

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Glenn Robinson III,  
*Appellant-Respondent*,

v.

Kelsey Childers,  
*Appellee-Petitioner*

April 3, 2023

Court of Appeals Case No.  
22A-JP-1874

Appeal from the  
Hamilton Superior Court

The Honorable  
David K. Najjar, Judge

Trial Court Cause No.  
29D05-1807-JP-917

**Memorandum Decision by Judge Vaidik**  
Judges Tavitas and Foley concur.

**Vaidik, Judge.**

## Case Summary

- [1] Glenn Robinson III (“Father”) and Kelsey Childers (“Mother”) have been engaged in litigation since the birth of their daughter in 2018. In 2021, Father sought to modify his child support and legal custody. The court modified Father’s child support but did not apply the modification retroactively, found that joint legal custody was not in their daughter’s best interests, and ordered Father to pay some of Mother’s attorney’s fees. Father now appeals these determinations. We affirm.

## Facts and Procedural History

- [2] Father and Mother have one child, A.R. (“Child”), who was born in March 2018. Father and Mother have never married and do not get along. When Child was born, Mother lived in Carmel. Father played basketball in the NBA and had his main home in Zionsville. In July 2018, Father and Mother entered into an agreement about legal and physical custody, parenting time, and child support (“2018 Agreement”). Relevant to this appeal, the 2018 Agreement provided that Mother had sole legal and primary physical custody of Child, the issue of parenting time was reserved, Father had to pay base child support of \$2,111 per week plus 7.1% of any income he received between \$1,841,765 and \$5,000,000, and Father and Mother could not go to each other’s homes and had

to communicate through Our Family Wizard (OFW). *See* Appellant’s App. Vol. II pp. 62-74.

- [3] In April 2020, Father and Mother entered into an agreement (“2020 Agreement”), which modified some terms of the 2018 Agreement. Relevant to this appeal, the 2020 Agreement modified legal custody as follows:

Mother and Father shall consult with each other on all major decisions concerning the child’s upbringing, including the child’s education, health care, and religious training. In the event the parties reach an impasse on a major decision concerning the child’s upbringing, Mother may make the final decision on the issues; however, she shall provide written notice to Father of her decision and the basis for her decision.

*Id.* at 76-77. As for physical custody and parenting time, Mother continued to have primary physical custody, but Father was given parenting time that varied depending on whether he was “in season” or “off season” with the NBA. *Id.* at 77. Father had to pay for Mother’s and Child’s expenses when they traveled to watch him play in the NBA. Mother and Father also agreed that “Father’s retirement from basketball would constitute a substantial change in circumstances requiring modification of physical custody/parenting time.” *Id.* at 80. Finally, Father and Mother agreed to continue communicating through OFW and to be “civil” and “respectful” to each other. *Id.* at 83.

- [4] In January 2021, the trial court increased Father’s child support to \$2,378 per week. The following month, in February, Father was waived by the NBA team he was playing for and returned to his home in Zionsville. On February 22,

Father moved to modify his child support and stopped paying child support altogether. He later moved to modify legal custody and parenting time as well.

[5] A hearing was held a year later in February 2022. Both Father and Mother testified. The trial court issued its order six months later in June. The court found that joint legal custody was not in the best interests of Child and ordered legal custody to continue according to the 2020 Agreement:

20. The parties have continuously litigated since the Child's birth.

\* \* \* \* \*

25. Mother testified their coparenting relationship is extremely difficult.

\* \* \* \* \*

31. Pursuant to the 2020 Agreed Entry, the parties are to primarily communicate via OFW except in an emergency and all communications shall be solely on matters regarding the Child and shall be civil and respectful.

32. Father repeatedly violates the 2020 Agreed Entry in his communications with Mother.

33. Father's messages to Mother on OFW are rude, threatening and demeaning, and frequently do not regard the Child:

a. On December 20, 2020, among other derogatory comments, Father told Mother that she didn't "have

enough money to tell [him] how to [sic] things will go . . .” (Exh. D, p. 2).

b. On December 22, 2020, Father said “. . . you will have to fly [sic] California and drive to Chicago when it is convenient for ME and my schedule.” Father also said: “You are so broke its laughable, you are nothing without my 7%.” He also called Mother “toxic and pathetic” in the same message. (Exh. D, pp. 4-5).

c. On April 11, 2021, Father messaged Mother: “You can disagree or ignore me, but send her shoes and clothes back unwashed just like you’ve told me. I don’t talk to you but every time I see you, I will ask for them. If you don’t have them, give me my money. I’m coming for everything you tried to destroy. [Child] will NOT be a thief like you.” (Exh. D, p. 14).

