

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Darrah Draper,
Appellant,

v.

Casey Umbarger,
Appellee.

October 29, 2021

Court of Appeals Case No.
21A-JP-561

Appeal from the Henry Circuit
Court

The Honorable Bob A. Witham,
Judge

Trial Court Cause No.
33C01-1902-JP-23

Brown, Judge.

[1] Darrah Draper (“Mother”) appeals the trial court’s order on custody and parenting time. We affirm.

Facts and Procedural History

[2] K.U. was born to Mother and Casey Umbarger (“Father”) in 2008. On February 24, 2019, Mother filed a petition to establish paternity, custody, parenting time, and child support. On July 16, 2019, Mother filed an emergency petition to establish parenting time stating that the parties resided together until January 2019 at which time they separated and “were sharing the minor child on a 50/50 basis” and that Father refused to honor their oral agreement. Appellant’s Appendix Volume II at 34. On July 26, 2020, the court entered an order stating it held a hearing and providing for parenting time in accordance with an exhibit admitted at the hearing. The parties filed an Agreement of the Parties for November 2019 with an attached calendar. In December 2019, Mother filed a motion for make-up days and approval of a calendar.

[3] In January 2020, Mother filed a motion for appointment of a guardian ad litem which the court granted. Mother filed a motion for approval of a February 2020 calendar. In March 2020, Mother filed a motion alleging she was not receiving her parenting time, and the court issued an order stating its intent was that each party receive fifty percent time with K.U. and for Father to take Mother’s work schedule into account. Also that month, Mother filed an emergency motion arguing Father was not following the court’s order, and the

court issued an order related to phone calls and other matters and included an attached calendar.

[4] On September 10, 2020, Guardian Ad Litem Janet Manship (the “GAL”) filed a seventeen-page report. The GAL stated she met with Mother, Father, and K.U. on several occasions, spoke with K.U.’s paternal grandparents and two friends of Mother, and reviewed DCS and school records, court pleadings, text messages, and documents provided by the parties and their counsel. The report reviewed the history of the proceedings including the issues related to parenting time, Mother’s work schedule, and Father’s unemployment and residence with his parents. According to the report, Father expressed many concerns regarding Mother’s care of and involvement with K.U. The GAL stated Father is always present and directly involved in all things K.U. is doing and Mother has a more hands-off approach and is not always directly involved when K.U. is in her care. K.U. stated he does not feel like Mother cares much since she did not see him for months, Father provided examples of Mother not being involved or making bad parenting decisions such as leaving K.U. home alone, not attending K.U.’s practices or having lunch with him at school, and giving K.U. sleeping medication, and the GAL noted many of the examples appeared to relate more to different perspectives on parenting than a lack of involvement.

[5] The report further stated the differing parenting styles were apparent and pointed to disagreements regarding whether K.U. should have been encouraged to sit with his team rather than with Father at a basketball banquet, whether K.U. should ride the bus to school, and the extent to which a parent should

monitor and limit a child's use of a phone. It stated Father and K.U. perceive that Mother interfered with K.U.'s phone use solely to limit his contact with Father and observed that there had been an issue regarding constant calls and texts between Father and K.U. during Mother's parenting time and that the court had ordered Father not to block Mother's number from K.U.'s phone. The report also discussed an occasion when Mother did not provide enough medication for K.U.'s ear infection, an occasion when Mother left a syringe from work on a kitchen counter where K.U. touched it, an incident where a dispute arose regarding the parenting time calendar and K.U. was blocked from leaving Mother's home, and an occasion when K.U. left Mother's home and started walking toward Father's residence. The GAL stated that Father appears to have an extremely high expectation of what signifies a parent's interest, does not make it easy for Mother to be involved, and relies heavily on reports from K.U. The GAL stated that Mother reports Father was not very involved prior to the parties' separation, is concerned Father isolates K.U. and does not allow him to have any independence, and feels Father is manipulative and controlling.

