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IN THE
COURT OF APPEALS OF INDIANA

In Re the Paternity of E.P.
(Minor Child)
Stephanie A. Mercede Tonevich,
Appellant-Respondent,
v.
Kasey C. Perkins,
Appellee-Petitioner.

September 6, 2022
Court of Appeals Case No.
22A-JP-57
Appeal from the Warrick Circuit
Court
The Honorable Greg A. Granger,
Judge
Trial Court Cause No.
87C01-1910-JP-216

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, Stephanie Tonevich (Mother), appeals the trial court's Order granting her and Appellee-Petitioner, Kasey Perkins (Father), joint legal custody of their minor child, E.P. (Child).
- [2] We reverse and remand with instructions.

ISSUES

- [3] Mother presents this court with two issues, which we restate as:
- (1) Whether the trial court entered adequate findings of fact and conclusions thereon in support of its joint legal custody Order; and
 - (2) Whether the trial court's grant of joint legal custody was supported by the evidence.

FACTS AND PROCEDURAL HISTORY

- [4] Prior to Child's birth, Mother obtained a protective order against Father based on allegations that he had been physically and verbally aggressive with Mother and Mother's other children. After obtaining the protective order, Mother relocated to Lake County but continued her relationship with Father. Child was born to Mother and Father (collectively, Parents) on June 28, 2019. Father executed a paternity affidavit for Child. After Child's birth, Parents continued to be in a relationship. Father traveled to Lake County on the weekends to visit with Child until approximately September of 2019, when Parents had a verbal altercation involving Mother's current boyfriend. Thereafter, Parents were unable to agree on a time and place for Father to exercise parenting time with Child, with Father expressing fear of coming to Mother's home or even entering Lake County for parenting time because of the protective order and Mother feeling that Father was using parenting-time arrangements to harass her.
- [5] On December 5, 2019, Father filed his Verified Petition to Establish Parenting Time and Joint Legal Custody.¹ On March 25, 2020, the trial court held the first of six hearings on Father's

¹ Apart from Mother's Motion to Correct Errors, none of the parties' various petitions and motions are included in the record on appeal.

petition, the scope of which expanded to the issue of physical custody. Parents continued to disagree on arrangements for Father to exercise parenting time. On March 26, 2020, the trial court entered an interim order that Father was to have videocalls with Child every other day during the week for two hours. On July 30, 2020, Mother filed an emergency petition for supervised parenting time and for a child support order. On August 11, 2020, the trial court held a hearing on Father's and Mother's petitions. The court-ordered videocalls had not gone smoothly: Father felt that Mother's husband, Mark Tonevich (Mark), was taunting him during the sessions and that Mother had muted the sound at times so that Child could not hear him. For her part, Mother accused Father of using the videocalls to make inappropriate comments aimed at her, and she felt that Father had made a racist comment about Mark and had unfairly demanded that she keep Child awake. Parents both testified that their communication continued to be poor. Father related that Mother would bring up the protective order whenever he asked about Child's medical care or about who was caring for Child when Mother was at work. By that time, Father had a pending charge of invasion of privacy in Lake County for violating the protective order. Mother confirmed that Father had promised to "tak[e] [her] down[.]" (Transcript Vol. II, p. 221). After the August 11, 2020, hearing, the trial court entered an order that Father was to exercise parenting time every other weekend, from Saturday morning to Sunday evening, supervised by his parents. Father was to travel to Mother's home to pick up Child. Due to the protective order, Mother requested that Father pick up Child at a neutral location. The first scheduled exchange of Child for Father's parenting time was tense, confrontational, and was videorecorded by both parties. Mother later accused Father's mother of pulling Child out of her arms and Father of not allowing her time to say goodbye to Child. Mother described Father's girlfriend of being more concerned about Child's well-being than Father. After this first tumultuous exchange, the parties continued to disagree about basic arrangements for exchanging Child for Father's parenting time, such as where and when the exchange would occur.

