MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Michael D. Raines,

Appellant-Intervenor

v.

Christian Conyers,

Appellee-Intervenor

March 28, 2024

Court of Appeals Case No.
23A-DC-1918

Appeal from the Henry Circuit Court

The Honorable Kit C. Dean Crane, Judge

Trial Court Cause No.
33C02-1801-DC-17

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] Michael D. Raines ("Raines") and Christian Conyers ("Grandfather") were competing intervenors in this child custody matter, each seeking custody of eleven-year-old L.C. Following a hearing, the trial court granted legal and physical custody of L.C. to Grandfather. Raines now appeals, challenging the trial court's finding that Grandfather was a de facto custodian of L.C. On appeal, Raines acknowledges that Grandfather cared for L.C. for part of L.C.'s life. However, Raines points out that Grandfather was not a caregiver "for almost two and one-half years" prior to the custody case. Appellant's Br. p. 9.

[2] Identifying sufficient evidence that Grandfather was a de facto custodian as our legislature has defined that term, we affirm the trial court's custody decision.

Facts and Procedural History

[3] L.C. was born in July 2012, and his younger sibling, M.C., was born in June 2016 (collectively, "Children"). Children's biological father is deceased, and their mother, T.C. ("Mother"), has struggled with substance abuse. In 2018, the State successfully petitioned to establish child support as to Children. In 2023, Grandfather—Children's maternal grandfather—intervened in the case, seeking legal and physical custody of Children. The trial court scheduled a July 2023 hearing, ahead of which Raines—a friend of the family—intervened and petitioned for custody of L.C. only. A married couple, Misty and Shawn Gibbs ("the Gibbs"), also intervened, with the Gibbs seeking custody of M.C. only.

[4] At the hearing—which Mother did not attend—the trial court accepted the intervenors' stipulations that "Mother is not fit and proper to retain legal and physical custody of [Children]. She is, and has for a long time, experienced active illicit substance abuse problems," with an active criminal case and an active warrant in another case. Appellant's App. Vol. 2 p. 9. The trial court heard evidence about the extent to which the intervenors cared for Children.

[5] As to Grandfather, there was evidence that Mother was evicted around February 2020, at which point she and Children moved in with Grandfather. They resided with Grandfather for about eight or nine months, until "[e]arly 2021, late 2020, somewhere around in there." Tr. Vol. 2 p. 18. There was also evidence that, prior to that extended stay with Grandfather, Children had stayed with him for different periods of time that, "in the aggregate," amounted to "far more than a year" of their lives. *Id.* When asked whether he "provide[d] for [Children] economically" when they stayed with him, Grandfather said: "Yes." *Id.* When asked how, Grandfather said: "Food, shelter, clothing." Grandfather also testified that, during those periods, Mother was unable to provide those things for Children. He testified that, while living with him, Mother continued to struggle with substance abuse. In late 2020 or early 2021, Mother moved out with Children when she "got mad, threw a fit, and stomped out," with Mother feeling that she "wasn't appreciated enough[.]" *Id.* at 19. Grandfather explained that, until that point, he was involved in Children's daily lives: "I'd get them up and put them on the school bus and take care of them after they came home." *Id.* at 19–20. Grandfather testified that he

would help Children with their schoolwork. He noted that, when Children came home, Mother was "[u]sually . . . asleep." *Id.* at 20.

[6] The evidence indicated that, after Mother moved out, she "wouldn't let [Grandfather] see them" and "used [Children] as a weapon" in their relationship. *Id.* at 22. He testified that he eventually saw Children around November 2022. Grandfather further testified that, before that point, he believed Children were living with Mother in an apartment. However, he later learned that L.C. was living with Raines. Grandfather testified that Mother "cut off all contact" with him in December 2022, and he had not seen Children since. *Id.* at 24. He added: "[W]hen I found out that [Mother] had been arrested again, I came down here to try to get custody of [Children]." *Id.* Grandfather further testified that, at one point, he called Raines and "told him he had a chance to do the right thing by letting [him] pick up [L.C.]," but Raines "declined." *Id.* Grandfather noted that "[l]aw enforcement wouldn't assist [him]" in obtaining physical custody of L.C. because Grandfather "didn't have a court order" regarding custody. *Id.* at 25–26.