[6] The report stated that K.U. provided the GAL with a "pro/con" list for each parent, many of his "cons" for Mother mimicked those concerns of Father, some of K.U.'s negatives were a misunderstanding of events but some of his negatives were supported by all versions of the facts, and there were no positives listed for Mother. Respondent's Exhibit A at 10. It noted that all of K.U.'s comments about Father were positive except that he "gets mad a tiny bit

on homework sometimes.” *Id.* at 11. The positives for Father included that he spent time and played with K.U., gave him privacy, and cooked his favorite meals. The GAL reported:

[K.U.] was adamant, he wants to spend less time with Mother and more time with Father. [K.U.] does not like to be away from Father for more than a day at a time and wants to be able to speak with his Father daily. And [K.U.] is more comfortable with his Father assisting with his homework than his Mother. [K.U.] did not have a high opinion of his Mother, but the GAL is not certain if that is because he was trying so hard to pick any and every negative thing his Mother has done to simply support his desire to spend less time with her, if it was because he has heard his Father voice concerns and only sees things from his Father’s perspective or if it is truly his own opinion. But regardless, at this time, [K.U.] is much more comfortable with Father and has a very tight bond with his Father.

Id. The GAL concluded that, while Father’s affection for K.U. can be supportive, “the extent of [his] overzealous involvement is almost to a fault” and his “inability to view events in any way other than in a negative context of Mother’s parenting is problematic.” *Id.* at 12. She concluded that both parents clearly love K.U. and are parenting him in a way they feel is best. She concluded that, while it is important for each parent to continue to have significant contact with and influence on K.U., at this time K.U. would be devastated if his time with Father were to be reduced or eliminated, and he feels strongly about reducing his time with Mother. The GAL concluded that, “[w]ith the foregoing in mind, [she] believes [K.U.’s] wishes should be taken into consideration but should not be the ultimate deciding factor” *Id.* at 13. The GAL recommended that Father have primary physical custody and

Mother have parenting time consistent with the Indiana Parenting Time Guidelines with certain adjustments.

[7] On January 12, 2021, the trial court held a hearing at which it admitted the GAL's report without objection and heard testimony from Father, Mother, and friends of Mother. Father testified that he lived in the house where he was raised, his parents live at their lake house for the most part, and everyone had their own rooms. He described K.U.'s hobbies and their activities together and testified K.U. had straight As in school, he helped K.U. with homework even when he was at Mother's house, he was unemployed and helped his father with properties his father owned, he had accumulated savings while working at his previous job, and he paid for clothing and food for K.U. He testified as to his concerns with K.U.'s emotional state around Mother and with Mother's parenting style. He indicated he paid for K.U.'s cell phone and took him to appointments.

[8] On cross-examination, Father indicated that he resigned from his former employment at a school corporation, and the court admitted documents related to his prior employment.¹ Father responded to questions regarding his savings, the extent to which his parents paid for his expenses, why he did not permit K.U. to ride the bus to school, scheduling K.U.'s dental appointment and not informing Mother, and whether he felt that his discussions with K.U. pushed

¹ The documents include Father's resignation letter dated May 10, 2019, and records related to complaints about Father's communications with students.

him away from Mother, K.U. tried to impress him, or he had influence over K.U. Mother testified regarding her history with Father, her and Father's employment, her work schedule, instances in which Father yelled at her, attempted to flip a couch with her on it, and shoved her resulting in her sliding down steps and breaking her hand, and how Father interfered with her parenting time.

[9] Mother's counsel indicated she wished to present testimony from Dr. Erica Kane, and Father's counsel argued Dr. Kane had not met with Father or K.U. and there was not a foundation for her testimony. Mother's counsel stated Dr. Kane "can evaluate from a psychological standpoint the [GAL's] report just like any medical expert could." Transcript Volume II at 115-116. The court asked if Dr. Kane had spoken with anybody in the case, and Mother's counsel replied: "Nope. All she did was read the report." *Id.* at 116. Mother's counsel argued Dr. Kane was an expert witness.² The court stated that it did not know if she was an expert witness and "I just have a difficulty seeing how someone can come in who has not seen the child, has not talked to . . . any of the other

² Ind. Evidence Rule 702 provides:

(a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

(b) Expert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles.

