

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Justin R. Key
Goldberg Simpson
Jeffersonville, Indiana

ATTORNEY FOR APPELLEE

Rebecca L. Lockard
Jeffersonville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Elizabeth Baumgardner,
Appellant-Petitioner,

v.

Melissa Jenkins, et al,
Appellee-Intervening Party.

March 10, 2021

Court of Appeals Case No.
20A-GU-1607

Appeal from the Clark Circuit
Court

The Honorable Vicki L.
Carmichael, Judge

Trial Court Cause No.
10C04-1811-GU-177

Pyle, Judge.

Statement of the Case

- [1] Elizabeth Baumgardner (“Baumgardner”) appeals the trial court’s order removing her as the guardian of eight-year-old B.W. (“B.W.”) and appointing

B.W.’s paternal grandmother, Melissa Jenkins (“Paternal Grandmother”), as a successor guardian. Baumgardner specifically argues that the trial court abused its discretion when it removed her as B.W.’s guardian and appointed Paternal Grandmother as B.W.’s successor guardian. Concluding that the trial court did not abuse its discretion, we affirm the trial court’s judgment.

[2] We affirm.

Issue

The sole issue for our review is whether the trial court abused its discretion when it removed Baumgardner as B.W.’s guardian and appointed Paternal Grandmother as B.W.’s successor guardian.

Facts

[3] B.W. was born in August 2012. He lived with Paternal Grandmother until the spring of 2018, when B.W.’s father (“Father”) and B.W. moved in with Father’s sister (“Paternal Aunt”), her children, and her boyfriend. At some point, Father and B.W. apparently moved in with Baumgardner.

[4] In November 2018, Baumgardner filed a petition asking the trial court to appoint her as B.W.’s temporary and permanent guardian. According to the petition, Father had consented to a temporary guardianship. Also in the petition, Baumgardner, who identified herself as B.W.’s maternal great-aunt, alleged that she was “essentially [B.W.’s] grandmother” because she had “raised” B.W.’s biological mother (“Mother”). (App. Vol. 2 at 15). Baumgardner further alleged that she was the only individual who could

provide a stable environment and adequate financial support for B.W. because both of B.W.'s parents were homeless, active drug users who were "not fit to maintain custody" of B.W. (App. Vol. 2 at 16). In the petition, Baumgardner listed Father and Mother as the persons most closely related to B.W.

Baumgardner's petition did not mention Paternal Grandmother or the fact that B.W. had lived with Paternal Grandmother for the first five years of his life.

[5] In January 2019, following a hearing, the trial court issued an order appointing Baumgardner as B.W.'s temporary guardian. Two months later, following another hearing, the trial court issued an order appointing Baumgardner as B.W.'s permanent guardian. At some point, Baumgardner "remov[ed] [Father] from her residence[.]" (App. Vol. 2 at 29). Beginning in July 2019, Baumgardner refused to allow Father's family, including Paternal Grandmother, Paternal Aunt, and B.W.'s cousins, to have contact with B.W. In addition, Baumgardner moved B.W. to a new school.

[6] It appears that Paternal Grandmother attempted to see B.W. several times during the summer of 2019. During one of these attempts, Paternal Grandmother went to Baumgardner's house and asked to see B.W. When Baumgardner told Paternal Grandmother that she would not allow her to see B.W., Paternal Grandmother refused to leave. Baumgardner then called the police and "had [Paternal Grandmother] arrested for stalking." (Tr. Vol. 2 at 42). At some point, the trial court apparently issued a no-contact order prohibiting Paternal Grandmother from being within 500 feet of Baumgardner.

[7] In March 2020, Paternal Grandmother filed petitions asking the trial court to remove Baumgardner as B.W.’s guardian and to appoint her as B.W.’s successor guardian. In the petitions, Paternal Grandmother alleged that Baumgardner had refused to allow Father’s family to contact B.W. since July 2019. The petition further alleged that B.W. and his paternal cousin had previously attended the same school and that Baumgardner had changed B.W.’s school “to continue her attempt to cut his [paternal] family out of his life[.]” (App. Vol. 2 at 41). Lastly, the petition alleged that it was in B.W.’s “best interests for . . . Baumgardner to be removed from her position as” B.W.’s guardian. (App. Vol. 2 at 41). Both Mother and Father requested in writing that the trial court remove Baumgardner as B.W.’s guardian and appoint Paternal Grandmother as B.W.’s successor guardian.