[7] The trial court took the matter under advisement and issued a written order that included sua sponte findings and conclusions. Therein, the trial court noted that Mother was the "current custodian" of Children. *Id.* The trial court specifically found that Grandfather is "the [m]aternal [g]randfather to [Children]" and that "[t]he evidence [was] clear and convincing that he is a de facto custodian for [Children]." Appellant's App. Vol. 2 p. 9 (emphasis removed). The trial court also found that Raines "is a family friend who has

provided significant care for L.C. since January of 2022." *Id.* The trial court added that "[t]he evidence is clear and convincing that [Raines] could be considered . . . a de facto custodian for [L.C.]" *Id.* (emphasis removed). The trial court further found that "there ha[d] been a substantial and continuous change in circumstances such that the current custody order should be modified." *Id.* at 10. The trial court added that it was "persuaded by each intervenor that a modification of the current custody order [was] in each child's best interests." *Id.* The trial court ultimately stated that, "[a]fter consideration of the evidence and presentation by each [i]ntervenor," the court was granting Grandfather's request for legal and physical custody of Children, thereby denying the other requests for child custody. Raines now appeals.

Discussion and Decision

[8] Raines challenges the sufficiency of the evidence supporting the trial court's finding that Grandfather was a de facto custodian of L.C. According to Raines, because the evidence did not support a finding that Grandfather was a de facto custodian, the trial court clearly erred in granting custody to Grandfather.

[9] Where—as here—no party filed a timely written request for special findings and conclusions, the sua sponte findings and conclusions control "only upon the issues or matters covered thereby and the judgment or general finding, if any, shall control as to the other issues or matters[.]" Ind. Trial Rule 52(D). As to the special findings, Trial Rule 52(A) directs us to give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." And we "shall not set aside the findings or judgment unless clearly erroneous[.]" T.R.

52(A). Moreover, "[w]e review issues covered by the findings by determining whether the evidence supports the findings and, if so, whether those findings support the judgment." *State ex rel. Dep't of Nat. Res. v. Leonard*, 226 N.E.3d 198, 202 (Ind. 2024). In conducting our review, we "are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)). In reviewing a challenge to the sufficiency of the evidence, "it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by [the] appellant before there is a basis for reversal." *Id.* (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)). Furthermore, "there is a well-established preference in Indiana 'for granting latitude and deference to our trial judges in family law matters.'" *Id.* (quoting *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). That is because appellate courts "are 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." *Id.* (quoting *Kirk*, 770 N.E.2d at 307).

[10] Although we must defer to the trial court's factual findings, to the extent the judgment turned on a question of law—such as the meaning of a statute—our review is de novo. *See generally, e.g.*, *Howard Reg'l Health Sys. v. Gordon*, 952 N.E.2d 182, 185 (Ind. 2011). In interpreting a statute, our first task is to determine whether the statute is "clear and unambiguous." *WEOC, Inc. v.*

Niebauer, 226 N.E.3d 771, 777 (Ind. 2024). "If so, we interpret the statute 'consistent with its plain meaning, by giving effect to' both what it says and does not say." *Id.* (quoting *KS&E Sports v. Runnels*, 72 N.E.3d 892, 907 (Ind. 2017)). Moreover, "[w]e presume the General Assembly 'intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals.'" *Spells v. State*, 225 N.E.3d 767, 772 (Ind. 2024) (quoting *Town of Linden v. Birge*, 204 N.E.3d 229, 237 (Ind. 2023)).

[11] Indiana Code section 31-17-2-21 governs a trial court's authority to modify child custody, specifying that modification is proper only if it is in the child's best interests and there is a substantial change in "one . . . or more of the factors" set forth in Indiana Code section 31-17-2-8. That statute sets forth a non-exhaustive list of factors that bear on a child's best interests, including:

> (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.

Ind. Code § 31-17-2-8 (emphasis added). Under Indiana Code section 31-9-2-35.5—which we refer to as the De Facto Custodian Statute—the term "de facto custodian" refers to "a person who has been the primary caregiver for, and financial support[er] of, a child who has resided with the person for at least: (1) six (6) months if the child is less than three (3) years of age; or (2) one (1) year if the child is at least three (3) years of age."

