MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Ann C. Coriden
Dominic W. Glover
Coriden Glover, LLC
Columbus, Indiana

ATTORNEY FOR APPELLE

Robert D. Wickens
Wickens & Wickens, LLC
Greensburg, Indiana

IN THE COURT OF APPEALS OF INDIANA

Holly M. (Albertson) Hancock,
Appellant-Petitioner,

v.

Aaron D. Albertson,
Appellee-Respondent

March 17, 2021

Court of Appeals Case No. 20A-DR-1595

Appeal from the Bartholomew Superior Court

The Honorable Timothy B. Day, Special Judge

Trial Court Cause No. 03D02-1206-DR-2868

May, Judge.

[1] Holly M. (Albertson) Hancock ("Mother") appeals the trial court's order regarding the custody and support of G.A. ("Child"). Mother presents multiple issues for our review, which we restate as:

> 1. Whether the trial court abused its discretion when it ordered Mother to pay the cost of a custody evaluation;
>
> 2. Whether the trial court abused its discretion when it ordered Mother and Aaron D. Albertson ("Father") to share:
>
> A. joint physical custody of Child, and
>
> B. joint legal custody of Child;
>
> 3. Whether the trial court abused its discretion when it denied Mother's petition to find Father in contempt; and
>
> 4. Whether the trial court erred when its written judgment did not order Father to reimburse pre-existing medical expenses of Child that had been paid from the Health Savings Account ("HSA") of Mother's husband ("Stepfather").

We affirm and remand.

Facts and Procedural History

[2] Child was born to Mother and Father on January 21, 2006. Mother and Father divorced November 14, 2006. At the time of dissolution, Mother and Father agreed Mother would have primary physical and legal custody of Child and

Father would have parenting time in accordance with the Indiana Parenting Time Guidelines. Mother and Father have both remarried.

[3] Mother and Father have spent the majority of Child's life adjudicating proposed relocation, child support, physical custody, and legal custody. In 2011, the State intervened in the matter due to unpaid child support, resulting in the trial court modifying the amount Father was to pay in child support. In 2012, Mother filed a petition to relocate to Hawaii; the trial court ordered that if she did so, Father would be awarded custody of Child. In 2013, Mother filed another petition to relocate and a petition for change of venue. The trial court granted Mother's request for change of venue and appointed a new judge to oversee the case. That judge affirmed the 2012 order granting Mother permission to move to Hawaii, but noting that if she did so, Father would be granted custody of Child. Mother appealed that ruling, and we affirmed the trial court's decision. *H.H. v. A.A.*, 3 N.E.3d 30, 39 (Ind. Ct. App. 2014).

[4] In May 2014, Father filed a petition to modify the income withholding order put in place in 2011 because he had paid the entirety of the arrearage. The trial court granted Father's petition. On January 17, 2017, Father filed a petition to modify custody. After a number of continuances and the appointment of a Guardian ad Litem, the trial court awarded Father primary physical custody and ordered the parties to share legal custody of Child. The trial court also appointed a parenting time coordinator to assist the parties, because they could not communicate effectively. Mother appealed the grant of physical custody to Father but did not appeal the trial court's decision to award joint legal custody

of Child. *H.M.A. v. A.D.A.*, 03A01-1708-DR-1684 at *1 (Ind. Ct. App. December 28, 2017). We affirmed the trial court's decision regarding Child's physical custody. *Id.* at *3.

[5] On February 21, 2019, Father filed a petition to modify custody, asking that the trial court award him sole legal custody because "the parties are unable to communicate and reach agreements" regarding Child's medical care. (App. Vol. II at 40.) Father also asked the trial court to order Mother's parenting time to "be modified to fit in the [sic] with [C]hild's schedule and [C]hild's desires." (*Id.*) On April 24, 2019, Mother filed three items: a counter-petition requesting sole physical and legal custody of Child; a petition for contempt citation against Father, alleging he did not notify her of certain medical appointments and denied her parenting time; and a motion for a court-ordered custody evaluation.

[6] The trial court held a hearing on all pending matters on May 10, 2019. After argument from the parties, the trial court appointed Dr. Jonni Gonzo as custody evaluator and ordered Mother to pay the cost of the custody evaluation. Other issues were continued pending the completion of the custody evaluation. On February 3, 2020, Mother filed a motion for emergency hearing regarding custody because Child had experienced mental health issues. The trial court held a hearing on Mother's motion on February 14, 2020, and determined "there is no emergency." (*Id.* at 52.)

