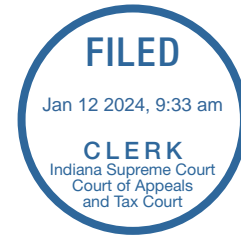


# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

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Marques Bennett,  
*Appellant-Respondent,*

v.

Holly Wegeng,  
*Appellee-Petitioner*

January 12, 2024

Court of Appeals Case No.  
23A-JP-1162

Appeal from the Boone Circuit  
Court

The Honorable Lori N.  
Schein, Judge

Trial Court Cause No.  
06C01-1409-JP-286

**Memorandum Decision by Judge Crone**  
Judges Riley and Mathias concur.

**Crone, Judge.**

## **Case Summary**

- [1] Marques Bennett (Father) appeals the trial court’s order suspending his parenting time. He claims that the restriction of his parenting time lacks the required statutory finding and is unsupported by sufficient evidence. We conclude that Father agreed to the restriction of his parenting time and therefore the statutory finding is not required. We also conclude that sufficient evidence supports the court’s order. Accordingly, we affirm.

## **Facts and Procedural History**

- [2] Father and Holly Wegeng (Mother) have one child, M.B. (Child), born in May 2014. Father’s paternity was established, and Mother was awarded primary physical custody. In May 2019, the trial court approved the first of several agreed entries that have focused on providing Father with parenting time if he can demonstrate his sobriety. Pursuant to this agreed entry, Father’s parenting time was contingent upon his successful participation in the Soberlink Program. After one year of Father’s activating and using the Soberlink breath-testing device, he would be entitled to parenting time pursuant to the Indiana Parenting Time Guidelines (IPTG). If Father failed any Soberlink test or failed to take a test as required, then his parenting time would be suspended and he would be required to participate in an inpatient alcohol addiction program.
- [3] In November 2021, Father filed a petition to reestablish parenting time, seeking to have contact with Child “by telephone, Facetime, and other such modes of communication.” Appellant’s App. Vol. 2 at 35. The trial court approved the

parties' partial agreed entry in December 2021, pursuant to which Father again agreed to participate in the Soberlink Program. The parties agreed that Father would have phone or video conference communication with Child three times a week if Father had no alcohol in his system at the time. However, if Father had a positive test for alcohol or missed a test, or if Soberlink determined that Father tampered with the Soberlink device, then Father was prohibited from having communication with Child that evening.

[4] In January 2022, the trial court approved an agreed entry that indicated that Father had not taken the Soberlink test on Christmas Day 2021 and had missed his Christmas day telephone call. The parties agreed that Father would test with Soberlink three times daily and that Father's noncompliance with the testing requirements would allow Mother to seek modification of the current agreement. This agreed entry contained a nonexhaustive list of behaviors that would be viewed as noncompliant with the Soberlink test requirement. *Id.* at 42.

[5] In July 2022, Mother filed a petition for contempt, and she requested suspension of Father's communication with Child. Mother alleged that "Soberlink confirmed that Father had 90 non-compliant tests due to testing positive or having his identity declined[,]” and Father missed five scheduled tests. *Id.* at 49. Subsequently, the trial court approved an agreed entry (July 2022 Agreed Entry), in which the parties stipulated that Father would be evaluated at Fairbanks, submit to its recommended treatment plan, and continue with Soberlink testing three times a day and thirty minutes before any communication or parenting time. The July 2022 Agreed Entry permitted

Mother to submit information to Fairbanks pertaining to Father's substance abuse. Upon Father's successful completion of Fairbank's recommended treatment, followed by thirty days of compliant Soberlink tests, Father would be entitled to supervised parenting time twice a week for sixty days, after which the parties were to mediate again.

[6] In September 2022, Father filed a motion to enforce the July 2022 Agreed Entry. He alleged that he had complied with that entry and that Fairbanks had not recommended any treatment. Mother filed a response in opposition to his motion asserting that due to conflicting understandings regarding her submissions to Fairbanks, Father's evaluation at Fairbanks was not in conformance with the July 2022 Agreed Entry. Following an evidentiary hearing, the trial court ruled from the bench that Father was to be reassessed by Fairbanks and follow all treatment recommendations. The court also granted Father parenting time with Child via Facetime twice a week if he passed a Soberlink test thirty minutes before the scheduled Facetime. The court advised Father "to conduct the Soberlink test in such a manner as to not create suspicion." *Id.* at 68.

[7] In October 2022, Father completed a second assessment at Fairbanks. He tested positive for nonprescribed amphetamines and marijuana. Fairbanks recommend an Intensive Outpatient Program (IOP). In December, Father filed a petition for Christmas parenting time, asserting that he would complete his IOP on December 19. Mother filed a response opposing Father's petition. The court held a hearing, at which Father testified that he had taken Adderall

without a prescription the day before his second Fairbanks assessment. Father's Fairbanks records were admitted, and they indicated that Father reported a relapse on December 15. Father denied that he had relapsed. Fairbanks's prognosis at the conclusion of Father's IOP was "poor to guarded" and that he had "not developed the nec[essary] foundation to sustain his sobriety long-term." Ex. Vol. 2 at 185. Fairbanks recommended individual therapy, obtaining a sponsor, and attending 12-step meetings. The court denied Father's request for Christmas parenting time.

