MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

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CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

Brian E. Roell,

Appellant-Respondent

v.

Kristina L. Roell,

Appellee-Petitioner

June 28, 2024

Court of Appeals Case No.
24A-CR-63

Appeal from the Johnson Superior Court

The Honorable Peter D. Nugent, Judge

Trial Court Cause No.
41D02-1209-DR-666

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

[1] Brian Roell (Father) and Kristina Vandevender (Mother), whose marriage was dissolved in 2015, are the parents of two minor daughters, L.R. and V.R. (the Children). In 2023, the trial court issued an order retaining joint legal custody, modifying physical custody from shared to Father having primary physical custody, and imposing a specific parenting time arrangement for Mother.[1] About three months later, Father filed a petition to modify joint legal custody and Mother's parenting time, which the trial court summarily denied without a hearing. Father appeals, asserting that the trial court committed reversible error by denying his petition without holding an evidentiary hearing.

[2] We affirm.

Facts & Procedural History

[3] Following the 2015 dissolution, the parties co-parented "fairly well," sharing joint legal custody of the Children and utilizing a 50/50 parenting time arrangement until April 2021, when conflicts arose between the parties stemming from allegations made by L.R. about Mother's then-boyfriend/now husband, Rob. *Appellant's Brief* at 5; *Appendix* at 21. The CCS reflects that in late April 2021, Father filed a verified emergency petition for modification of

[1] The record indicates that, at the time of this order, L.R. was sixteen years old and V.R. was fourteen.

custody, parenting time, and child support and, in July 2021, he filed a separate verified motion to modify; a couple weeks later, Mother filed a counter petition to modify. During 2021 and 2022, a guardian ad litem was appointed, the court held an *in camera* interview with the Children, Father filed a motion for change of judge that was denied, Mother filed one or more motions for rule to show cause, the case was referred to mediation, and the court ordered the parties to participate in counseling with Dr. Randall Krupshaw.

[4] Evidentiary hearings were held in April and July 2023 on the various pending motions, and, on August 14, 2023, the court issued an order (the August 2023 Order), which provided in part:

> 9. That . . . [Dr. Krupsaw] indicated that both minor children have issues with Mother and believe that she has chosen Rob over them. This has caused a great deal of animosity between Mother and the minor children. He also testified that the Father has empowered the minor children, which, frankly, is obvious.
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> * * *
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> 11. That this Court has issued Orders regarding parenting time, however, since the Court Order of May 17, 2021, Mother has not exercised any parenting time with the minor children. There is some dispute as to why the minor children are not accompanying Mother.
>
> 12. That Mother claims that Father has denied her parenting time, while Father claims that Mother has simply not exercised her time. The Court GRANTS Mother's Verified Motion for Rule to Show Cause, filed May 18, 2021. The Court believes that [] Father has demonstrated a pattern of alienation which

> affects the children's relationship with their Mother. The Court does not mean to imply that Mother bears zero responsibility for the current situation, because she certainly does. However, BOTH parents have the right to access to their children, barring a Court Order to the contrary. . . .

Appendix at 23. As to modification of custody and parenting time, the court ordered:

> 14. . . . [T]hat a substantial and continuing change in circumstances exists which render[s] the current custody arrangement unreasonable. Specifically, the wishes of the parties, and of the minor children were given substantial weight, along with the minor children's adjustments to their current community and school. The Court hereby awards the parties joint [legal] custody of the minor children, with the Father receiving primary physical custody of the minor children. . . . [T]here is no doubt that [L.R.] is afraid of Rob, and placing [L.R.] in Mother's home, in which Rob is present, is simply not an option. Mother shall receive parenting time with [V.R.] pursuant to the Indiana Parenting Time Guidelines, with Mother's Sunday night being an overnight as well. Mother's time with [L.R.] shall [be], initially, for 3 hours every other week, and it shall take place at either a public place, or at Mother's residence, however, Rob is not to be present during parenting time with either child, for the time being. *The Court will review this part of its ruling in six months*.