[12] When a trial court "finds by clear and convincing evidence that the child has been cared for by a de facto custodian," the court must consider the following factors "[i]n addition to the factors" that apply in all child custody cases:

> (1) The wishes of the child's de facto custodian.
>
> (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
>
> (3) The intent of the child's parent in placing the child with the de facto custodian.
>
> (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to:
>
> > (A) seek employment;
> >
> > (B) work; or
> >
> > (C) attend school.

I.C. § 31-17-2-8.5.

[13] Raines's appellate claim is limited to whether there was clear and convincing evidence that Grandfather was a de facto custodian of L.C. In challenging the sufficiency of the evidence that Grandfather was a de facto custodian, Raines asserts that L.C. had not lived with Grandfather since late 2020 or early 2021. He argues: "There is no case law that indicates that a person who has provided

no residence, no caregiver role, and no financial support for a child for almost two and one-half years is a de facto custodian." Appellant's Br. p. 9. Thus, Raines appears to suggest that, under the De Facto Custodian Statute, a person is a de facto custodian only if the person provided recent care for the child.

[14] The De Facto Custodian Statute clearly and unambiguously defines a de facto custodian as "a person who has been the primary caregiver for, and financial support[er] of, a child who has resided with the person for at least: (1) six (6) months if the child is less than three (3) years of age; or (2) one (1) year if the child is at least three (3) years of age." I.C. § 31-9-2-35.5. The De Facto Custodian Statute does contain threshold time constraints, in that a person is a de facto custodian only if they were the primary caregiver for at least "six (6) months if the child is less than three (3) years of age" or "one (1) year if the child is at least three (3) years of age." *Id.* However, the De Facto Custodian Statute does not specify that the caregiving must have occurred immediately prior to the trial court's custody determination. *See id.* Furthermore, the De Facto Custodian Statute does not provide any other parameter limiting a de facto custodian to a recent caregiver. *See id.* We must be "mindful 'of what the statute says and what it doesn't say," and avoid interpretations that lead to "disharmonizing" results. *Spells*, 225 N.E.3d at 772 (quoting *Town of Linden*, 204 N.E.3d at 237). Here, the lack of a recency requirement makes sense within the statutory scheme. That is because, in all custody cases, our legislature prioritized the best interests of the child—and it may not serve a child's best interests to follow the wishes of the most recent caregiver(s). Thus,

to obtain a fuller picture and avoid excluding input from key caregivers, our legislature adopted a statutory scheme that gives special consideration to any person who had a significant caregiving role at some time in the child's life.

[15] We therefore reject Raines's suggestion that the trial court erred in finding that Grandfather was a de facto custodian on the basis that "[t]here is no case law that indicates that a person who has provided no residence, no caregiver role, and no financial support for a child for almost two and one-half years is a de facto custodian." Appellant's Br. p. 9. Indeed, this type of caselaw would be inapposite because, based on our interpretation of the De Facto Custodian Statute—which is clear and unambiguous—our legislature broadly defined a de facto custodian as any person "who has been the primary caregiver for, and financial support[er] of, a child who has resided with the person for at least . . . one (1) year if the child is at least three (3) years of age." I.C. § 31-9-2-35.5.

[16] Turning to Raines's challenge to the sufficiency of the evidence, Raines does not appear to dispute that L.C. lived with Grandfather for at least one year. Instead, Raines contends that "[t]here was no evidence that [Grandfather] was the *primary* caregiver for or *primary* financial support[er] of [L.C.]" because Mother "resided with [L.C.] the entire time that they stayed in Grandfather'[s] house." Appellant's Br. p. 9 (emphases added). Raines goes on to argue: "Though Grandfather testified that he had provided some of these [forms of care or support] to [L.C.], at no time did his testimony or the testimony of anyone else establish that [Grandfather] provided *primary* care or *primary* financial support for [L.C.] while he resided in [Grandfather's] home." *Id.*

(emphases added). Raines ultimately claims that Grandfather's "failure to establish that he was the primary provider of these things" to L.C. was "fatal" to Grandfather's "claim of being a de facto custodian," thus, the trial court should not have granted custody of L.C. to Grandfather. *Id.*