[7] On June 17, 2020, Dr. Gonso filed her report, and the trial court held a hearing on the matter on July 23, 2020. During that hearing, the parties indicated they

had agreed to a modified physical custody schedule wherein Child spent alternating weeks with Mother and then with Father. On July 30, 2020, the trial court held another hearing and discussed its order on pending matters in open court. The trial court ordered parenting time to alternate week by week with no midweek visitation, awarded the parties joint legal custody of Child, ordered Father to reimburse Mother for certain medical expenses paid out of Stepfather's HSA, and declined to find Father in contempt. The trial court entered a written order on August 12, 2020, that included all issues discussed during the July 30, 2020, hearing except the HSA reimbursement issue.

Discussion and Decision

1. Payment for Custody Evaluator

[8] On April 24, 2019, Mother moved for a court-ordered custody evaluation as part of her counter-petition to modify custody of Child. During a hearing on May 10, 2019, Father objected to the appointment of a custody evaluator because Child had already met with a Guardian ad Litem as part of a previous custody-related proceeding and had multiple therapists. The trial court granted Mother's motion for appointment of a custody evaluator and appointed Dr. Gonso based on Mother's recommendation. Mother now appeals the trial court order that she pay the full cost of that evaluation.

[9] When discussing the appointment of Dr. Gonso, Mother testified that she understood "that [she] may very well be ordered to pay the entirety . . . of that feet [sic] [.]" (Tr. Vol. II at 21.) When asked whether the custody evaluation

was "something that [she felt] strong enough about to do that[,]" Mother answered, "[a]bsolutely." (*Id.*) After hearing testimony from the parties, the trial court stated:

> So I'm going to authorize the evaluation. And [Mother's counsel], if you would modify the order that was submitted to me, I will authorize a custody evaluation to be performed by Dr. Gonso. I mean, she appears to be experienced and qualified to do it. I'll require [Mother] to bear the cost of it, because that's her – she's the one requesting it.

(*Id*. at 25.) Mother agreed to pay for the custody evaluation and thus has invited any error. Under the legal doctrine of invited error, a party may not take advantage of an error she commits, invites, or allows to happen as a natural consequence of her own neglect or misconduct. *Batterman v. Bender*, 809 N.E.2d 410, 412 (Ind. Ct. App. 2004). Invited error is not subject to review by this court. *Id*. Accordingly, we decline to review this allegation of error.

2. Modification of Custody

[10] Mother argues the trial court abused its discretion when it granted the parties joint physical and joint legal custody of Child. Our review of a trial court's decision regarding a party's request to modify child custody is well-settled:

> We review custody modifications for abuse of discretion, with a preference for granting latitude and deference to our trial judges in family law matters. In the initial custody determination, both parents are presumed equally entitled to custody, but a petitioner seeking subsequent modification bears the burden of demonstrating that the existing custody should be altered. When

> reviewing a trial court's decision modifying custody, we may not reweigh the evidence or judge the credibility of the witnesses. Instead, we consider only the evidence most favorable to the judgment and any reasonable inferences therefrom.

Julie C. v. Andrew C., 924 N.E.2d 1249, 1256 (Ind. Ct. App. 2010) (internal citations omitted). A court may not modify a prior child custody order unless doing so is in the best interest of the children and there has been "a substantial change in one (1) or more of the factors that the court may consider under section 8 . . . of this chapter." Ind. Code § 31-17-2-21. Indiana Code section 31-17-2-8 provides:

> 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.

A. Joint Physical Custody

[11] Regarding physical custody of Child, the trial court found:

1. The parties shall share joint physical custody of [Child].

a. Parenting time shall alternate week by week, with one parent one week and the other parent the next week.

There will be no mid-week visitation. The parties shall continue to have exchanges on Fridays at 6:00 p.m.

b. The parties shall continue the Holiday parenting schedule in accordance with the Indiana Parenting Time Guidelines (IPTG). Special days such as Christmas shall include only the day, (as opposed to the weekend designated in IPTG) from 9:00 a.m. to 9:00 p.m. Extended Holidays shall be subsumed by the parties' alternating week schedule. For purposes of determining holiday parting time schedule ONLY, the Father shall be designated as custodial and Mother as non-custodial parent.

c. There shall be no Opportunity for Additional Parenting Time, no make-up time, nor any negotiations to changes of parenting time.

d. [Child] shall have four one-day passes per month that will allow her to spend time with the parent who does not have parenting time that week from 9:00 a.m. to 9:00 p.m. Unused passes shall not carry forward to the next month.

e. Each parent can choose a 2-week extended vacation during the Summer. The Mother shall pick this time first in odd-numbered years; the Father shall pick first in even-numbered years. No parent shall have three weeks in a row. The Summer schedule shall be adjusted once both parents have picked their 2-week vacation. The parent picking the 2-week vacation shall inform the other parent in writing by April 1 of that year.

f. Transportation shall be in accordance with the Indiana Parenting Time Guidelines.