[8] Also in March 2020, Paternal Grandmother filed a motion asking the trial court to order Baumgardner and Paternal Grandmother to participate in mediation. The trial court granted Paternal Grandmother’s motion, and the parties met in May 2020. At the end of May 2020, the trial court approved the parties’ mediation agreement. The agreement, which did not resolve the parties’ outstanding issues, provided that Baumgardner would ask B.W.’s therapist, psychologist Dr. Lucinda Woodward (“Dr. Woodward”), to begin therapeutic sessions with Paternal Grandmother and B.W. The agreement further provided that Baumgardner would also ask Dr. Woodward to include other paternal relatives in the therapeutic sessions.

- [9] In July 2020, one year after Paternal Grandmother had last been allowed to visit B.W., Dr. Woodward facilitated a visit between Paternal Grandmother and B.W. B.W.'s paternal cousins also attended the visit. According to Paternal Grandmother, B.W. was "very happy to see his family" and "when it was time to go [B.W.] wasn't ready to go." (Tr. Vol. 2 at 11).
- [10] The following visit was scheduled for B.W.'s birthday party. However, after Paternal Grandmother spoke with an individual at the prosecutor's office and learned that she "could get locked up" for violating the no-contact order if Baumgardner was at the party, Paternal Grandmother chose not to attend the party. (Tr. Vol. 2 at 17).
- [11] The trial court judge, who had previously granted Baumgardner's petitions for temporary and permanent guardianship of B.W., presided over the hearing on Paternal Grandmother's petitions in August 2020. Paternal Grandmother testified that she and B.W. had been "very close before all this [had] happened" and that B.W. had "looked at [Paternal Grandmother] as his second mother." (Tr. Vol. 2 at 10).
- [12] Also at the hearing, Dr. Woodward testified that she had met with B.W. every two weeks for the past year. When Dr. Woodward referred to Baumgardner as B.W.'s "grandmother," Paternal Grandmother's counsel pointed out that Baumgardner was not B.W.'s grandmother. (Tr. Vol. 2 at 27). Rather, according to counsel, Baumgardner was Mother's third cousin. Dr. Woodward testified that she had concerns about the removal of Baumgardner as B.W.'s

guardian and the appointment of Paternal Grandmother as a successor guardian. However, Dr. Woodward acknowledged that it “seemed important to [B.W.] to maintain contact with [Father’s] side of the family.” (Tr. Vol. 2 at 34).

[13] Baumgardner also testified at the hearing. She admitted that she was Mother’s cousin and not B.W.’s great-aunt or grandmother. Baumgardner denied that the purpose of changing B.W.’s school was to further separate him from his paternal relatives. However, she admitted that she had “cut [B.W.] off from all of the family that he had ever known.” (Tr. Vol. 2 at 74).

[14] One week after the hearing, the trial court issued a detailed seven-page order granting Paternal Grandmother’s petitions to remove Baumgardner as B.W.’s guardian and to appoint Paternal Grandmother as a successor guardian. In reaching its decision to remove Baumgardner as B.W.’s guardian, the trial court applied guardianship and personal representative statutes, *see* IND. CODE §§ 29-3-12-4 and 29-1-10-6, as well as the statutory factors used to determine the child’s best interests in child custody cases. *See* IND. CODE §§ 31-14-13-2. The trial court’s order specifically provides, in relevant part, as follows:

10. Indiana courts have not addressed this specific set of facts – a non-relative versus a paternal grandparent. The cases of non-parent versus parent, though, are instructive as are cases involving termination of guardianships.

* * * * *

21. In this case, the Court finds [Baumgardner] has seriously undermined [B.W.’s] relationship with [P]aternal

[G]randmother, with whom he lived for the first five years of his life; and with [P]aternal [A]unt and cousins, with whom he lived for approximately a year before the guardianship was granted.

