MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher Mercado,
Appellant-Petitioner,

v.

Angelicah Shaver,
Appellee-Respondent.

September 20, 2022

Court of Appeals Case No. 22A-JP-542

Appeal from the Lake Superior Court

The Honorable Thomas P. Stefaniak, Jr., Judge
The Honorable Aimee M. Talian, Magistrate

Trial Court Cause No. 45D06-1606-JP-703

Weissmann, Judge.

[1] Christopher Mercado (Father) and Angelicah Shaver (Mother) disagreed over their son's medical treatment and expenses, which led Father to seek changes in their shared custody arrangement. Father requested the trial court award him sole legal custody so that he alone could make the medical decisions for their 10-year-old son, L.M. (Child). Father sought to restrict Mother's parenting time with Child and also requested the trial court find Mother in contempt of court for failing to pay her share of Child's uninsured medical expenses. Mother responded by seeking an equal split of parenting time. The court granted Mother's parenting time request, denied Father's requests, but found Mother in contempt of court and ordered her to pay ½ of Child's uninsured medical expenses, which the trial court calculated to be $491.04. Father appeals, challenging each of the trial court's rulings. We affirm the court's judgment in all respects.

Facts

[2] When Father established his paternity of Child, Father and Mother agreed, and the trial court ordered, that Father would have primary physical custody of Child, and the parents would share legal custody and split equally the cost of Child's uninsured medical expenses. The parenting time schedule gave Father slightly more time with Child than Mother. Father and Mother later deviated from the original parenting time schedule, with Child spending nearly equal time with each parent.

[3] Child was diagnosed with Intermittent Mood Disorder, ADHD, and receptive and expressive language disorders and prescribed medication and behavior therapy. Father and Mother's ability to co-parent deteriorated as they navigated their son's medical challenges.

[4] Father petitioned the court to hold Mother in contempt for her failure to pay her share of Child's uninsured medical expenses. He filed a second petition and sought sole legal custody of Child and to restrict Mother's parenting time. In response, Mother asked the court to continue the equal-share parenting time schedule that the parents were following. After a hearing, the court granted Mother's parenting time request and denied Father's requests for a custody change and parenting time restrictions. The court found Mother in contempt of court and ordered her to pay Father ½ of Child's uninsured medical expenses, which the trial court calculated to be $491.04. Father appeals.

Discussion and Decision

[5] Father challenges the trial court's determinations of: (A) legal custody; (B) parenting time; and (C) the amount Mother owed him for Child's uninsured medical expenses. Father asserts, generally, that the evidence does not support the trial court's judgment. We find no error and affirm the trial court's judgment.

I. Standard of Review

[6] A trial court has discretion to modify custody and parenting time decisions and will be revised only for an abuse of that discretion. *In re B.B.*, 1 N.E.3d 151, 159

(Ind. Ct. App. 2013) (custody); *Miller v. Carpenter*, 965 N.E.2d 104, 108 (Ind. Ct. App. 2012) (parenting time). No abuse of discretion occurs if there is a rational basis for the trial court's determination. *Gomez v. Gomez*, 887 N.E.2d 977, 983 (Ind. Ct. App. 2008).

[7] We give substantial deference to trial courts in family law matters. *Matter of Paternity of B.Y.*, 159 N.E.3d 575, 578 (Ind. 2020). "Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment." *Id.* (quoting *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011)).

[8] Where, as here, a trial court enters findings of fact and conclusions of law, we first determine whether the evidence supports the findings, and we then determine whether the findings support the judgment. *Lechien v. Wren*, 950 N.E.2d 838, 841 (Ind. Ct. App. 2011). A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* Because Father does not challenge the court's findings, we must accept them as true. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) ("Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.").

II. Legal Custody

[9] First, Father argues the trial court abused its discretion when it denied his petition to modify the parties' joint legal custody of Child and award Father sole legal custody. As the party seeking modification, Father carried the burden

of proving that the existing custody arrangement should be modified. *In re Paternity of A.S.*, 948 N.E.2d 380, 386 (Ind. Ct. App. 2011). 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." *Id.*

[10] A paternity court may modify an initial child custody order only upon a showing that modification is in the child's best interests and that there has been a substantial change in one or more of the statutory factors. Ind. Code § 31-14-13-6. Those factors are: (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 14 years old; (4) the interaction and interrelationship of the child with the child's parents, siblings, and 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; and (7) evidence of a pattern of domestic or family violence by either parent. I.C. § 31-14-13-2.

[11] As the trial court found, Father did not meet his burden of showing a substantial change of circumstances. Father merely argued in the trial court that Mother's uncooperative attitude in medical and religious decision making shows her unsuitability as Child's legal custodian. Father contends that Mother has turned medical decisions into a "battleground" and educational determinations will be her next skirmish. Appellant's Br., pp. 17-18. Father also

argues that Mother has contempt for his religious beliefs, and that she "teaches" Child ideology contrary to Father's religion. *Id.*

[12] But the trial court found Father's claims exaggerated. It ruled:

> Father has failed to meet his burden of showing that there has been a substantial change in circumstances to warrant a modification of legal custody, and the Court believes it to be in the best interests of the child that the parties continue to share joint legal custody. Simply because one parent disagrees with or questions a medical treatment plan for their child does not bring into question their fitness and suitability to make a medical decision, in fact, it is the opposite. Parents should ask questions of medical providers so that they may be fully informed as to their child's care. The parties continue to reside within close proximity to each other and there has been no evidence that either parent's home environment is more suitable than the other.