[17] Raines directs us to caselaw for the proposition that providing only "basic needs and financial support [is] insufficient to establish the statutory requirement of a de facto custodian unless the party asserting de facto custodian status establishes . . . that he provided a majority of the caregiving and financial support" for the required time period. *Id.* (citing *In re Paternity of T.P.*, 920 N.E.2d 726, 731 (Ind. Ct. App. 2010)). Yet, the evidence favorable to the judgment did not indicate that Grandfather provided L.C. with only "basic" needs and financial support. Rather, the evidence indicated that Mother was evicted, at which point Children came to live with him at some point in early 2020. In addition to providing shelter, Grandfather provided Children with food and clothing. He also cared for Children, specifically testifying that he would "get them up and put them on the school bus and take care of them after they came home," at which point Mother was usually asleep. Tr. Vol. 2 pp. 19–20. To the extent Raines suggests that a de facto custodian must be the *exclusive* provider for the child, we note that our legislature chose the phrase "primary caregiver" rather than "exclusive caregiver." *See* I.C. § 31-9-2-35.5. And, regardless of this phrasing, there was no evidence that anyone other than Grandfather was providing food, shelter, and clothing for L.C. during that time.

[18] In challenging the finding that Grandfather was a de facto custodian, Raines otherwise focuses on evidence favorable to him. *See, e.g.*, Appellant's Br. p. 10 (focusing on evidence indicating that "Raines was the sole caregiver and financial provider for [L.C.] for at least seventeen months" before Grandfather sought custody of L.C.). But we must view evidence in a light most favorable to the judgment. *See generally Steele-Giri*, 51 N.E.3d at 124. Thus, to the extent Raines is asking us to reweigh the evidence, we must decline those requests.

[19] Raines also complains that the trial court did not definitively conclude that Raines was a de facto custodian, but instead found that he "*could* be considered . . . a de facto custodian for [L.C.]" Appellant's App. Vol. 2 p. 9 (emphasis added). Yet, "[s]pecial findings, even if erroneous, do not warrant reversal if they amount to mere surplusage and add nothing to the trial court's decision." *Bell v. Clark*, 653 N.E.2d 483, 489 (Ind. Ct. App. 1995), *adopted on transfer by* 670 N.E.2d 1290 (Ind. 1996). Here, Raines does not assert that the trial court misapplied the factors pertinent to a custody decision. *Cf.* I.C. § 31-17-2-8.5 (directing a court to apply certain factors if the court identifies a de facto custodian). Instead, the crux of Raines's argument is that there was insufficient evidence to support a finding that *Grandfather* was a de facto custodian. *See* Appellant's Br. p. 13 (citing the de facto custodian factors and arguing that because "there was no evidence that qualified [Grandfather] as a de facto custodian, the only relevant considerations are those that apply to . . . Raines") & 14 ("The manner in which [Grandfather] presented his evidence, along with the [t]rial [c]ourt's [o]rder[,] place a heavy reliance on the finding that

Grandfather was a de facto custodian."); *see also* Appellant's Reply Br. p. 8 ("Since the incorrect finding of [Grandfather] as a de facto custodian is not harmless error, the award of custody to [Grandfather] is clearly erroneous and should be reversed[.]"); *see also id.* (claiming error based on the "incorrect inclusion of [Grandfather's] wishes"). Thus, based on Raines's appellate position, the remark regarding Raines amounts to mere surplusage because the trial court chose to grant custody of L.C. to Grandfather rather than Raines.

[20] All in all, this case is illustrative of the non-traditional, disjointed, and often transient custody arrangements for the children of parents in the throes of substance abuse. Here, Father is deceased, and Mother is unfit due to her substance abuse issues. Thus, for the trial court to make a decision regarding the custody of L.C., it was necessary for the trial court to look to a de facto custodian or potentially rely on the already overburdened child welfare and foster care system. Ultimately, in light of our reading of the De Facto Custodian Statute—which does not contain a recency requirement—we conclude that clear and convincing evidence supported the trial court's finding that Grandfather was a de facto custodian. We therefore conclude that Raines did not identify error in the court's decision to grant custody to Grandfather.

[21] Affirmed.

Pyle, J., Tavitas, J., concur.

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