Ind. Evidence Rule 703 provides: "An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field."

persons who are involved . . . and say I disagree with this [GAL] report,” and Mother’s counsel stated: “That’s not what she’s going to say,” “[s]he’s going to talk about what she perceives to be red flags based upon the facts elicited by” the GAL, “I’m asking, assume that the facts that the [GAL] sets out are true, are there concerns from a psychological standpoint.” *Id.* at 116-118. Dr. Kane testified regarding her education and experience. She indicated that Mother’s counsel asked her to review the GAL’s report and she had not met with the parties or child. Father’s counsel moved to exclude her testimony.

[10] The court asked Mother’s counsel if she was planning to ask Dr. Kane “if she sees parental alienation in this case, based upon her review of the report,” Mother’s counsel responded affirmatively, and the court stated it would not “let [Mother’s counsel] present a parental alienation based upon . . . someone reviewing a report . . . who has not talked to any of the parties at all and say that there’s parental alienation in this case just from reading this 17 page report.” *Id.* at 121-122. The court said the GAL’s report had been filed in September, both parties disagreed with aspects of the report, and it seemed unfair to have Dr. Kane comment on the report under the circumstances. Mother’s counsel asked for a continuance, which the court denied. The court excused itself so that Mother’s counsel could make a record. Outside the presence of the trial judge, Dr. Kane described parental alienation as a tactic and stated she had previously reviewed custody evaluations without meeting the parties or children involved. She stated “I found 29 instances within this report that would indicate typical behavior of an alienating parent,” and she

pointed to statements in the report that K.U. mimics Father's impression, perceives restrictions as Mother denying him contact with Father rather than as disciplinary actions, and was unaware of discrepancies in the parents' respective schedules but stated, if there was, Father's calendar was correct. *Id.* at 127. She indicated that parental alienation should be investigated.

[11] On January 26, 2021, the court entered findings of fact and conclusions. The court found that it was in K.U.'s best interest that Father have primary physical custody and ordered that the parties have joint legal custody. The court noted the GAL's report highlighted the strengths and weaknesses of both parties' ability to parent. It noted the report referred to K.U.'s wishes to spend more time with Father and less time with Mother, that K.U. does not like to be away from Father more than a day and wants to speak to him daily, and that K.U. would be devastated if his time with Father were to be reduced. The court stated the GAL's report included recommendations which it had taken into consideration. It further found that Mother should have more than the normal parenting time recommended by the Indiana Parenting Time Guidelines and that she shall have parenting time as the parties agree and, if they cannot agree, shall have parenting time every Tuesday after school until Wednesday morning at the start of school and every other Thursday after school until Sunday at 5:00 p.m. It also included orders related to holiday and summer parenting time. The court did not order either party to pay child support. Mother filed a motion for clarification, and the court issued an order related to certain

parenting time and communication. Mother filed a motion to correct error, which was denied.

Discussion

- [12] Mother asserts the trial court erred in not permitting her to elicit testimony from Dr. Kane and argues “Dr. Kane could explain to the court what conclusions she would have drawn with the same facts and statements that were available to the GAL” and “why, in her expert opinion, the statements provided in the fact section of the GAL report indicated that Father had been alienating the minor child, and that this behavior is likely to continue.” Appellant’s Brief at 17. Mother further asserts the court relied solely on K.U.’s wishes and seemingly ignored Father’s behavior and defiance of prior court orders.
- [13] Where a trial court enters findings of fact and conclusions, we first determine whether the evidence supports the findings and then whether the findings support the judgment. *Lechien v. Wren*, 950 N.E.2d 838, 841 (Ind. Ct. App. 2011). We will set aside findings only where there are no facts or inferences to support them. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.*
- [14] A trial court’s custody determination is afforded considerable deference as it is the trial court that sees the parties, observes their conduct and demeanor, and hears their testimony. *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 945-946 (Ind. Ct. App. 2006). We will not reweigh the evidence, judge the credibility of witnesses, or substitute our judgment for that of the trial court. *Id.* at 946.

