

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Kendra Shepherd Tilley,  
*Appellant-Petitioner,*

v.

Russell A. Shepherd,  
*Appellee-Respondent.*

June 8, 2023

Court of Appeals Case No.  
22A-DC-2523

Appeal from the Jefferson Circuit  
Court

The Honorable Donald J. Mote,  
Judge

Trial Court Cause No.  
39C01-1709-DC-852

**Memorandum Decision by Chief Judge Altice.**

Judge Pyle concurs.

Judge Riley dissents with separate opinion.

**Altice, Chief Judge.**

## **Case Summary**

[1] Kendra Shepherd Tilley (Mother) appeals the trial court's grant of Russell A. Shepherd's (Father) petition to modify custody of their minor children, eleven-year-old M.S. and eight-year-old E.S. (collectively, the Children). Specifically, she contends that the trial court abused its discretion when it transferred primary physical custody of the Children to Father.

[2] We affirm.

## **Facts & Procedural History**

[3] In September 2017, Mother petitioned for dissolution of her ten-year marriage to Father. M.S. had just turned seven at the time, and E.S. was three years old. The parties entered into a mediated settlement agreement about a year later, which the trial court accepted and incorporated into the final decree of dissolution on September 10, 2018. Pursuant thereto, the parties shared joint legal custody and Mother was awarded primary physical custody, with Father receiving parenting time as the parties could agree or if they could not agree, in accordance with the Indiana Parenting Time Guidelines with certain delineated modifications. Father was ordered to pay child support in the amount of \$194 per week.

[4] Mother and the Children remained in the marital home in Madison, Indiana. In April 2020, Father moved about an hour away to Louisville, Kentucky. Despite his move, Father continued to regularly exercise parenting time on alternating weekends until Monday after school, as well as holidays, special

days, and one-half of the summer. He remained current with his child support obligation.

- [5] Mother and Father appear to have coparented without any major bumps in the road until shortly after Mother began a romantic relationship with Christian Featherstone, who she knew was a felon and had just come out of a rehabilitation facility. In fact, Featherstone's criminal history was extensive, beginning in 2014 with convictions, under two cause numbers, for Class D felony arson and Class D felony residential entry. He served time and was placed on probation for three years, which he subsequently violated. Then in early 2017, he was convicted, again under two cause numbers, of Class B misdemeanor possession of marijuana and Class A misdemeanor theft. In October 2021, Featherstone was charged with Class A misdemeanor invasion of privacy for violating a protective order issued to prevent domestic violence or harassment, and, less than three weeks later, he was charged with Class C misdemeanor OWI and Class C misdemeanor leaving the scene of an accident.
- [6] While the two criminal cases were pending, Featherstone apparently went into a substance rehabilitation facility and, upon his return, he and Mother began a romantic relationship in December 2021. On March 29, 2022, Featherstone pleaded guilty to OWI and the State dismissed the other pending charges. He was placed on supervised probation for 180 days.
- [7] Mother introduced the Children to Featherstone in April, and he moved into their home that same month, while still on probation. The Children quickly

began voicing concerns about Featherstone to Father and expressing a reluctance to return to Mother's home after Father's parenting time concluded. The Children also conveyed their concerns to Mother. In one text exchange, M.S. asked Mother if Featherstone would be at the home upon their return from Father's, and Mother replied: "I DONT KNOW ITS MY HOUSE." *Exhibit Vol.* at 54.

- [8] In May, Father reached out to his counsel and indicated that he was worried, based on conversations with the Children and others, that there was domestic violence and drug use in Mother's home and that arguments were occurring in front of the children. Counsel advised Father to communicate with Mother, which he did that same month.
- [9] Father expressed his multiple concerns to Mother and detailed Featherstone's extensive criminal history – both past and present. Mother responded that "it wasn't any of [Father's] business and that [Featherstone] was a good person and she was making the decision." *Transcript* at 7. According to Mother, she "didn't have any concerns at that time" because Featherstone had been in treatment, was sober, and did not have "any criminal history against children." *Id.* at 44. And Mother did not believe Father had any proof that the Children were in danger at the time with Featherstone in the home.
- [10] On June 18, 2022, about two months after Featherstone had moved into Mother's home, police officers responded to the residence for a domestic dispute. Mother reported that Featherstone had shoved her in the kitchen,

causing her to fall and injure herself, tried to punch her, pointed a knife at her, and made threats. He took her phone away when she tried to call for help. According to the probable cause affidavit, Featherstone reported that he and Mother had been drinking throughout the day and that an argument ensued that night after Mother returned from visiting friends. Featherstone was arrested and charged with Level 5 felony intimidation, Level 6 felony domestic battery, and Class A misdemeanor interference with reporting a crime. A criminal no-contact order was issued between Featherstone and Mother.