Id. at 23 (emphasis added). The court determined that Father had not followed prior court orders on other matters:

> 16. That . . . Father testified that he has changed medical providers for the children without discussing it with Mother.

> This is unacceptable, and Father cannot continue to do this … anymore [sic] than [] Mother could do so without Father's input.
>
> 17. That the Court, in its Decree of Dissolution, awarded each party the right to claim one (1) child each as a tax exemption for federal and state tax purposes. The testimony was that Father claimed both minor children for federal and state tax purposes in taxable year 2021. The Court GRANTS Mother's Verified Motion for Rule to Show Cause filed 11/29/22. Father is in contempt for this action. . . .

Id. at 24.

[5] On November 21, 2023 – or about three months after the August 2023 Order – Father filed a "Verified Petition for Modification of Legal Custody and Respondent's Parenting Time and Expedited Hearing on Respondent's Parenting Time" (the Petition), seeking sole legal custody and asking the court to modify or suspend Mother's parenting time. *Id*. at 26. The Petition alleged that modification of joint legal custody was warranted because Mother refused to communicate with Father "on not only the major issues but on almost any if not all issues." *Id*. With regard to parenting time with L.R., Father averred that Mother "has made little to no attempts to . . . [a]rrange, schedule or discuss her visitation with [L.R.]" since the August 2023 Order. *Id*. at 27.

[6] As to parenting time with V.R., Father alleged that Mother cancelled one weekend in August citing illness; returned V.R. five minutes after picking her up for an exchange later in August; failed to respond to Father's text messages from September through November regarding eleven midweek and five

weekend parenting times; and, when Father and V.R. went to the exchange location, Mother "never showed." *Id*. at 27-30.

[7] Father asserted in the Petition that Mother "has made the choice not to foster a mother daughter relationship" with the Children and that it was not in the Children's best interests "to go to each exchange . . . when Mother fails to show; reiterating to the [C]hildren that she has chosen to maintain her current relationship with her husband over reunifying the relationship with her daughters." *Id*. at 30. Father asked the court to set an expedited hearing to determine if Mother's parenting time should be suspended.

[8] On November 27, the court by CCS entry noticed the parties that it was taking the Petition "under advisement to give Mother's counsel a chance to respond." *Id*. at 20. Mother did not file a response, and on January 2, 2024, the trial court summarily denied the Petition by CCS entry. Father now appeals.

Discussion & Decision

[9] Mother has not filed an appellee's brief in this appeal. We do not undertake the burden of developing appellee's arguments, and we apply a less stringent standard of review and may reverse if the appellant establishes prima facie error. *Meisberger v. Bishop*, 15 N.E.3d 653, 656 (Ind. Ct. App. 2014). In this context, prima facie error is error at first sight, on first appearance, or on the face of it. *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006). However, questions of law are reviewed de novo. *S.M. v. A.A.*, 136 N.E.3d 227, 230 (Ind. Ct. App. 2019).

[10] A trial court may grant a parent's motion to modify custody if it finds that the modification is in the child's best interest and there has been a substantial change in one or more of the statutory factors. *See* Ind. Code §§ 31-17-2-8, -21; *see also* I.C. § 31-17-2-15 (listing factors to consider in determining whether joint legal custody would be in child's best interest). It may grant a parent's motion to modify parenting time when modification would serve the best interests of the child. I.C. § 31-17-4-2. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development. *Id*. Relying on those statutes, Father argues that reversible error occurred here because, "without holding an evidentiary hearing, [the court] could make no determination" about whether a substantial change had occurred in the enumerated factors to warrant a modification of custody or whether a modification of either custody or parenting time was in the Children's best interests. *Appellant's Brief* at 8.