\* \* \* \* \*

41. The parties have not demonstrated an ability to work together to make joint decisions in the best interests of the Child.

\* \* \* \* \*

43. Despite having more time [due to his retirement from the NBA] to engage in meaningful discussions with Mother about the Child or to engage with health care providers and others impacted by the major decisions being made about the Child, Father has continued to engage in rude and harassing commentary on Twitter and directly with Mother through OFW. . . .

44. The Court is convinced, based upon the testimony at the hearing and the sampling of OFW messages between the parties admitted as Exhibit D, that the parties are not willing and able to communicate and cooperate in advancing the child's welfare.

45. Joint legal custody will not serve the best interests of the Child, as it will give legal authority to the uncooperativeness of the parties, specifically Father, and will create the potential for stalemates and legal battles on important decisions for the Child.

46. The 2020 Agreed Entry allows for Father to have meaningful input and to help Mother make decisions for the Child. Father has not taken advantage of these opportunities. Had he done so and had this led to a more civil and cooperative co-parenting relationship between the parties, the Court may find that joint legal custody would serve the best interests of the Child.

47. Mother is a [sic] fit and suitable to be the legal custodian of the Child. As such, the Court denies Father's motion to modify legal custody and the parties will continue to be bound by the legal custody provision (paragraph 3) in the parties' 2020 Agreed Entry.

*Id.* at 33-38.<sup>1</sup>

[6] The trial court made several findings about child support:

114. Father owns a residence in Zionsville, and has an investment account that contains at least \$675,482.00. Father

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<sup>1</sup> Although Father does not raise any issues concerning parenting time on appeal, we note that the trial court did increase his parenting time. However, in December 2022, after filing his appellant's brief, Father filed a notice of intent to relocate to California and a petition to modify parenting time and child support. Father has since moved to California. A hearing is currently scheduled for July 2023.

presently has no need to work for income or to support himself or the Child. Father, however, engages in a lifestyle that will quickly exhaust his present resources without significant income streams in the future.

115. Father has four vehicles. One of the four vehicles is a Mercedes Benz that he purchased after February 22, 2021.

116. Father has traveled frequently since February 22, 2021.

117. Father gives \$1300-\$1500 to his mother each month and pays her property taxes each year in the amount of approximately \$4,400.00.

118. The Court finds that Father is voluntarily unemployed.

\* \* \* \* \*

120. The Court finds that Father's income for child support purposes to be \$2,868.00 per week or approximately \$150,000.00 annually, which is the approximate amount earned by Father in investment income in 2021.

*Id.* at 48. The trial court reduced Father's child-support obligation from \$2,378 per week to \$179 per week. The court did not make the new amount retroactive to February 22, 2021 (when Father moved to modify child support); rather, the court made it effective June 17, 2022. As a result, the court determined that Father had a child-support arrearage of \$159,326, which represented \$2,378 per week multiplied by the 67 weeks that Father didn't pay any child support:

187. Although Father ceased playing professional basketball on February 22, 2021, Father had the necessary resources to continue to pay his court-ordered child support while this matter pended. This is evidenced by the fact that Father had hundreds of thousands of dollars deposited into his bank account between February 22, 2021 and December 18, 2021. (Exh. L). Moreover, Father's monthly expenses (withdrawals from his bank account) averaged \$70,000 per month after he stopped playing professional basketball. Father has averaged \$603.00 per month on haircuts, spent thousands of dollars for travel (for himself and others), and spent thousands on cryptocurrency after February 22, 2021.

*Id.* at 58.<sup>2</sup> Finally, the court ordered Father to pay \$12,000 of Mother's attorney's fees:

153. Despite Father no longer playing professional basketball and having been unemployed for over one year, Father has a great deal of resources with which to pay attorney's fees. Father owns a residence in Zionsville, has four vehicles (Porsche, DeLorean, Mercedes Benz, and Ford), and has an investment account that contains at least \$675,482.00. Father also has several bank accounts.