[8] Following a review hearing in January 2023, the trial court issued an order finding that Father had completed Fairbanks's Level One Program, requiring him to obtain a 10-panel hair follicle drug test, and granting him supervised parenting time at Child's Sunday sporting events if Father abstained from all nonprescribed medications, maintained sobriety, and submitted the hair follicle test results. The court ordered a hearing in March 2023 to review Father's parenting time.

[9] In February 2023, Soberlink's compliance department sent an email to Father and Mother indicating that the integrity of sixty-four tests between January 1 and February 2, 2023, was in question due to Father's suspicious testing behavior.

[10] In March 2023, the trial court held a review hearing. Mother, Father, Soberlink's Director of Operational Compliance Chris Fonseca, and Father's primary care provider Hannah Thornton testified. Thornton testified that she

began treating Father in August 2022. At that time, Father informed Thornton that he had quit using alcohol in June 2021, was not consuming alcohol, and was taking Naltrexone to treat his history of alcohol abuse. Tr. Vol. 3 at 26. Thornton prescribed Lamictal for a “mood disorder.” *Id.* at 27. In October 2022, Thornton prescribed Adderall for ADHD, but she was not aware that Father had tested positive for amphetamines at Fairbanks or that Fairbanks had recommended IOP. In December, Father requested that Thornton refill his prescriptions for Naltrexone, Disulfiram, Adderall, Hydrochlorothiazide, Lexapro, and Lamictal. Thornton refilled his prescriptions but was still unaware of Father’s treatment at Fairbanks. Thornton also testified that she was leaving primary care and would no longer be available to treat Father.

[11] Fonseca testified regarding the suspicious manner in which Father took the Soberlink tests. Fonseca explained that based on the “position of the mouthpiece[,] ”Father could not have been “blowing into it with his own breath.” *Id.* at 56. Fonseca testified that Soberlink could no longer properly supervise Father’s alcohol use because it “really can’t guarantee that any test moving forward or in the past has come from Father’s breath versus something else.” *Id.* at 50. Fonseca recommended the use of regular PEth blood alcohol tests or SCRAM ankle monitoring to measure alcohol in sweat. Photographs taken from January to March 2023 of Father performing the tests were admitted, and Father subsequently performed a test for the trial court to observe. Father submitted the result of a March 8, 2023 PEth blood alcohol test, which was negative for alcohol. Ex. Vol. 3 at 132. However, Father admitted

that there was nothing on that document that indicated that he had not used alcohol for a period of thirty days prior to the specimen being collected.

[12] In May 2023, the trial court issued the appealed order, which provides in relevant part as follows:<sup>1</sup>

1. Father has struggled with alcohol abuse and has been in treatment for same.

2. Due to Father's issues with alcohol, Father had no in-person contact with [Child] for four (4) years.

....

34. Father is not properly taking the Soberlink tests.

35. Soberlink is unable to supervise Father due to Father's continued suspicious behavior related to the Soberlink device.

....

37. If Father desires to have any in person parenting time with his child, Father is ORDERED to obtain and wear an alcohol monitoring device such as a SCRAM ankle monitor.

....

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<sup>1</sup> The appealed order is an amended order granting Mother's motion to correct errors as to financial matters, and the amendments are irrelevant to the issues on appeal.

40. Father shall also go to an addiction specialist and shall provide proof of his attendance at appointments to Mother's counsel.

41. Once Father has obtained the SCRAM type bracelet and set up appointments with an addiction specialist and provided proof of these appointments to Mother's counsel, he may resume attending his child's extracurricular events.

42. At all times, Father's parenting time is contingent upon Father's not drinking any alcohol.

43. Any positive test for alcohol will result in Father forfeiting his in person parenting time for a period of thirty (30) days from the date of the positive test.

Appealed Order at 1-3.<sup>2</sup> This appeal ensued.

## Discussion and Decision

[13] Father argues that the trial court erred in restricting his parenting time. Our trial courts are entitled to latitude and deference in making parenting time decisions, and we will reverse only when the trial court abuses its discretion. *Gomez v. Gomez*, 887 N.E.2d 977, 983 (Ind. Ct. App. 2008). "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or if the court misinterpreted the

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<sup>2</sup> The appealed order includes a finding that Father provided the result of a hair follicle test dated March 14, 2023, which was negative for alcohol. However, the test result dated March 14, 2023, is for Father's PEth blood test. Ex. Vol. 3 at 132. The parties do not discuss Father's results, if any, from a hair follicle test.



law.” *Hazelett v. Hazelett*, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019). “No abuse of discretion occurs if there is a rational basis supporting the trial court’s determination.” *Gomez*, 887 N.E.2d at 983. “Therefore, on appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.” *Duncan v. Duncan*, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006), *trans. denied*. An appellate court is “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.” *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)).