[11] On June 21, 2022, Mother reported to law enforcement that she had received text messages from a person at the Jefferson County Jail, which she believed were sent by or on behalf of Featherstone. Mother was visibly shaken and crying when the dispatched officer arrived, and she informed the officer that “she was sure [Featherstone] was going to kill her.” *Appendix* at 99. About a week later, Featherstone was charged with invasion of privacy.

[12] Featherstone’s assault on Mother occurred during Father’s parenting time with the Children, and Mother promptly informed Father of the altercation. Mother also sent photographs of her multiple injuries to the Children along with a text message stating, “[Featherstone] got drunk and got mad and he had a knife and was shoving me around.” *Exhibit Vol.* at 4. Father did not feel that it was appropriate for Mother to have sent the photographs and texts to the Children, especially seven-year-old E.S., who was distraught and concerned the rest of the weekend with Father.

- [13] On June 24, 2022, Father petitioned to modify custody, alleging that there had been a continuing and substantial change in circumstances in that “the [C]hildren have witnessed domestic violence involving [Mother] and her boyfriend and the household is not safe for the [C]hildren.” *Appendix* at 84. The trial court held an evidentiary hearing on Father’s motion on August 26, 2022.
- [14] At the hearing, Father testified to living in a nice neighborhood in Louisville with his fiancée and her thirteen-year-old daughter. They had lived in their current home, which they were buying, for over two years, and the Children each had their own rooms in the home. Father is a nineteen-year veteran of the United States Air Force and testified that he is nearing retirement. His work schedule is 6:00 a.m. to 4:30 p.m., Tuesday through Friday, with his place of employment close to home. Although he was “deploy[ed] a lot” when the Children were younger, he had not been deployed since 2020 and had no scheduled deployments or other job-related travel. *Transcript* at 56. Father’s fiancée, also in the Air Force, works at the same facility as Father.
- [15] While Mother still lived in the marital home in Madison, she testified that she had accepted an offer on her home and “will possibly be moving into [a] rental home as soon as it’s ready.” *Id.* at 51. Mother also indicated that she was deciding between two possible rentals in Madison. Mother testified to being employed full-time with Madison Consolidated Schools making \$14 per hour and, since February, working a second job as a bartender at the Madd Paddle.

During summer breaks, she worked at the Marriott. Mother had a couple other jobs before March 2021.

[16] As to Mother's relationship with Featherstone, Father testified that Mother "wasn't responsive" to the specific concerns he expressed in May. *Id.* at 8. Based on conversations with the Children and others, as well as a search of Featherstone's public criminal record, Father was worried about domestic violence and drug use in Mother's home and that the Children were witnessing arguments between the couple.<sup>1</sup> When the Children voiced concerns to Mother around this same time, about a month before the domestic battery incident in June, she "[d]isregarded the situation" and "[d]id nothing." *Id.* at 23. Father testified that Mother's failure to act in the Children's best interests regarding Featherstone "[a]bsolutely" makes him concerned about her decision making going forward and whether "she'll place somebody around the [C]hildren who's dangerous." *Id.*

[17] In response, Mother testified that she did not see any harm in having Featherstone in the home before the June incident and that there was nothing in his criminal history that made her "think that he was any danger." *Id.* at 56. She claimed he was "completely sober" at the time, neither of them was using illegal drugs, and they were not having arguments in front of the Children. *Id.*

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<sup>1</sup> Father also thought Featherstone might be driving the Children while in Mother's care, which worried Father because Featherstone was currently on probation for OWI. Mother testified that the Children were lying if they had reported this to Father.

at 44. Mother testified that she did not recall the text exchange between herself and M.S., in which M.S. allegedly expressed concern about whether Featherstone would be at the home upon the Children's return from Father's. Mother also indicated that because of the June incident, she would never again allow Featherstone around the Children.

[18] At the end of the hearing, the trial court took the matter under advisement and indicated that it would like to conduct *in camera* interviews with the Children. On September 6, the trial court held short *in camera* interviews with each of the Children.

