

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Amanda Kay Gossman,
Appellant-Respondent,

v.

Kyle Lee Jones,
Appellee-Petitioner

June 2, 2023

Court of Appeals Case No.
22A-DR-2279

Appeal from the Bartholomew
Superior Court

The Honorable James D. Worton,
Judge

Trial Court Cause No.
03D01-1305-DR-2735

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

- [1] Amanda Gossman (Mother) appeals the trial court’s custody modification order granting Kyle Jones (Father) primary physical custody and sole legal custody of their 14-year-old child, A.J. (Child). Finding sufficient evidence that the custody modification was in Child’s best interests and based on a substantial change in circumstances—the occurrence of domestic violence in Mother’s home—we affirm.

Facts

- [2] A year after Child’s birth in 2008, the Bartholomew Superior Court issued a custody order granting Mother and Father joint legal custody of Child, with Mother having primary physical custody and Father having parenting time. Mother now lives in Monroe County with her husband, Christopher Arp. Father lives in Lake County with his wife, identified only as Natalie.
- [3] Mother and Father co-parented Child under the original custody order for 12 years. But in September 2020, Mother sent Child to live with Father because Mother “was going through some things.” Tr., p. 92. According to Father:

[Mother] was having a uh issues with her husband Chris Arp. And um they was having a falling out and they was (sic) she going to file for divorce and bunch of other stuff happened with him and um where there was alcohol involved and violence involved and she had to get a restraining order and um she ended up leaving him for another man . . . and I offered to take [Child]. I said well I will take him until you find out where you are going to go and what you are going to do.

Id. at 7-8. Mother confirmed that Arp was an alcoholic, had threatened to kill her, and on one occasion, put a shotgun to her head.

- [4] Mother reconciled with Arp four months later. Child, however, continued living with Father for two years. Father eventually petitioned to modify custody, which Mother opposed. After a hearing on Father’s petition, the trial court issued a custody modification order granting Father primary physical custody and sole legal custody of Child. Mother was granted parenting time and ordered to pay \$23 per week in child support.

Discussion and Decision

- [5] Mother argues that the trial court erred in awarding Father primary physical custody and sole legal custody of Child. “We review custody modifications for an abuse of discretion with a preference for granting latitude and deference to our trial judges in family law matters.” *Hecht v. Hecht*, 142 N.E.3d 1022, 1028 (Ind. Ct. App. 2020) (internal quotation omitted). “We will not reweigh the evidence or judge the credibility of the witnesses.” *Id.* at 1029. “Rather, we will reverse the trial court’s custody determination only if the decision is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom.” *Id.* (internal quotation omitted).
- [6] Indiana Code § 31-17-2-21(a) prohibits a trial court from modifying 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 . . . or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this

chapter.”¹ Indiana Code § 31-17-2-8 identifies nine factors relevant in determining a child’s best interest, including “[e]vidence of a pattern of domestic or family violence by either parent.” Ind. Code § 31-17-2-8(7).

I. Substantial Change

- [7] The trial court did not clearly err in finding a substantial change in one of the statutory best interest factors. The record reveals a “pattern of domestic violence” in Mother’s home since the court issued its original custody order. Ind. Code § 31-17-2-8(7). Specifically, Arp threatened to kill Mother and, on one occasion, put a shotgun to Mother’s head. As a result, Mother sent Child to live with Father and obtained a restraining order against Arp. Mother, however, rekindled her relationship with Arp only four months later.
- [8] Mother claims that Arp’s acts of domestic violence did not create a substantial change in circumstances because, as Mother testified, there have been “no issues” since Arp quit drinking alcohol. Tr., p. 70. But the trial court was not required to credit Mother’s testimony that Arp has been sober and/or nonviolent since he and Mother reconciled. *See In re E.M.*, 4 N.E.3d 636, 646 (Ind. 2014). The record therefore supports the trial court’s conclusion that a substantial change in circumstances warranted custody modification.

¹ Section 8.5 “only applies if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.” Ind. Code § 31-17-2-8.5(a).

II. Best Interests

A. Physical Custody

- [9] The trial court also did not clearly err in finding that Child's best interests were served by granting Father primary physical custody of Child. Child has lived with Father and attended school in Lake County for the last two years. Child has an established routine in Father's home, where Child is subject to supervision and discipline. Child completes chores at Father's home, including yard work, washing dishes, and taking out the trash. Father is also active in Child's life—the two participate in martial arts together and regularly go on hiking trips in Indiana, Tennessee, and Wisconsin.
- [10] Mother highlights that Child has struggled academically while living with Father. But Father articulated a plan for improving Child's academic performance, including both tutoring and restricting the amount of video games Child plays. Mother also complains that Father took Child off his ADHD medication without first consulting a pediatrician. However, Father testified that Mother agreed with that course of action. We will not reweigh this evidence on appeal. *Hecht v. Hecht*, 142 N.E.3d 1022, 1029 (Ind. Ct. App. 2020).
- [11] Finally, Mother emphasizes that Child would prefer to live with Mother, which the trial court recognized. But the record indicates that Child's preference may be based simply on a lack of supervision and discipline at Mother's home, and "the wishes of the child [are] only one of the many factors the trial court must consider in determining and effecting the best interests of the child." *Stone v.*

Daviess Cnty. Div. of Child. & Fam. Servs., 656 N.E.2d 824, 832 (Ind. Ct. App. 1995). The record, as a whole, supports the trial court’s conclusion that granting Father primary physical custody of Child was in Child’s best interests.

B. Legal Custody

[12] Additionally, the trial court did not clearly err in finding that Child’s best interests were served by granting Father sole legal custody of Child. Mother agrees that joint legal custody was not appropriate given her and Father’s inability to effectively communicate with each other. However, Mother contends she—not Father—should have been granted sole legal custody of Child because Father did not take Child to a pediatrician or dentist during the two years Child lived with Father. Noting that the trial court’s custody modification order specifically requires Father to “ensure that [Child] is properly cared for a by a pediatrician” and to “make sure [Child] receives regular dental care,” App. Vol. II, p. 20, we find no error in the trial court’s decision.

Conclusion

[13] Mindful of the substantial deference we accord our trial courts in family law matters, we cannot say the trial court abused its discretion in modifying custody to grant Father primary physical custody and sole legal custody of Child. We therefore affirm the trial court’s judgment.

Bailey, J., and Brown, J., concur.