[15] Ind. Code § 31-14-13-2 provides:

The court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. 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 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 parents;
 - (B) the child's siblings; and
 - (C) 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.
- (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 2.5(b) of this chapter.

The statute requires a court to consider the statutory factors, not make a finding regarding each one, and we presume trial courts know and follow the law. *See Anselm v. Anselm*, 146 N.E.3d 1042, 1047 (Ind. Ct. App. 2020), *trans. denied*.

Also, we review parenting time decisions for an abuse of discretion. *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013).

[16] As for Mother’s argument that the trial court erred in not permitting her to present testimony from Dr. Kane, a trial court’s ruling on the admission of evidence is generally accorded a great deal of deference on appeal. *Hall v. State*, 36 N.E.3d 459, 466 (Ind. 2015), *reh’g denied*. We will not reverse if the court’s decision is sustainable on any ground. *See Gomez v. Gomez*, 887 N.E.2d 977, 982 (Ind. Ct. App. 2008). We presume a trial court’s evidentiary rulings are correct and afford wide latitude to its decision. *Rowe v. State*, 717 N.E.2d 1262, 1264 (Ind. Ct. App. 1999). We will not reverse an erroneous evidentiary decision if the ruling constituted harmless error. *Spaulding v. Harris*, 914 N.E.2d 820, 829-830 (Ind. Ct. App. 2009), *reh’g denied, trans. denied*. An error is harmless if it does not affect the substantial rights of the parties. *Id.* at 830.

[17] The record reveals that the trial court heard the parties’ arguments as set forth above and in the record. While Mother’s counsel indicated that Dr. Kane could “evaluate from a psychological standpoint” the GAL’s report and “talk about what she perceives to be red flags based upon the facts,” she also indicated that Dr. Kane had only read the report. Transcript Volume II at 115-116. The court noted the GAL’s report had been filed four months earlier, that Dr. Kane had not interviewed K.U. or the parties, and it seemed unfair to have Dr. Kane comment on the report under the circumstances. We afford the trial court wide latitude in its ruling. *See Rowe*, 717 N.E.2d at 1264. Mother does not challenge the denial of her request for a continuance. Moreover, we

observe that the GAL's report noted those facts which suggested that K.U.'s statements and perspective may have been influenced by Father. The GAL reported that K.U. provided her with a "pro/con" list for each parent, observed many of his "cons" for Mother "mimicked those concerns of Father and [K.U.'s] perception of events was nearly identical to Father's perception of what constitutes bad parenting, neglect or abuse," and noted Mother's concern that Father isolates K.U. and is manipulative. Respondent's Exhibit A at 10. The GAL also noted K.U. did not have a high opinion of Mother and she was "not certain if that is because he was trying so hard to pick any and every negative thing his Mother has done to simply support his desire to spend less time with her, if it was because he has heard his Father voice concerns and only sees things from his Father's perspective or if it is truly his own opinion." *Id.* at 11. The court also heard the testimony of Father and Mother. The court was able to consider Father's influence in determining how much weight to assign to K.U.'s wishes and statements to the GAL. We cannot conclude that reversal on this basis is warranted.

[18] The GAL's report was thorough, described the sources of the information presented, summarized the information and statements provided by K.U. and the parties, and reviewed the assertions made by the parties and K.U. The GAL's report included extensive conclusions and recommendations. The court heard the testimony of Father and Mother, and each of them were thoroughly cross-examined. The court was able to consider the parties' testimony and the GAL's report and to take into account the parties' care for K.U., their living

arrangements, their resources and schedules, the conduct of the parties, the extent to which Father did not comply with court orders or agreed upon parenting time, and the assertions regarding the parties' patterns of behavior. The court was also able to consider the evidence presented regarding K.U.'s relationship with each of his parents, his age and gender, the parties' conduct, K.U.'s adjustment to his home and school, the health of all the individuals involved, and the wishes of the parties and K.U. Based upon the record, we cannot say that no facts or inferences support the decision of the trial court.

[19] For the foregoing reasons, we affirm the trial court.

[20] Affirmed.

Najam, J., and Riley, J., concur.