[19] On October 6, 2022, the trial court issued its order granting Father's petition to modify and awarding him primary custody of the Children, with Mother receiving parenting time in accordance with the Indiana Parenting Time Guidelines. Based on the facts set out above, the trial court made the following conclusions:

44. The Court considers the following [statutory] factors applicable to this case:

a. The interaction and interrelationship of the child with the child's parent or parents, the child's sibling, and any other person who may significantly affect the child's best interests.

While living in the home, Mr. Featherstone was in a position that he could have significantly affected the Children['s] best interests. Mr. Featherstone is no longer in the home and no longer has contact with the Children.



b. The child's adjustment to the child's home, school, and community.

The Children are 11 and 8. They are presumably settled in at their schools and have developed relationships with classmates. This weighs heavily against a modification.

The Children also have grandparents and cousins who live in the area here, although no record was made of the nature and extent of their relationships with these other family members. The Children would have few, if any, blood relatives nearby in Louisville. But the Court gives this factor nominal weight against modifying custody insofar as Louisville is only an hour drive from Madison.

45. The glaring, non-statutorily delineated factor here is Mother's decision to bring a convicted felon and recovering drug addict[,] who is currently on probation, into her home and exposing the Children to him.

46. Even more troubling is Mother's decision to permit Mr. Featherstone to use alcohol in her home knowing he is a recovering drug addict.

47. The Court is further unimpressed by Mother's apathetic responses to Father when he expressed his concerns about Mr. Featherstone weeks before the assault, as well as her decision to send pictures depicting her injuries resulting from what was clearly violent physical assault to [M.S.].

48. Even when [M.S.] previously texted Mother asking whether Mr. Featherstone would be at the house when the Children returned to her home – demonstrating at least one child did not wish to be around Mr. Featherstone – Mother responded, "I

DON'T KNOW, IT'S MY HOUSE.” This message shows Mother’s character and indifference to her Children, as well as her willingness to put her own needs and desires over the needs and safety of her Children.

49. The Court considers there is absence of evidence in the record demonstrating how, if at all, these events have *directly* impacted the Children.

- a. There is no evidence suggesting the Children[’s] relationships with either Parent have changed.
- b. There is no evidence that the Children were witness to any violence in the home.
- c. Mr. Featherstone is no longer in the home.
- d. Since Mr. Featherston’s departure, neither Child has expressed reluctance to return to Mother’s home.

50. That said, Mother exhibited poor judgment in allowing Mr. Featherstone, a convicted arsonist with multiple prior misdemeanor convictions who was on probation for OWI, into her home and exposing the Children to him.

51. Mother’s decision to permit Mr. Featherstone to drink alcohol in her home despite being well aware he is a recovering addict is shocking and greater evidence of her poor decision-making. This is particularly troubling to the Court. In dismissing Father’s concerns, Mother made it clear several times that she was not worried about the Children’s safety because Mr. Featherstone’s drug addiction had been addressed through treatment, and that he was in “active sobriety”.

\* \* \*

53. Here, Mother's responses to both Father and the Children were dismissive and far from making every effort to discuss options as required by the [Indiana Parenting Time Guidelines]. Her responses demonstrated poor character and an unwillingness to work through those concerns with Father.

54. Furthermore, the Court simply does not credit Mother's testimony regarding the text message exchange with [M.S.] and her claim she did not know whom the exchange was about. It is obvious to this Court that [M.S.] was asking whether Mr. Featherstone would be in the home when the Children returned from Father's care. It is equally obvious Mother knew this when she responded, "I DON'T KNOW, ITS MY HOUSE."

55. Mother's lack of candor before this Court calls into question her ability to make sound and safe decisions regarding the welfare of the Children. It gives the Court great pause when considering Mother's testimony that there is no drug use in the house, there were no arguments with Mr. Featherstone in the presence of the Children, or that Mr. Featherstone was not transporting the Children while on probation for OWI.

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57. This Court saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand. This Court properly understands the significance of the evidence and concludes that there has been a substantial change in circumstances warranting a modification of custody.

58. The Court awards primary physical custody of the Children to Father. This modification is in the best interests of the Children.

*Appendix at 101-104 (footnote omitted and emphasis in original).*

[20] Mother now appeals. Additional facts will be provided as necessary.

