# COURT OF APPEALS OF INDIANA

Megan Risedorph,
*Appellant-Respondent,*

v.

Ryan J. Risedorph,
*Appellee-Petitioner.*

February 17, 2021

Court of Appeals Case No. 20A-DR-1501

Appeal from the Noble Circuit Court

The Honorable Michael J. Kramer, Judge

Trial Court Cause No. 57C01-1609-DR-149

**Najam, Judge.**

## Statement of the Case

[1] Megan Risedorph ("Mother") appeals the trial court's order granting a petition filed by Ryan Risedorph ("Father") to modify custody of the parties' two minor children. Mother presents two issues for our review:

1. Whether the trial court abused its discretion when it granted Mother's counsel's motion to withdraw her appearance on behalf of Mother.

2. Whether the trial court abused its discretion when it granted Father's petition to modify custody.

[2] We affirm.

## Facts and Procedural History

[3] Father and Mother were married and have two children together, R.R. and C.R. ("the Children"). In September 2016, Father filed a petition for dissolution of the marriage, and the trial court entered a final decree of dissolution in July 2017. In the decree, the court granted physical custody of the Children to Mother with parenting time to Father.[1]

[4] On August 21, 2019, Father filed a petition for modification of custody, parenting time, and child support. The trial court scheduled a hearing on Father's petition for July 1, 2020. The day before the scheduled hearing, on

[1] The parties do not state, and the record does not reveal, who had legal custody under the decree.

June 30, Mother's counsel filed a motion to withdraw, which the trial court granted the same day. And on July 1, the trial court continued the hearing on Father's petition to July 16.

[5] At the hearing on July 16, Mother appeared pro se and Father appeared with counsel. In support of his petition, Father testified that Mother had moved "more than a handful of times, probabl[y] eight to twelve times" since their divorce in 2017 and that she routinely had trouble "getting [the Children] to school regularly or on time and the[ir] consistency just fell apart." Tr. Vol. 2 at 47, 76.

[6] In addition, C.R.'s teacher, Holly Edwards, testified that C.R. was "behind in reading and some social skills" and had an Individualized Education Program ("IEP") that required C.R. to receive assistance from a special education teacher "mainly [for help with] reading." *Id.* at 7. Edwards testified that C.R. is a child "who need[s] . . . order[,]" and she agreed that it is "important for [C.R.] to be at school on a regular basis." *Id.* Father presented evidence that C.R. had seven tardies and eight absences during the 2019-2020 school year. R.R.'s preschool teacher, Martha Walker, testified that R.R. had more than thirty absences during the 2019-2020 school year; that R.R. had regressed since first starting at daycare; and that she "was a little below in some of the areas that she could benefit more if she came [to daycare] more regularly." *Id.* at 22-23.

[7] During the hearing, Mother cross-examined Father's witnesses, made objections, presented a witness of her own, and submitted exhibits. At the conclusion of the hearing, the trial court stated that Mother had done "one of the best jobs as far as somebody representing themselves." *Id.* at 130. Nonetheless, the trial court granted Father's petition and awarded him sole legal and primary physical custody of the Children, with parenting time to Mother pursuant to the Indiana Parenting Time Guidelines. In its written order, the court found that there was a "substantial change in one or more factors under Indiana Code [Section] 31-17-2-8 since the prior Order of this Court" and that it was in "the best interests of the minor children to modify custody" to Father. Appellant's App. Vol. 2 at 16. This appeal ensued.

## Discussion and Decision

### *Issue One: Motion to Withdraw*

[8] Mother first contends that the trial court abused its discretion when it granted her counsel's motion to withdraw the day before the hearing on Father's petition to modify custody. We review a trial court's decision to grant or deny a motion to withdraw representation for an abuse of discretion. *F.M. v. N.B.*, 979 N.E.2d 1036, 1039 (Ind. Ct. App. 2012). "A trial court abuses its discretion when it reaches a conclusion which is clearly against the logic and effect of the facts or the reasonable and probable deductions which may be drawn therefrom." *Id.*

[9] Mother asserts that her counsel did not provide advance notice to Mother of her motion to withdraw. Indiana Rule of Trial Procedure 3.1(H) states in relevant part that "[a]n attorney representing a party may file a motion to withdraw representation of the party upon a showing that the attorney has sent *written notice of intent to withdraw to the party at least ten (10) days before filing a motion to withdraw representation* . . . ." (Emphasis added.) Noble County Local Rule LR57-TR 3.1-2(A) also provides in relevant part that counsel must provide her client with ten days' notice of a motion to withdraw.

[10] On appeal, Mother asserts that, because her counsel did not give Mother any advance notice of her last-minute motion to withdraw, the trial court's grant of the motion violated both the trial rule and the local rule and that she was "substantially prejudiced" by that decision. Appellant's Br. at 16. However, Mother does not cite any evidence in the record on appeal to support her bare assertion that she did not have the requisite notice of her counsel's intent to withdraw.[2] Accordingly, Mother has not satisfied her burden on appeal.