(App. Vol. II at 23-4) (emphasis in original). Mother contends the trial court's decision ignores "largely undisputed" facts that Father has engaged in alienating behaviors and thus the court abused its discretion when it granted joint physical custody. (Br. of Appellant at 16.)[1]

[12] In her report, Dr. Gonso noted that Father used "emotional manipulation" by involving Child "in litigation and adult matters, especially at 9 years old" and that manipulation amounted to "alienating behavior." (Ex. Vol. I at 45.) However, Dr. Gonso also indicated "[n]either [Father] nor [Mother] have accepted any personal responsibility to understand the harm their behavior has caused [Child] . . . and they both have a contribution." (*Id.* at 44.) At the time of the hearing regarding pending custody issues, the parties acknowledged they had come to an agreement in the interim between filings to a temporary physical custody arrangement whereby Child would spend a week with Father, then a week with Mother. Dr. Gonso also endorsed the week-to-week plan.

[13] The trial court indicated, after its in-camera interview with Child, that Child thought "the week on/week off [custody arrangement] seems great. She wanted that. . . . She was pretty forceful that, that's what [she] want[s]." (Tr. Vol. II at 148.) Additionally, the other terms of the order regarding physical

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[1] Mother also insists she is not requesting this court reweigh the evidence and suggests that our standard of review of the issue is de novo because "to the extent the trial court's decision is based on Dr. Gonso's custody evaluation, this court is in as good a position to determine the force and effect of that paper record as the trial court." (Br. of Appellant at 16 n.4.) We decline to engage in de novo review because the trial court's findings regarding these issues indicate it not only considered Dr. Gonso's report, but also the testimony of the parties, Dr. Leeds, and Dr. Gonso, and Child's in-camera interview with the trial court.

custody – no make-up time, one-day passes to be used at Child's discretion – are direct recommendations from Dr. Gonso's report and the testimony provided at the hearing. Mother's request that we ignore all the other evidence and focus on one part of Dr. Gonso's report to the exclusion of the rest is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh the evidence or judge the credibility of witnesses). Therefore, we conclude the trial court did not abuse its discretion when it awarded the parties joint physical custody of Child. *See Clark v. Madden*, 725 N.E.2d 100, 110 (Ind. Ct. App. 2000) (affirming award of joint physical custody based on custody evaluator's report, testimony, and other evidence before the trial court).

B. Joint Legal Custody

[14] Joint legal custody "means that the persons awarded joint custody will share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training." Ind. Code § 31-9-2-67. The trial court may award joint legal custody of a child if the court finds that joint legal custody would be in the child's best interests. Ind. Code § 31-17-2-13.

> In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

> (1) the fitness and suitability of each of the persons awarded joint custody;
>
> (2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;
>
> (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) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;
>
> (5) whether the persons awarded joint custody:
>
> > (A) live in close proximity to each other; and
> >
> > (B) plan to continue to do so; and
>
> (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

Ind. Code § 31-17-2-15.

[15] Regarding legal custody and those decisions associated with the exercise of legal custody, the trial court found:

> 3. [Child] shall attend Martinsville High School whether it is virtual or in-person until further Order of the Court.

4. [Child] shall attend dance class in Martinsville, and the parties shall each pay 50% of expenses related to it.

5. [Child] shall continue to have Chelsea Leads[2] [sic] as therapist, who will determine the schedule of appointments and continue to choose and work with a psychiatrist, if necessary.

6. [Child] will continue with the same dentist and orthodontist, and the Father shall make appointments with them. He shall notify Mother of those appointments on the same day the appointments are made.

7. [Child] will continue to receive medical treatment at Riley Children's Hospital. The Mother shall schedule those appointments and shall notify the Father on the same day the appointments are made.

8. All third parties, whether medical provider or otherwise, shall continue to treat both parties as having Joint Legal Custody and shall share all information regarding [Child] and communicate equally with both parties.

9. Either party may make mental health appointments for [Child] and shall communicate that act to the other party on the same day the appointment is made.

10. The parties shall continue to have Dustin Matern serve as Parenting Coordinator. Any disputes shall first be addressed by him, and his decisions shall be binding until the matter can be

[2] The therapist testified that her name is spelled "L-E-E-D-S." (Tr. Vol. II at 32.)

> addressed by the Court. The Parenting Coordinator is to consult with therapist Chelsea Leads [sic] when making any decision.