## **Standard of Review**

[21] The trial court entered specific findings of fact and conclusions in its order modifying custody. Pursuant to Indiana Trial Rule 52(A), we will not set aside the trial court's findings or judgment unless clearly erroneous, giving due regard to the trial court's ability to judge the credibility of witnesses. *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). Considering only the evidence most favorable to the judgment and all reasonable inferences derived therefrom, we will find clear error only if the evidence, either directly or by inference, fails to support the findings, or if the findings fail to support the conclusions. *Paternity of X.A.S. v. S.K.*, 928 N.E.2d 222, 224 (Ind. Ct. App. 2010), *trans. denied*.

[22] Further, in reviewing this modification of child custody, we keep in mind the well-established preference in Indiana “for granting latitude and deference to our trial judges in family law matters.” *Steele-Giri*, 51 N.E.3d at 124. “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*

*v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)). To reverse a trial court’s ruling, it is not enough that the evidence might support a different conclusion. *Id.* Rather, the evidence must positively require the conclusion contended for by the appellant. *Id.* Still, although we must be highly deferential to trial courts in cases such as this, that deference is not absolute. *See Kirk*, 770 N.E.2d at 307 n.5 (“This is not to say that the circumstances of a custody or visitation case will never warrant reversal.”).

## Discussion & Decision

[23] To modify the existing child custody order, the trial court needed to find that modification was both in the best interests of the Children and there was “a substantial change in one (1) or more of the factors that the court may consider under [Ind. Code § 31-17-2-8].” I.C. § 31-17-2-21(a).<sup>2</sup> I.C. § 31-17-2-8 provides in relevant part:

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 parent or parents.

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<sup>2</sup> Father, as the party requesting modification, bore the burden below of proving that the existing custody order should be changed. *Montgomery v. Montgomery*, 59 N.E.3d 343, 350 (Ind. Ct. App. 2016), *trans. denied*. “Indeed, this more stringent standard is required to support a change in custody, as opposed to an initial custody determination[] where there is no presumption for either parent[,] because permanence and stability are considered best for the welfare and happiness of the child.” *Steele-Giri*, 51 N.E.3d at 124 (internal quotations omitted).

(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

(B) 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.

*Id.* (emphasis supplied). The statutory language makes clear that the above list is not exhaustive. *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1259-60 (Ind. Ct. App. 2010) ("The list of factors a trial court may consider when determining whether to modify custody is a nonexhaustive list.").

[24] When evaluating whether a change has occurred that is substantial enough to warrant a modification, the context of the whole environment must be judged. *In re Marriage of Sutton*, 16 N.E.3d 481, 485 (Ind. Ct. App. 2014). Ultimately, "the effect on the child is what renders a change substantial or inconsequential." *Id.*

[25] On appeal, Mother argues that the trial court's decision to modify custody focused solely on her battery at the hands of Featherstone, who is no longer in her life. And she notes that the trial court expressly found that the Children had not witnessed any of the domestic violence, their relationship with Mother had not changed, and the Children were not reluctant to stay in her care without Featherstone in the home. This is not an entirely accurate or complete description of the trial court's order.

[26] The trial court made extensive findings and conclusions that thoughtfully explained its decision to modify custody. Contrary to Mother's characterization, the court did not modify custody because Mother was a victim of domestic violence. Rather, the order makes clear that the modification was based on Mother's actions and inactions leading up to the domestic battery incident, her poor judgment, and her evasive testimony and lack of candor at the evidentiary hearing.

[27] The trial court's primary focus was on Mother's glaring decision to bring a felon and recovering drug addict, who was currently on probation, into the home with her young children. The court noted Mother's "apathetic responses" when Father expressed valid concerns to her regarding this decision. *Appendix* at 101. Further, the court concluded that Mother's curt response to M.S.'s text, which revealed that at least one of the Children did not want Featherstone in the home, demonstrated "Mother's character and indifference to her Children, as well as her willingness to put her own needs and desires over the needs and safety of her Children." *Id.* at 102. In sum, the court characterized Mother's

responses to Father and Children as “dismissive” and illustrative of “poor character and an unwillingness to work through those concerns with Father.” *Id.* at 103. The trial court also found Mother’s poor judgment reflected in her decision to send pictures to M.S. “depicting her injuries resulting from what was clearly a violent physical assault.” *Id.* at 102.