[6] On August 27, 2020, Mother filed a verified motion for appointment of a guardian ad litem for Child, which Father opposed. On September 1, 2020, Father filed a contempt motion against Mother, and on September 8, 2020, Mother filed a contempt motion and rule to show cause against Father. On September 15, 2020, after a hearing, the trial court appointed Kelly Ferguson (GAL Ferguson) to represent Child's interests. On January 15, 2021, the trial court held a third hearing on Father's petition for legal custody and Mother's emergency petition for supervised parenting time, after which the trial court entered an order that Father would

continue to exercise parenting time every other weekend but without supervision if his parents or his fiancée were close by. On January 20, 2021, the trial court held a fourth hearing, during which it came to light that Mother had called off the exchange of Child for Father's parenting time that was to have occurred on January 16, 2021, between the latest hearings. Mother blamed the weather, but Father felt that Mother was exaggerating her concerns as a ruse to keep him from exercising his parenting time with Child. Parents were unable to agree on makeup time for Father. At the January 20, 2021, hearing Mother characterized Parents' communication as, "I say black, he'll say white . . . there's no gray area, um, from just pure spite I don't get a lot of understanding of where we can like come together . . . [on] what's best for [Child.]" (Tr. Vol. III, p. 70). At the fifth hearing in this matter on March 12, 2021, it was revealed that on February 3, 2021, Mother had procured a second protective order, this time in Lake County, against Father. Mother testified that she had procured this second protective order due to her allegations that, during an exchange of Child for parenting time where Mother was accompanied by Mark, Father had grabbed his crotch and shouted that his genitalia was bigger than Mark's. Father testified that he had never been served with the filings for the protective order and had not attended the evidentiary hearing on Mother's protective order petition. Mother had not alerted the trial court in this matter, and GAL Ferguson was unaware of the existence of the Lake County protective order until the March 12, 2021, hearing. After the entry of the second order, Mother had unilaterally ceased videocalls between Child and Father. Mother expressed her desire to have sole legal custody of Child due to Parents' inability to communicate or make joint major decisions about Child. GAL Ferguson testified that, after working with Parents, she had observed that "[t]hey both were extremely difficult to agree on something . . . Both of them were stubborn and would not agree to anything – from me or from the other person." (Tr. Vol. III, p. 187). Parents and GAL Ferguson agreed that Parents could benefit from a parenting-time coordinator, although cost was a concern. After this latest hearing, the trial court ordered that videocalls between Child and Father should resume in addition to his weekend parenting time. On May 28, 2021, at the sixth and final hearing on Father's petition for joint legal custody, GAL Ferguson recommended in relevant part that the parties communicate through Our Family Wizard and that they share "modified" joint legal custody, wherein Father would have input on major decisions relating to Child, but Mother would make final decisions. (Tr. Vol III, p. 203). GAL Ferguson still felt that Parents would benefit from a parenting-time coordinator, because she had been unsuccessful at mediating issues such as meeting places for parenting time.

Father requested joint physical and legal custody. Mother requested primary physical custody and sole legal custody, citing Parents' inability to communicate.

[7] On August 2, 2021, the trial court entered its Order, awarding Parents joint physical and legal custody of Child.² The trial court entered sua sponte findings in relevant part as follows:

The [c]ourt finds that the parties have demonstrated an inability to cooperate and agree on what is in [C]hild's best interests. The parties have video-taped parenting time exchanges. Their confrontations in the presence of [C]hild are turbulent and even hostile.

* * *

The [c]ourt finds the parties are currently unable to communicate with each other in a constructive fashion. The parties shall utilize the Our Family Wizard app in all future communications.

(Appellant's App. Vol. II, pp. 13, 15). The trial court found that Mother had mischaracterized Father as short-tempered and mentally unstable, Mother had a history of unstable relationships, Mother's relocation had negatively impacted Father's relationship with Child, and that Mother had engaged in efforts to thwart Father's parenting time. Regarding Father's conduct, the trial court found that he was an engaged father who regularly drove more than four hours one-way to exercise parenting time with Child. Child was to immediately begin spending alternating one-week periods in each parent's home.