22. [B.W.'s] parents have also been cut out of his life. And, while they still believe guardianship is necessary, they no longer find [Baumgardner] to be appropriate. They have asked the Court to remove her and appoint [P]aternal [G]randmother as the successor guardian.

23. The Court may remove a guardian who has been unsuitable or incapable of performing guardianship duties. In determining the best interests of a child, the Court must consider the wishes of the parents; the relationship of the child with any other person affecting his best interest; and the child's adjustment to home, school and community.

24. Clearly, the parents wish to have [Baumgardner] removed and [P]aternal [G]randmother appointed as successor guardian[.] While Father in 2018 believed [Baumgardner] was appropriate, he no longer believes so. [Mother] failed to appear at the hearing when [Baumgardner] was appointed; however, she now believes [Baumgardner] should be removed[.]

25. [P]aternal [G]randmother had a significant relationship with [B.W.] prior to the guardianship as the child (and the father) lived with her from his birth until he was five years of age. The child then lived with the paternal aunt and [Paternal] [G]randmother's relationship with the child continued during that time period. It was not until July 2019 that [Paternal] [G]randmother was denied access to [B.W.] by [Baumgardner].

26. Dr. Woodward testified [that B.W.] was doing well with [Baumgardner] and she would have concern if he was removed from [Baumgardner's] home and was placed with [Paternal] [G]randmother[.] [B.W.] has apparently adjusted to his current home.

27. The Court is most concerned with the fact [that Baumgardner] cut off all contact with [B.W.'s] [paternal] family soon after the guardianship was granted. She also sought a protective order against [P]aternal [G]randmother, which was ultimately dismissed. However, [P]aternal [G]randmother is now facing stalking charges against [Baumgardner], and a no contact order was issued in that criminal case. This Court is not minimizing [P]aternal [G]randmother's conduct, which resulted in her arrest and criminal charges being filed. However, a review of the case reveals [P]aternal [G]randmother was attempting to see [B.W.] after [Baumgardner] cut off contact. She obviously should have gone through the court process she is now going through rather than engage in behavior that resulted in criminal charges.

28. Given the fact that parents have requested the Court to remove the current guardian; given the fact [that B.W.] lived with the paternal grandmother for the first five years of his life; and given the fact [that] [Baumgardner] has undermined [B.W.'s] relationship with [paternal] family members, this Court finds that [Paternal Grandmother's] Petition to Remove Guardian and Petition to Appoint Successor Guardian should be and are hereby GRANTED.

(App. Vol. 2 at 55, 57-59).

[15] Baumgardner now appeals.

Decision

[16] Baumgardner argues that the trial court abused its discretion when it removed her as B.W.'s guardian and appointed Paternal Grandmother as B.W.'s successor guardian. We disagree.

[17] Guardianship proceedings are guided by statute. *In re Guardianship of M.N.S.*, 23 N.E.3d 759, 765-66 (Ind. Ct. App. 2014). INDIANA CODE § 29-3-12-4(a) provides, in relevant part, that the trial court may “remove a guardian . . . on petition of . . . any person interested in the guardianship, after notice and hearing, on the same grounds and in the same manner as is provided under IC 29-1-10-6 for the removal of a personal representative.” INDIANA CODE § 29-3-12-4(b) further provides that “[i]f the appointment of a successor guardian is required, the court shall appoint a qualified successor guardian[.]” In addition, INDIANA CODE § 29-1-10-6(b) provides, in relevant part, that “[w]hen the personal representative becomes . . . unsuitable . . . , the court may remove the representative[.]” ““The statute governing the proceedings for the removal of a guardian vests broad discretion in the trial court, and the appellate court will not interfere unless an abuse of discretion clearly appears.”” *Meranda v. Spaw*, 139 N.E.3d 1094, 1097 (Ind. Ct. App. 2019) (quoting *Carr v. Carr*, 685 N.E.2d 92, 97 (Ind. Ct. App. 1997)).