[28] Furthermore, the trial court did not believe that Mother testified truthfully at the hearing and particularly discredited her testimony that there were no drugs in the house,<sup>3</sup> that she and Featherstone did not argue in front of the Children, and that Featherstone was not transporting the Children while on probation for OWI. That is, while the trial court recognized that Father presented no evidence that the Children witnessed violence in Mother’s home, the court did not credit Mother’s testimony that there were no arguments. And based on Mother’s “lack of candor” at the hearing, the court questioned “her ability to make sound and safe decisions regarding the welfare of the Children.” *Id.*

[29] The trial court also acknowledged that there was a lack of evidence regarding if and how the Children were directly impacted by Featherstone’s presence in the home. And there was no evidence that their relationship with Mother had changed or that they were reluctant to return to Mother’s home since

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<sup>3</sup> The trial court also noted Mother’s poor decision to permit Featherstone, a recovering addict, to drink alcohol in her home. On appeal, Mother does not dispute that Featherstone was intoxicated on the night he attacked her, but she claims that there was no admissible evidence that she was drinking with him that day or that she *allowed* him to drink alcohol. Even if the trial court erred in making and relying on this finding, we find the error insignificant in light of the ample other evidence showing Mother’s lack of judgment.



Featherstone's departure. That said, we cannot fault the trial court for finding a substantial – not inconsequential – change in circumstances due to her recent well-documented poor judgment – which continued in the face of concerns thoughtfully raised by Father, as well as the Children – and her decision to put her own desires over the needs and safety of the Children.

[30] Even with the benefit of hindsight, Mother does not seem to grasp that she exercised poor judgment in allowing Featherstone to live in her home with the Children. On appeal, she asserts that despite knowledge of his prior convictions and history of substance abuse, Mother could not “predict the future and know [Featherstone] would batter her.” *Appellant's Brief* at 11. This focuses on the issue with too narrow of a lens. The question is whether Mother should have exercised more caution to protect her Children by not welcoming into her home an individual with a long criminal record, recently out of drug rehab and still on probation for his most-recent offense, whom she introduced to the Children only days before he moved in. Father discussed with Mother the obvious red flags and the Children's reactions to Featherstone, but she chose to wait until she had “first-hand knowledge” of the danger he posed in the home. *Transcript* at 65. Then after obtaining such direct knowledge, she sent pictures from her hospital bed to M.S. showing her injuries, along with a message with details of the attack.

[31] Once Featherstone assaulted Mother on June 18, 2022, she contacted law enforcement and Father, cooperated in the criminal investigation, and informed the authorities when he subsequently violated the no-contact order. At the

hearing, which was about two months after the attack, Mother testified that she had had no contact with Featherstone and would not have him around the Children again. Mother's decision to excise Featherstone from her life is commendable, but it does not change the fact that she made decisions that were not in the best interests of the Children.

[32] In light of the substantial change in circumstances, the trial court considered all of the relevant statutory factors and determined that modification was in the Children's best interests. Weighing against modification, the trial court expressly considered the Children's lifelong ties to the Madison community, where they have extended family<sup>4</sup> and are settled in their schools. The court also recognized that Featherstone was no longer living in Mother's home and that there was no evidence that the Children's relationship with Mother had changed going forward. The trial court's findings also reveal that Mother's living arrangements were in a state of flux, as she was in the process of selling the home in which the Children had been raised and was then planning to rent but did not know where. In contrast, Father and his fiancée had lived in their home, in which the Children have their own rooms, for over two years. Additionally, the trial courts findings indicate that Father works fifteen minutes from home and, unlike in the past, no longer travels often for work.

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<sup>4</sup> The court noted the void in the record regarding the nature and extent of the Children's relationship with other family members in Madison and then indicated that Father's home in Louisville was only an hour drive from Madison.

[33] In addition to the trial court’s findings and conclusions, we observe that the trial court conducted *in camera* interviews with the Children, who were then ages eight and nearly twelve. “While the record gives no indication of what was said during the interview[s], we presume the trial court gave [them] due consideration when making its order.” *Julie C.*, 924 N.E.2d at 1257; *see also Jarrell v. Jarrell*, 5 N.E.3d 1186, 1194 (Ind. Ct. App. 2014), *trans. denied*.

[34] The trial court scrutinized the whole picture and ultimately determined that it was in the Children’s best interests for Father to now have primary custody. In making this determination, the credibility of both Mother and Father was carefully weighed by the trial court. We cannot and will not venture into reweighing the evidence or judging the credibility of witnesses on the cold transcript before us. No matter if we would have made a different decision as the factfinder, the record does not establish that the trial court’s decision to modify custody was clearly erroneous.