[8] On September 1, 2021, Mother filed a motion to correct error, and the trial court set a hearing for December 9, 2021. On October 13, 2021, Mother filed a Confidential Verified Motion for Emergency Remote Hearing, apparently based on concerns that Child was holding her bowel movements for a week while in Father's care and that Father was overmedicating Child with laxatives, causing Child to have explosive diarrhea when returned to Mother. The trial court held a hearing on the matter on November 1, 2021, at which Child's pediatrician testified that "there's two different things going on in two different locations" and that Parents should work

² Mother does not appeal the trial court's award of joint physical custody.

together on providing Child with laxatives to better address her condition. (Tr. Vol. IV, p. 38). On December 9, 2021, the trial court held a hearing on Mother's motion to correct error at which no new evidence was admitted. On December 10, 2021, the trial court denied Mother's motion to correct error.

[9] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[10] Mother challenges the trial court's award of joint legal custody. Where a trial court enters sua sponte findings of fact and conclusions thereon, "as to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment." *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). As to issues not covered by the trial court's findings, we apply the standard of review of general judgments under which we will affirm the judgment if it can be sustained on any legal theory supported by the evidence. *Id.* As a general matter, a trial court's custody determination is reviewable only for an abuse of discretion. *Russell v. Russell*, 682 N.E.2d 513, 515 (Ind. 1997). We accord deference to the trial court's family law determinations due to the trial court's "unique, direct interactions with the parties face-to-face, often over an extended period of time" which provides the court with the opportunity to assess credibility, ascertain information, and apply common sense to determine what is in the best interests of the child involved. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). However, even though we accord deference to a trial court in family law matters, if a ruling is based on a legal error or is unsupported by the evidence, it is subject to reversal, as a trial court has no discretion to reach a wrong result. *In re Paternity of C.B.*, 112 N.E.3d 746, 750 (Ind. Ct. App. 2018), *trans. denied*.

II. *Adequacy of Findings*

[11] Mother argues that the trial court erred when it failed to enter adequate findings to support its judgment awarding Parents joint legal custody. Joint legal custody means that the persons awarded 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. A trial court may make an initial award of joint legal custody in a paternity action where the trial court determines that it would be in a child's best interests. I.C. § 31-14-13-2.3(a). In making that determination, the trial court "shall consider it a matter

of primary, but not determinative, importance, that the persons awarded joint legal custody have agreed” to it. I.C. § 31-14-13-2.3(c). The trial court must also consider the following factors:

- (1) the fitness and suitability of each of the persons awarded joint legal custody;
- (2) whether the persons awarded joint legal 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 legal custody;
- (5) whether the persons awarded joint legal custody:
 - (A) live in close proximity to each other; and
 - (B) plan to continue to do so;
- (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody; and
- (7) whether there is a pattern of domestic or family violence.

I.C. § 31-14-13-2.3(c).

[12] Mother argues that the trial court’s Order was inadequate because the court did not enter express findings that joint custody was in Child’s best interests and did not enter findings on each of the factors listed in the statute. However, it is well-established that in making custody determinations, a trial court is required to consider all relevant factors, but it is not required to make specific findings. *Russell*, 682 N.E.2d at 515; *Hegerfeld v. Hegerfeld*, 555 N.E.2d 853, 856 (Ind. Ct. App. 1990) (rejecting the argument that trial court was required to enter a finding that the custody award was in children’s best interests where neither party had requested

specific findings); *C.B.*, 112 N.E.3d at 753 (holding that section 31-14-3-2.3 requires that the trial court consider the joint legal custody factors, not that it must enter findings on each factor).

- [13] Here, the trial court entered findings of fact and conclusions thereon, but it did not enter a specific finding that joint custody was in Child's best interests or findings as to each factor enumerated in the joint custody statute. Because neither Mother nor Father requested that the trial court enter specific findings, we find no error in the form of the trial court's judgment.

