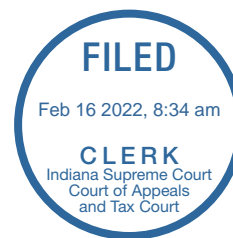


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Jessie D. Cobb-Dennard
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Laura Harper,
Appellant-Respondent,

v.

Adam Helsley,
Appellee-Petitioner.

February 16, 2022

Court of Appeals Case No.
21A-JP-1736

Appeal from the Franklin Circuit
Court

The Honorable Brian D. Hill,
Special Judge

Trial Court Cause No.
24C01-2008-JP-449

Weissmann, Judge.

[1] Laura Harper (Mother) appeals trial court's order granting Adam Helsey (Father) unsupervised parenting time with their child, E.H. (Child). Mother argues that, without supervision, Father's parenting time might endanger Child's physical health or significantly impair Child's emotional development. Finding that Mother's argument amounts to an improper request to reweigh the evidence, we affirm.

Facts

[2] Child was born on March 28, 2018. More than two years later, Father filed a petition to establish paternity, custody, child support, and parenting time. After a hearing at which both parents testified, the trial court found that Father is Child's biological and legal father. It granted Mother full legal and primary physical custody of Child and allowed Father unsupervised parenting time.

Discussion and Decision

[3] Mother appeals the grant to Father of unsupervised parenting time, arguing that it might endanger Child's health or significantly impair her development and that the evidence is insufficient to support the trial court's ruling. She asks that the trial court's order be revised to require supervised parenting time instead. We review a trial court's order on visitation for abuse of discretion. *Lasater v. Lasater*, 809 N.E.2d 380, 400 (Ind. Ct. App. 2004). When a rational basis in the record supports the trial court's determination, there is no abuse of discretion. *Id.* We will not reweigh the evidence or judge the credibility of witnesses. *Id.* Because Father did not file a brief in this appeal, we will reverse if Mother's

brief presents a case of prima facie error, meaning error at first sight, on first appearance, or on the face of it. *In re Adoption of E.B.*, 163 N.E.3d 931, 935 (Ind. Ct. App. 2021).

- [4] Indiana law has long held that noncustodial parents are generally entitled to visitation rights. *Id.* at 400-01. “However, the right of visitation is subordinated to the best interests of the child.” *Id.* at 401 (citing *Hanson v. Spolnik*, 685 N.E.2d 71, 79 (Ind. Ct. App. 1997)). Indiana Code § 31-17-4-1, which governs visitation, states:

[A] parent not granted custody of the child is entitled to reasonable parenting time rights 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.

Mother, as the party seeking to restrict Father’s visitation rights, bears the burden of presenting evidence justifying the restriction, which she must prove by a preponderance of evidence. *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013).

- [5] Mother argues that Father voluntarily excluded himself from Child’s life. In support of this allegation, Mother points to Father’s testimony that he has not seen Child in more than two years. Mother notes that Father provided no evidence that he tried to contact Child during that time beyond his own testimony. But Father’s testimony was enough. Father testified that he petitioned to establish parenting time because Mother refused to allow him

access to Child. Tr. Vol. II, p. at 11-12. Mother even conceded that she never returned Father's calls when he asked for his daughter. *Id.* at 43.

[6] Mother also argues that Father is a danger to Child. She relies chiefly on her own testimony, which Father's testimony often contradicted or contextualized. Mother testified that Father once left Child unattended on a chest-high changing table while changing her diaper; Father testified that it was his habit to change Child's diaper on the floor. Mother points to Father's multiple alcohol-related convictions; Father admitted those convictions but testified that he no longer drinks. Mother testified that Father hit her; Father testified that Mother hit him. Even where Father did not directly contradict Mother's allegations, it was within the trial court's discretion not to credit Mother's testimony.

[7] The trial court, presented with conflicting evidence, determined that Father should receive unsupervised parenting time. A rational basis in the record supports this conclusion. *See Lasater*, 809 N.E.2d at 400. Mother's argument amounts to a request to reweigh the evidence, which we will not do. *Id.* Accordingly, the trial court is affirmed.

Najam, J., and Vaidik, J., concur.