(App. Vol. II at 24-5.) Mother argues the trial court's decision to award joint legal custody of Child "is contrary to the evidence" and not appropriate considering the parties' historical inability to communicate. (Br. of Appellant at 12.)[3]

[16] Mother likens the facts here to those in our recent decision in *Rasheed v. Rasheed*, 142 N.E.3d 1017 (Ind. Ct. App. 2020), *trans. denied*, where we reversed the trial court's decision to award joint legal custody of the parties' children based on the parties' acrimonious relationship. *Id*. at 1022. In *Rasheed*, while the trial court did not make any findings regarding its reasons for awarding joint legal custody, our court noted the parties' contentious relationship, including incidents of domestic violence and multiple protective orders, and their inability to co-parent without "constant bickering." *Id*. at 1020. Mother argues, based on *Rasheed*, that "it is undisputed that Mother and Father cannot effectively

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[3] Mother also argues the trial court's decision to award joint legal custody, and specifically its findings regarding appointments and communication between the parties, "infringes on Mother's fundamental right to parent G.A." (Br. of Appellant at 14) (formatting omitted). However, Mother did not make this argument before the trial court and thus it is waived. *See Dennerline*, 886 N.E.2d at 594 (issue presented for first time on appeal is waived).

Similarly, Mother argues for the first time in her Reply Brief that the trial court erred in its decision to award joint legal custody and its orders that the parties to perform in a certain way regarding appointments because those decisions are "vested in a legal custodian" not the trial court. (Appellant's Reply Br. at 5.) However, Mother is not permitted to make an argument for the first time in a Reply Brief. *See Gordon v. Purdue Univ.*, 862 N.E.2d 1244, 1250 (Ind. Ct. App. 2007) (argument raised for first time in reply brief is waived).

communicate and cooperate even with the aid of a parenting coordinator" and thus the evidence does not support joint legal custody. (Br. of Appellant at 14.)

[17] While there is certainly constant bickering between the parties in the case before us, that is where the similarity to *Rasheed* ends. There is no evidence of domestic violence between the parties, and there are no protective orders in place. Dr. Gonso testified she believed Child should remain in the Martinsville School District and Child's "best interests would be served by a court order that is incredibly detailed" regarding the issues about which the parties have disagreed in the past. (Tr. Vol. II at 81-2.) While Dr. Gonso recommended in her report that Mother should have sole legal custody of Child, she noted "it would be incumbent upon [Mother] to seek input from [Father][.]" (Ex. Vol. I at 51.) Additionally, the trial court reported, based on its in-camera interview with Child, that it was to Child's "detriment that either one of [the parents] be in charge" and so joint legal custody should continue. (Tr. Vol. II at 149.)

[18] Further, during its in-camera interview, the trial court worked with Child to make some decisions, such as "where she goes to school, who her dentist is, [and] who her therapist is" in an effort to "try to reduce or eliminate as many things that [Mother and Father] can disagree on as far as joint legal custody[.]" (*Id*. at 150.) The trial court encouraged the parties to speak with the parenting coordinator when there are issues in decision making, and the court ordered that the parenting coordinator's decision would be binding pending further order of the court. As there existed evidence to support the trial court's decision, we conclude Mother's argument is an invitation to reweigh the

evidence and judge the credibility of witnesses, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh the evidence or judge the credibility of witnesses). Thus, the trial court did not abuse its discretion when it ordered the parties to share joint legal custody of Child. *See Swadner v. Swadner*, 897 N.E.2d 966, 974 (Ind. Ct. App. 2008) (joint legal custody appropriate despite parties' continued disagreements).

3. Contempt

[19] Mother argues the trial court abused its discretion when it denied her request to find Father in contempt. Our review of a trial court's decision regarding contempt is well-settled:

> The trial court's finding regarding whether a party is in contempt is a matter within the trial court's discretion and will be reversed only for an abuse of discretion. *Williamson v. Creamer*, 722 N.E.2d 863, 865 (Ind. Ct. App. 2000). When reviewing a contempt order, we neither reweigh the evidence nor judge the credibility of witnesses, and we consider only the evidence and reasonable inferences supporting the trial court's judgment. *Id*.
>
> "In order to be held in contempt for failing to comply with a court order, a party must have willfully disobeyed the order." *Deel v. Deel*, 909 N.E.2d 1028, 1032 (Ind. Ct. App. 2009). "The order must have been so clear and certain that there could be no question as to what the party must do, or not do, and so there could be no question regarding whether the order is violated." *Id*. (quotation omitted).

Bandini v. Bandini, 935 N.E.2d 253, 264 (Ind. Ct. App. 2010).