[14] Where, as here, the trial court enters findings sua sponte, “the specific factual findings control only the issues that they cover, and a general judgment standard applies to issues upon which there are no findings.” *Clary-Ghosh v. Ghosh*, 26 N.E.3d 986, 990 (Ind. Ct. App. 2015), *trans. denied*. For issues covered by the findings, we consider “whether the evidence supports the findings, and whether the findings support the judgment.” *G. S. v. H. L.*, 181 N.E.3d 1040, 1043 (Ind. Ct. App. 2022) (quoting *Steele-Giri*, 51 N.E.3d at 123). A general judgment may be affirmed “on any legal theory supported by the evidence.” *In re Snyder*, 26 N.E.3d 996, 998 (Ind. Ct. App. 2015).

[15] “In parenting time disputes, our collective goal in Indiana is to seek an environment in which a child can have a ‘well-founded relationship with each

parent.” *Id.* at 999 (quoting *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013)). Still, “[i]n all parenting time controversies, courts must give foremost consideration to the best interests of the child.” *Hazelett*, 119 N.E.3d at 161. Accordingly, parenting time may be restricted under Indiana Code Section 31-17-4-1, which provides, “[A] parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child’s physical health or significantly impair the child’s emotional development.” “Even though the statute uses the word ‘might,’ this Court has previously interpreted the language to mean that a court may not restrict parenting time unless that parenting time ‘would’ endanger the child’s physical health or emotional development.” *Hatmaker*, 998 N.E.2d at 761.

[16] Father presents two arguments. First, he claims that the “trial court erred in suspending and restricting” his parenting time because the court failed to make the required finding that parenting time would endanger Child’s physical or emotional development. Appellant’s Br. at 11. On this basis, Father seeks reversal of the appealed order and remand for the trial court to make the required finding or remove the requirements that he wear an ankle monitor and go to an addiction specialist.

[17] We do not agree that the suspension and restriction of Father’s parenting time require a finding of endangerment. Significantly, in the July 2022 Agreed Entry, Father agreed that his parenting time would be suspended pending successful treatment of his alcohol dependence and demonstration of his sobriety. Father

then filed a motion to enforce the July 2022 Agreed Entry and a petition for Christmas parenting time. The court held hearings on each of these motions and then review hearings in January and March 2023. As such, the motions, hearings, and orders, including the appealed order, following the July 2022 Agreed Entry, have pertained to implementing the restriction of Father's parenting time that he had agreed to. Thus, the trial court was not required to make a finding of endangerment.<sup>3</sup>

[18] Second, Father asserts that “the trial court’s restriction on [his] parenting time is not supported by the evidence presented.” *Id.* at 13. He claims that there is no evidence that he has an ongoing alcohol abuse problem and that the court clearly erred in finding that he is not properly taking the Soberlink tests. In support, he maintains that all the Soberlink tests were found to be compliant and that he has never been “charged with an alcohol related crime.” *Id.* at 13-14. It is true that Father’s Soberlink records show that “[a] compliant test was received.” Ex. Vol. 3 at 93-97, 100-101. However, the records also show that Soberlink was “unable to confirm whether [Father’s] breath ... generated the

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<sup>3</sup> Father does not cite Indiana Code Section 31-17-4-2, which permits the trial court to modify a parenting time order “whenever modification would serve the best interests of the child[.]” but prohibits the court from restricting “a parent’s parenting time rights unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development.” To the extent that he argues that the trial court impermissibly modified the July 2022 Agreed Entry, he has failed to present a cogent argument and thus has waived this issue for appellate review. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant’s brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal relied on); *In re A.J.*, 146 N.E.3d 1075, 1083 (Ind. Ct. App. 2020) (concluding that appellant waived argument that court erred when it ordered him to pay child support because he failed to support it with cogent reasoning and appropriate citations to the record), *trans. denied*.

breath sample or if the breath sample was generated by an alternative air source.” *Id.* Fonseca also testified that Soberlink was unable to verify Father’s abstinence from alcohol. Further, Father was arrested for driving while intoxicated with Child in March 2017 and pled guilty to reckless driving. Father’s argument is merely a request to reweigh evidence, which we must decline.<sup>4</sup> Based on the foregoing, we affirm the trial court’s order.

[19] Affirmed.

Riley, J., and Mathias, J., concur.

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<sup>4</sup> Father also asserts that “to the extent that the trial court use[d] [his] prescription medicine as grounds for restricting his parenting time, such findings fail to support the restriction imposed.” Appellant’s Br. at 15. Father cites to the entire appealed order and fails to identify any specific findings that he believes the court may have relied on. Father has failed to present a cogent argument and thus has waived this issue. *See* Ind. Appellate Rule 46(A)(8)(a); *A.J.*, 146 N.E.3d at 1083.