[18] We grant latitude and deference to trial court judges in family law matters. *M.N.S.*, 23 N.E.3d at 765-66. Appellate deference to the determination of trial court judges, especially in family law matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). Because trial courts are tasked with assessing credibility and character through both factual testimony and intuitive discernment, trial judges are in a superior position to ascertain information and apply common sense. *Id.* Therefore, we neither

reweigh the evidence nor reassess witness credibility, and we view the evidence most favorably to the judgment. *Id.*

[19] In determining whether a guardianship should be terminated, we have generally applied a more detailed test than required by the plain language of the statutes discussed above. *See M.N.S.*, 23 N.E.3d at 766. Instead, we have applied a standard similar to the one used in child custody modifications, which takes into account the best interests of the child. *See id.* Specifically, we have required evidence that: (1) there has been a substantial change in one or more of the child custody statute factors; and (2) termination of the guardianship is in the child's best interests. *See id.* (citing INDIANA CODE § 31-14-13-6).¹ We apply that standard in this case.

¹ INDIANA CODE § 31-14-13-6, which relates to a modification of custody in a paternity action, provides as follows:

The court may not modify a child custody order unless: (1) 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 2 . . . of this chapter.

INDIANA CODE § 31-14-13-2 sets forth the following factors:

- (1) The age and sex of the child.
- (2) The wishes of the child's parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parents;
 - (B) the child's siblings; and
 - (C) any other person who may significantly affect the child's best interest.
- (5) The child's adjustment to home, school, and community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter

[20] Here, Baumgardner argues that the trial court abused its discretion in removing her as B.W.’s guardian and appointing Paternal Grandmother as B.W.’s successor guardian. Baumgardner specifically argues that the trial court “engag[ed] in an incorrect and inconsistent analysis on how to resolve this dispute” after it mistakenly “refer[ed] to this dispute as a paternal grandparent against a non-relative[.]” (Baumgardner’s Br. 16).

[21] We agree with Baumgardner that the trial court misclassified her as a non-relative where the evidence revealed that she is Mother’s cousin. However, our review of the evidence and the trial court’s order reveals that the trial court’s misclassification of Baumgardner as a non-relative was not a deciding factor in its decision to remove Baumgardner as B.W.’s guardian.

[22] Indeed, the trial court’s order reveals that the trial court properly applied the relevant guardian and personal representative statutes and concluded that Baumgardner had become an unsuitable guardian. *See* IND. CODE §§ 29-3-12-4(a) and 29-1-10-6(b). Thereafter, the trial court properly applied the statutory child custody factors and concluded that there had been a substantial change in one of the child custody modification factors and that the removal of Baumgardner as B.W.’s guardian was in B.W.’s best interests. Specifically, the trial court concluded that there had been a substantial change in the wishes of B.W.’s parents. *See* IND. CODE 31-14-13-2(2). The trial court further concluded that removing Baumgardner as B.W.’s guardian was in B.W.’s best interests because Baumgardner had undermined B.W.’s relationship with his paternal family members and had not allowed B.W. to see Paternal Grandmother with

whom he had lived for the first five years of his life. The trial court's decision is not clearly against the logic and effect of the facts and circumstances before it. Accordingly, we find no abuse of the trial court's discretion.²

[23] Affirmed.

Vaidik, J., and Brown, J., concur.

² Baumgardner argues that the trial court “fail[ed] to acknowledge [Dr. Woodward’s] professional insight[.]” (Baumgardner’s Br. 20). However, we note that the trial court’s order acknowledges that “Dr. Woodward testified [B.W.] was doing well with [Baumgardner] and would have concern if he was removed from [Baumgardner’s] home and placed with [Paternal] [G]randmother.” (App. Vol. 2 at 58). Immediately thereafter, the trial court’s order states that the trial court was “most concerned with the fact [Baumgardner] [had] cut off *all* contact with [B.W.’s] [paternal] family soon after the guardianship was granted.” (App. Vol. 2 at 58) (emphasis added). Baumgardner’s argument is a request that we reweigh the evidence, which we do not do. *See Best*, 941 N.E.2d at 502.