[11] In any event, because the trial court continued the July 1 hearing to July 16, the alleged lack of notice did not ultimately prejudice Mother's ability to prepare for the hearing. Mother did not move for a continuance, but she came to the

[2] Mother asserts that her counsel admitted to the lack of notice in counsel's motion to withdraw, but Mother has not included that motion in her appendix on appeal.

hearing prepared to represent herself.[3] Mother submitted exhibits, presented a witness, testified on her own behalf, and cross-examined Father's witnesses. And Mother makes no contention on appeal that she tried but was unable to find new counsel prior to the July 16 hearing.

[12] In sum, Mother has not satisfied her burden on appeal to show that she was denied the requisite notice for her counsel's motion to withdraw. And Mother has not shown that she was prejudiced by the trial court's grant of that motion. We hold that Mother has not shown reversible error as a result of the trial court's grant of Mother's counsel's motion to withdraw.

### *Issue Two: Modification of Custody*

[13] Mother next contends that the trial court abused its discretion when it granted Father's petition to modify custody and awarded him sole legal and primary physical custody of the Children. We review custody modifications for an abuse of discretion. *Kirk v. Kirk*, 770 N.E.2d 304, 306 (Ind. 2002). Further, as our Supreme Court has stated,

> there is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. 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. On appeal it is not

[3] As Father points out, Mother had previously appeared pro se at a hearing and moved for a continuance, so she was well aware of that option when she appeared at the July 16 hearing.

> 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. Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

*Steele-Giri v. Steele* (*In re Marriage of Steele-Giri*), 51 N.E.3d 119, 124 (Ind. 2016).

[14] Indiana Code Sections 31-17-2-8 and -21 (2020) provide that a trial court may modify custody if there has been a substantial change in any one of a number of statutory factors, including the interaction and interrelationship of the child with his parents or other family members; the child's adjustment to his home, school, and community; the mental and physical health of all individuals involved; evidence of a pattern of domestic or family violence; and the child's own wishes. "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." *Baker v. Sutton* (*In re Marriage of Sutton*), 16 N.E.3d 481, 485 (Ind. Ct. App. 2014) (brackets and quotation marks omitted).

[15] Mother maintains that the trial court abused its discretion when it modified custody because "the trial court focused solely on [the] children's alleged lack of consistency with attending school and day care, to the exclusion of all other relevant best interests factors." Appellant's Br. at 22. In particular, Mother asserts that the court disregarded the Children's young ages, Mother's strong desire to maintain physical custody of the Children, the Children's relationships with Mother's husband and his extended family, and Father's alleged domestic abuse against Mother.

[16] In support of her contentions on this issue, Mother cites *Green v. Green*, 843 N.E.2d 23 (Ind. Ct. App. 2006). In *Green*, a father appealed the trial court's denial of his petition to modify custody of his child. There, as here, the trial court did not issue findings and conclusions in its order. We held that we could not "be certain as to which of the section 8 factors the trial court considered important" and that the trial court "appear[ed] not to have considered several factors that, taken together," supported modification of custody. *Id.* at 27-28. Thus, we remanded to the trial court "for an evaluation of the evidence that fully considers those factors in determining whether modification is in the best interests of this child." *Id.* at 28.

[17] Mother's reliance on *Green* is misplaced. Here, in contrast to *Green*, there is no evidence that the trial court ignored the relevant statutory factors. *See Milcherska v. Hoerstman*, 56 N.E.3d 634, 641 (Ind. Ct. App. 2016). And the court made clear the factors it considered important by its comments at the conclusion of the hearing on Father's petition. In particular, the court stated that the Children needed consistency that Mother had not provided them, and the court expressed concern that C.R.'s frequent absences from school were detrimental to his well-being. Thus, the court's findings considered and addressed the Children's best interests, and those findings are supported by the evidence.

[18] Further, as this Court has observed, while a trial court must "consider" the Section 8 factors, *Kanach v. Rogers*, 742 N.E.2d 987, 989 (Ind. Ct. App. 2001), it need only find a substantial change in one of the factors to modify custody, I.C.

§ 31-17-2-21. Additionally, trial courts are not required to make special findings of fact in cases involving modification of custody. *Kanach*, 742 N.E.2d at 989. Again, there is no indication here that the trial court did not consider all the relevant factors, and, in fact, the trial court stated it had "consider[ed] all the evidence that[ had] been presented." Tr. Vol. 2 at 131.

[19] The trial court's order includes the required finding of a substantial change in circumstances. Mother's contentions on appeal amount to a request that we reweigh the evidence, which we cannot do. We hold that the trial court did not abuse its discretion when it granted Father's petition to modify custody.

[20] Affirmed.

Riley, J., and Crone, J., concur.