III. *Joint Legal Custody*

- [14] Mother also challenges the substance of the trial court's joint legal custody determination. As set forth above, in making a joint legal custody award, it is of primary, but not determinative, importance that the parties have agreed to it. I.C. § 31-14-13-2.3(c). Indiana courts have also concluded that the second factor listed in the joint legal custody statute, namely, whether the parents are willing and able to cooperate to advance the child's welfare, is particularly important in making a legal custody determination. *Milcherska v. Hoerstman*, 56 N.E.3d 634, 641 (Ind. Ct. App. 2016); *see also Carmichael v. Siegel*, 754 N.E.2d 619, 635 (Ind. Ct. App. 2001) (acknowledging that whether the parties are willing and able to communicate and cooperate is a key factor in rendering a joint custody award). Where the parties have made child-rearing a battleground, joint custody is not appropriate. *Carmichael*, 754 N.E.2d at 635. Indeed, this court has observed that "to award joint legal custody to individually capable parents who cannot work together is tantamount to the proverbial folly of cutting the baby in half in order to affect a fair distribution of the child to competing parents." *Rasheed v. Rasheed*, 142 N.E.3d 1017, 1022 (Ind. Ct. App. 2020) (quoting *Micherska*, 56 N.E.3d at 642), *trans. denied*.

- [15] Mother argues that the trial court's findings do not support the judgment, and we agree. The trial court entered findings that "the parties have demonstrated an inability to cooperate and agree on what is in [C]hild's best interests" and that "the parties are currently unable to communicate with each other in a constructive fashion." (Appellant's App. Vol. II, pp. 13, 15). There is ample evidence in the record to support these findings, as the parties were unable to successfully arrange videocalls between Child and Father or exchanges of Child for Father's parenting time. During the pendency of this matter, Mother accused Father of steroid abuse, physical aggression, verbal threats, and bizarre behavior such as joking about killing the family's pet pig after castrating the pig himself at home and faking suicide scenes. Mother obtained a second protective order against Father without informing him or the trial

court. Father has accused Mother of faking a Covid-19 infection to continue a hearing in this matter and of exaggerating road conditions to avoid exchanging Child for parenting time. Parents' inability to communicate and cooperate continued even after the entry of the trial court's joint legal custody order, as evinced by the fact that they litigated Child's bowel movements.

- [16] Despite the evidence of Parents' inability to communicate and cooperate to advance Child's interests and the trial court's findings, the trial court entered an award of joint legal custody. Given the importance of this factor to a determination of joint legal custody, we conclude that the trial court's findings do not support the judgment in this case. Rather, it appears that the trial court attempted the very "cutting [of] the baby in half" we have concluded is inappropriate where parents cannot work together. *See Rasheed*, 142 N.E.3d at 1022. In addition, we observe that Mother and Father had not agreed to joint legal custody, which, apart from the trial court's findings, does not support an award of joint custody. *See* I.C. § 31-14-13-2.3(c). Therefore, we remand for the trial court to enter an award of sole legal custody for either Father or Mother. We clarify that the trial court is not required to accept additional evidence and that it may render its decision based on the record already developed through the six evidentiary hearings held in this matter.

CONCLUSION

- [17] Based on the foregoing, we conclude that, although the evidence supports the trial court's findings, its findings do not support the award of joint legal custody to Parents.
- [18] Reversed and remanded with instructions.
- [19] May, J. concurs
- [20] Tavitas, J. concurs with separate concurring opinion
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I N T H E
C O U R T O F A P P E A L S O F I N D I A N A

In Re the Paternity of E.P.
(Minor Child)

Stephanie A. Mercedes Tonevich,
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Kasey C. Perkins,
Appellee-Petitioner.

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22A-JP-57

Tavitas, Judge, concurring.

- [21] I concur with the majority opinion but write separately to emphasize the need for clear findings in such cases. I recognize that the trial court was not required to make specific findings unless requested by the parties. The trial court here entered sua sponte findings of fact and conclusions thereon, but it did not enter findings regarding the Child’s best interest, the statutes it applied, or the factors it considered in awarding joint legal custody. Such abbreviated findings, although permissible, make review of the trial court’s order more difficult. Under these circumstances, we must review those issues without findings under the general judgment standard—we will affirm “if it can be sustained on any legal theory supported by the evidence.” *Hahn-Weisz v. Johnson*, 189 N.E.3d 1136, 1145 (Ind. Ct. App. 2022). A better practice, however, would be to cite the applicable statutes and make findings regarding the child’s best interests and the relevant factors.