[11] In *Prater v. Wineland*, 160 N.E.3d 540 (Ind. Ct. App. 2020), a mother filed a petition seeking parenting time with her minor child, who was under a guardianship with the paternal grandparents. The trial court denied the petition without a hearing. This court reversed, observing that "the rights of parents to visit their children is a precious privilege" and that I.C. § 31-17-4-1 provides that a noncustodial parent is entitled to reasonable parenting time "unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional

development." The *Prater* court held that "[p]ursuant to this statutory provision, the trial court erred when it denied Mother's visitation petition without a hearing." *Id*. at 543; *see also Rickman v. Rickman*, 993 N.E.2d 1166, 1169 (Ind. Ct. App. 2013) (reversing a trial court's summary denial, without a hearing and by CCS entry, of an incarcerated father's petition to modify an order that had suspended his visitation with child, finding that "a factual basis and a finding as to potential endangerment of [child]'s physical health or safety or significant impairment of his emotional development are necessary" pursuant to I.C. § 31-17-4-2 for restriction of parenting time rights).

[12] Although *Rickman* and *Prater* inform our decision, we find they are distinguishable and do not mandate reversal here. In those cases, the petitioning parent sought to receive parenting time with their child, and the trial court denied the petition without a hearing. The court's denial resulted in the continued restriction of the parent's parenting time rights without the statutorily required finding as to the potential endangerment of the child's physical health or safety or significant impairment of the child's emotional development. Here, in contrast, Father's Petition sought to restrict Mother's parenting time and reduce her legal custody rights. Thus, unlike in *Rickman* and *Prater*, the trial court's denial of the Petition did not result in restriction of his parenting time without the necessary finding of endangerment or impairment required by statute. Rather, the effect of the trial court's denial was to retain the status quo of joint legal custody and Father having primary physical custody of the Children.

[13] Furthermore, and perhaps more central to our decision, is the fact that the trial court, after modifying physical custody and parenting time in its August 2023 Order, expressly stated that it "would review this part of its ruling in six months." *Appendix* at 23. Six months would have been February 16, 2024, and Father filed his Petition several months prior to that, on November 21, 2023.

[14] In assessing the appropriateness of the summary denial here, we note our well-established preference for granting wide latitude and deference to our trial judges in family law matters. *See Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quotation omitted). The record before us reflects a fractured relationship between the parties since 2021. For instance, a January 2022 CCS entry stated:

> Court's prior Orders compelled Father to allow Mother her parenting time. Court admonishes both parties that they shall comply with the Court's Orders. If either side fails to do so, counsel shall notify the Court IMMEDIATELY.

Appendix at 13 (capitalization in original). Then, in its August 2023 Order, the court observed that Mother and Father disputed why Mother was not exercising parenting time, with Father reporting that Mother was choosing not to exercise it and Mother claiming he was preventing her from doing so. The trial court determined that, while Mother bore some responsibility for the situation, Father had engaged in a pattern of parental alienation that was affecting the Children's relationship with Mother. The court also referenced Dr. Krupshaw's testimony that there was animosity between the Children and

Mother because of her relationship with Rob and that Father had "empowered" the Children in that regard, which was "obvious" to the trial court. *Id*. at 22.

[15] To address the various and ongoing concerns, the trial court awarded primary physical custody to Father and ordered a specific parenting time arrangement with Mother, expressly stating that it would revisit the issue in six months. Yet, before that time had passed, Father filed the Petition averring that Mother was not responding to his texts to arrange parenting time and "never showed" when Father took V.R. to the exchange location, which he continued to do week after week despite not having received any communication or confirmation from Mother. *Id*. at 27-29. It is conceivable that it was precisely this sort of conduct by either or both parties that caused the trial court to anticipate a need for review in six months.

[16] Considering the history of the case, combined with the timing of Father's Petition filed several months before the court's anticipated review, we do not find that the court's decision to summarily deny the Petition without a hearing constituted reversible error.

[17] Judgment affirmed.

Bradford, J. and Felix, J., concur.

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