App. Vol. II, p. 10. Father's arguments are, at best, a request to reweigh the evidence, which this Court cannot do. *See Best*, 941 N.E.2d at 503. Mindful of our deferential review, we cannot say that the court's findings or conclusions were clearly erroneous. We conclude that the court did not abuse its discretion when it denied Father's request to modify the parties' custody of Child and award him sole legal custody.[1]

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[1] We note that, in its order, the trial court cites to Indiana Code § 31-17-2-15, which applies when determining the modification of legal custody in a dissolution proceeding. And the parties cite this same statute in their respective appellate briefs. But when determining the modification of legal custody in a paternity case, as we have in this appeal, Indiana Code § 31-14-13-2.3(c) applies. That said, this error is harmless as the paternity and dissolution statutes contain nearly identical language and involve the same

III. Parenting Time

[13] Father next argues that the trial court abused its discretion when it denied his request to restrict Mother's parenting time. Father sought to limit Mother's parenting time to alternating weekends and one afternoon each week "throughout the school year[,] and then share [equal parenting time] during breaks." Tr. Vol. II, p. 81. Mother sought to continue their existing equal-share parenting time plan.

[14] A trial court may modify parenting time rights whenever modification would serve the best interests of the child. Ind. Code § 31-14-14-2. But Indiana Code § 31-14-14-1 provides that "[a] noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time might: (1) endanger the child's physical health and well-being; or (2) significantly impair the child's emotional development." "Even though [Indiana Code § 31-14-14-1] uses the term 'might,' this court interprets the statute to mean that a court may not restrict visitation unless that visitation would endanger the child's physical health or well-being or significantly impair the child's emotional development." *Farrell v. Littell*, 790 N.E.2d 612, 616 (Ind. Ct. App. 2003). A party who seeks to restrict parenting time bears the burden of

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standard of review. *See Joe v. Lebow*, 670 N.E.2d 9, 16-20 (Ind. Ct. App. 1996) (discussing the history of the dissolution and paternity custody modification statutes).

proving by a preponderance of the evidence that the restriction is justified. *Id.*; *In re Paternity of P.B.*, 932 N.E.2d 712, 720 (Ind. Ct. App. 2010).

[15] On appeal, Father does not argue that restricting Mother's parenting time would serve the best interests of Child. Neither does he contend that the current parenting time plan endangers Child's physical health or well-being or significantly impairs Child's emotional development. Instead, Father improperly attempts to shift the burden of proof to Mother to prove equal parenting time is in Child's best interests.

[16] The trial court found that "Father . . . failed to show that there is a substantial risk of harm to the child if Mother was to continue to exercise an unrestricted parenting time plan" and that "there [was] no evidence that modifying the parties' current shared parenting time plan [wa]s in the child's best interest." App. Vol. II, p. 10. The court concluded that it was "in the best interest of [Child] that the parties continue to exercise the shared parenting time plan currently in place, with each parent being entitled to 50% of the time[.]" *Id.*

[17] The record supports that judgment. For nearly half of Child's life, Father and Mother often deviated from the original parenting time plan to allow Mother additional time with Child. Last year, they began a successful 50/50 parenting time plan. Mother testified that Child "really thrived" under the 50/50 schedule. Tr. Vol. II, p. 136. And Child enjoys a positive relationship with both Father and Mother. The trial court did not abuse its discretion when it denied

Father's request to restrict Mother's parenting time and ordered them to continue their shared parenting time plan.

IV. Uninsured Medical Expenses

[18] Finally, Father contends the trial court erred in calculating Mother's ½ share of Child's uninsured medical expenses. The court found that Mother owed Father $491.04. Father disputes this amount, arguing the court's order "did not set forth how it arrived at an amount that is approximately 33% of the amount Father requested," which was $1,238.76, and "[t]here is no evidence in the record to support [the court's] finding." Appellant's Br., p. 20.

[19] Father attached to his contempt petition a spreadsheet that he created ("Spreadsheet 1"). In Spreadsheet 1, Father listed Child's doctors' visits, the amount charged for each visit, and Mother's ½ share of the amounts, which Father calculated as $982.08. But at the hearing on the matter, Father introduced into evidence a different spreadsheet ("Spreadsheet 2"). Spreadsheet 2 also contained a list of the amounts charged for Child's doctors' visits and what Father claimed to be Mother's share of the expenses, which Father calculated as $1,238.76. Father explained that Spreadsheet 2 included "added [medical] bills that had accumulated[.]" Tr. Vol. II, p. 90. Mother, on the other hand, testified that she had not received Father's spreadsheet "until court started[,]" and that, of the invoices and receipts that Father had shared with her, "[s]ome . . . were actually incorrect[.]" *Id.* at 129. Mother believed she had "paid far more than [her ½ share]." *Id.* But Mother did not provide the court

with copies of her payments to Father—telling the court only that, each time Father provided her with a "payment plan" for her share of the medical expenses, she had "paid [Father] in full[.]" *Id.*

[20] The court ultimately determined that Mother owed Father $491.04, and that amount is supported by the evidence in the record. And while Father is correct that the court did not explain how it arrived at this amount, the amount is ½ of the $982.08 listed in Spreadsheet 1. We conclude the court properly calculated Mother's share of the uninsured medical expenses. Father's argument to the contrary is an invitation to reweigh the evidence, which we will not do.

[21] The judgment of the trial court is affirmed.

Robb, J., and Pyle, J., concur.