[35] Judgment affirmed.

Pyle, J., concurs.

Riley, J., dissents with separate opinion.

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IN THE  
COURT OF APPEALS OF INDIANA

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Kendra Shepherd Tilley,  
*Appellant-Petitioner,*

v.

Russell A. Shepherd,  
*Appellee-Respondent.*

Court of Appeals Case No.  
22A-DC-2523

**Riley, Judge dissenting.**

[36] Parenting, just like childrearing, does not come with a manual. At times, parents struggle and make mistakes. The important lesson, however, is to acknowledge a mistake was made and mend it as best as possible.

[37] While I do not condone domestic violence and certainly do not approve of Mother's decision to send photos of her injuries to the Children, a change in conditions to support a modification for custody must be evaluated in the totality of the environment, and "it is the effect upon the child that renders a change substantial or inconsequential." *In re Winkler*, 725 N.E.2d 124, 128 (Ind. Ct. App. 2000). In its analysis of the statutory factors supporting a

modification of custody, the trial court concluded that “there is an absence of evidence in the record demonstrating how, if at all, these events have directly impacted the Children[:] (a) [t]here is no evidence suggesting the Childrens’ [sic] relationships with either Parent have changed; (b) [t]here is no evidence that the Children were witness to any violence in the home; (c) Featherstone is no longer in the home; and (d) [s]ince Featherstone’s departure, neither Child has expressed reluctance to return to Mother’s home. (Appellant’s App. Vol. II, p. 116). Yet, despite this conclusion and lack of evidence, the trial court, affirmed by the majority opinion, supported its modification of custody on the “glaring, non-statutorily delineated factor,” clarified as “Mother’s decision to bring a convicted felon and recovering drug addict who is currently on probation, into her home and exposing the Children to him.” (Appellant’s App. Vol. II, p. 116). This decision is the focus of the trial court’s Order and resulted in several other derivative conclusions, approved by the majority: Mother’s poor judgment in having a recovering addict consume alcohol; Mother’s apathetic indifference to Father’s concerns and the Children’s safety; and Mother’s ill-received text to her Children, documenting her injuries from the assault.

[38] Since Mother’s ill-fated decision to welcome Featherstone into her home, the assault and Featherstone’s arrest, which all occurred in the span of a mere two months and prior to Father’s petition to modify custody, Mother has turned her life around and obtained a protective order to protect her from further violence or harassment from Featherstone. Even though Featherstone attempted to

contact Mother in violation of the protective order three days after his arrest, Mother informed law enforcement and Featherstone was charged with invasion of privacy for attempting to contact Mother from jail. Mother testified that she has had no contact with Featherstone since his arrest. Father presented no evidence or information that Mother had been in contact with Featherstone since the date of the battery, which occurred before Father filed his petition to modify custody.

[39] Although a change in circumstances appeared to have existed temporarily when Mother allowed Featherstone to reside in her home for two months, which resulted in arguments and one documented instance of domestic violence, the domestic violence occurred during Father's parenting time with the Children and they were not witnesses to the abuse. Despite the trial court's apparent minimalization of Mother's efforts to turn her life around, Mother acted appropriately following the battery. She notified Father and stayed in contact with him. She obtained and enforced a protective order. And she terminated all contact with Featherstone. There is no evidence suggesting that the Children's relationship with either parent has changed, and since Featherstone's departure, Father and the Children no longer voice any concerns and the Children do not express a reluctance to return to Mother's home. If Featherstone had remained in the home after the domestic violence or had the evidence reflected that Mother was still in contact with Featherstone, my conclusion today would be different. However, the evidence before me does not support a substantial, continuous change in one or more of the statutory

factors; at best, a temporary, inconsequential change occurred that was successfully resolved by Mother prior to the trial court's custody modification order and which, as noted by the trial court and affirmed by the majority opinion, did not affect the Children. *In re Marriage of Sutton*, 16 N.E.3d 481, 485 (Ind. Ct. App. 2014) (“[T]he effect on the child is what renders a change substantial or inconsequential.”).

[40] In essence, by affirming the trial court's decision, the majority opinion today encourages any temporary mistake made by a parent to be considered as the basis for a custody modification, regardless of when the mistake was made, its severity, its impact on the child, and attempts to rectify.

[41] Accordingly, I respectfully part ways with the majority.