[20] In her petition for contempt citation filed on April 24, 2019, Mother alleged that Father

> has willfully failed to comply with [the trial court's 2017 order] in that while he notifies [Mother] of [Child's] medical appointments, there have been times where the appointment time changes and [Mother] is not notified until right before the appointment not giving her time to make the appointment per the Court's Order. [Father] further willfully fails to allow [Mother] parenting time per the prior Orders of the Court.

(App. Vol. II at 44.) During the hearing on pending motions in July 2020, Mother testified that she was denied parenting time during "Fall vacation of '18, Halloween of '18" and the parties "scheduled make-up time." (Tr. Vol. II at 124-5.) Mother also testified that midweek visitation in weeks prior to the hearing had not occurred because there seemed to be an arrangement that certain days be saved as make-up days for a future trip.

[21] Regarding medical appointments, Mother testified that Father scheduled appointments when Mother was away at conferences and that, on one occasion, Father did not tell Mother of a scheduled appointment until fourteen minutes prior to the appointment. Father testified he and Mother

> have many, many, many disagreements when it come[s] to medical appointments even. Who's supposed to make them when they're supposed to make the appointments. An example. If I make an appointment and send her the information, I'm told I have to change, because she couldn't make it that day or what have you. And I've had to go – actually she's taken me into the [Parenting Coordinator] multiple times over that issue to get clarified again and again.

(Tr. Vol. II at 12.) Dr. Leeds testified she had not "observed fighting over . . . medical appointments [with her]." (*Id*. at 40.) Finally, Father testified when Mother had sole legal custody in the past, she often did not make Father aware of the appointment until "the morning of or after the appointment had occurred." (*Id*. at 98.) Father indicated that when the trial court ordered joint legal custody in 2017, he "had to schedule [medical appointments] during her convenience[.]" (*Id*.)

[22] The trial court refused to find Father in contempt, stating:

> I don't find anybody in contempt. I mean, I just don't feel like some of the explanation for changing appointments, I've had that happen with my kids. You know, the dentist will come in and say we had an appointment cancel, can we go ahead and take them now. That makes sense. What I would rather you do though is say no, their mom is supposed to be here, I don't want her to miss it. That's what you should have done. Is it something I'm going to make a contempt order? I'm not.

(*Id*. at 156.) Mother's request that we accept her version of the events is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh the evidence or judge the credibility of witnesses). Based thereon, we conclude the trial court did not abuse its discretion when it denied Mother's request to find Father in contempt.

4. Reimbursement of Medical Payments

[23] In its pronouncement of its decision, the trial court ordered payments for medical services to be split 50/50 between the parties starting the date of its order. Mother asked the trial court about past medical expenses owed by Father to Mother:

> [Mother's Counsel]: The inquiry was about past medical bills that have been paid out of [Stepfather's] HSA that have been submitted to Mr. Matern [the Parenting Coordinator]. I think we presented some testimony about those, and some documentation, whether or not this Order of equal division of those expenses applies to those.
>
> [Court]: I'm going to say no and I'll tell you why. There may have been something that [Father] is required to pay so much up front and then it's divided in ratio to income. Is that what we did before?
>
> [Father's Counsel]: Yes, I believe so.
>
> [Court]: Whatever the order was before, today is the day it changes. So I'm going to – whatever – if there is money owed, it's owed. I'm not going to go retroactive on terminating support. I'm doing everything effective today, so that effects the both of you a little bit.
>
> [Mother's Counsel]: So if under the old order there was money owed, it remains owed?
>
> [Court]: It remains owed.

(Tr. Vol. II at 158-9.) The trial court did not include in its written order its ruling regarding the payment of prior medical expenses. Because the record indicates the trial court intended to order Father to pay Mother money owed for medical bills paid from Stepfather's HSA prior to the trial court's order in this case, we remand for a hearing to determine that amount and we direct the trial court to enter an order requiring Father to pay Mother accordingly.

Conclusion

[24] As Mother agreed to pay the full cost of the custody evaluation, she cannot now assert error in the order that she pay. The trial court did not abuse its discretion when it ordered Mother and Father to have joint physical and joint legal custody of Child. Additionally, the trial court did not abuse its discretion when it denied Mother's request to find Father in contempt. However, the trial court did not memorialize in its order that Father reimburse Mother for medical expenses that preceded the entry of the new court order. Therefore, we remand for a hearing to determine the amount owed by Father and direct the trial court to enter an order requiring Father to pay Mother accordingly.

[25] Affirmed and remanded.

Kirsch, J., and Bradford, C.J., concur.