154. From November 10, 2020 through December 18, 2021, Father's average monthly deposits into his bank account were \$67,194.77.

155. Meanwhile, Mother worked two jobs and her 2021 gross income was \$72,062.

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<sup>2</sup> The court also found that Father had an overpayment of child support in the amount of \$33,288 from 2020 and subtracted that from Father's arrearage.



156. Father's average monthly deposit into his bank account is nearly Mother's entire annual income for 2021.

*Id.* at 54.

[7] Father now appeals.

## Discussion and Decision

### I. Legal Custody

[8] Father contends the trial court erred in not modifying legal custody to joint. Trial courts have discretion in both initial custody and modification-of-custody determinations, and we review those determinations for an abuse of discretion. *In re Paternity of A.R.S.*, 198 N.E.3d 423, 430 (Ind. Ct. App. 2022). We accord deference to the trial court's family-law determinations due to its "unique, direct interactions with the parties face-to-face, often over an extended period of time," which provides the court with the opportunity to assess credibility, ascertain information, and apply common sense to determine what is in the best interests of the child involved. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011).

[9] A trial court may not modify a child-custody order unless: "(1) modification is in the best interests of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 2 and, if applicable, section 2.5 of this chapter." Ind. Code § 31-14-13-6. Mother concedes that there has been a substantial change in one of the factors from Indiana Code § 31-14-13-2 in that Father now wishes to have joint legal

custody. *See* Appellee's Br. p. 18; I.C. § 31-14-13-2(2) ("The wishes of the child's parents."). We therefore turn to best interests.

[10] A trial court may award joint legal custody if the court finds that "an award of joint legal custody would be in the best interest of the child." I.C. § 31-14-13-2.3(a). In determining whether an award of joint legal custody would be in the best interest of the child, "the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint legal custody have agreed to an award of joint legal custody." *Id.* at (c). The court shall also consider:

(1) the fitness and suitability of each of the persons awarded joint legal custody;

(2) whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare;

(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) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody;

(5) whether the persons awarded joint legal custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so;

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody; and

(7) whether there is a pattern of domestic or family violence.

*Id.* The second factor—whether the parents are willing and able to communicate and cooperate in advancing the child’s welfare—is particularly important in making a legal-custody determination. *In re Paternity of E.P.*, 194 N.E.3d 160, 166 (Ind. Ct. App. 2022). Where the parties have made child-rearing a battleground, joint custody is not appropriate. *Id.* Indeed, this Court has observed that “to award joint legal custody to individually capable parents who cannot work together is tantamount to the proverbial folly of cutting the baby in half in order to effect a fair distribution of the child to competing parents.” *Rasheed v. Rasheed*, 142 N.E.3d 1017, 1022 (Ind. Ct. App. 2020) (quotation omitted), *trans. denied*.

[11] Father concedes that he and Mother can’t get along on basic issues; however, he claims that they can get along on major issues, thereby making joint legal custody appropriate. But the record does not support Father’s claim. As the trial court found—and the CCS from the trial court reflects—Father and Mother have continuously litigated since Child’s birth on both minor and major issues. The record shows they have fought about things ranging from Child’s shoes to parenting time. Moreover, they can’t even get along on OFW—which records their interactions for the court to see—in a civil and respectful manner. And as Father’s recent filings in the trial court show, Father and Mother can’t agree on

his parenting time (now that he has moved to California) pending the July 2023 hearing. *See Respondent's Request for Expedited Hearing*, Cause No. 29C01-1807-JP-917 (Feb. 15, 2023). Because Father and Mother are not willing and able to communicate and cooperate in advancing Child's welfare, the court did not abuse its discretion in finding that joint legal custody is not in Child's best interests and in keeping the status quo, which, as the trial court emphasized, still allows Father "to have meaningful input and to help Mother make decisions for the Child."

## II. Child-Support Arrearage

[12] Father next contends the trial court erred in not making his new child-support obligation of \$179 per week retroactive to February 22, 2021, when he moved to modify child support. It is within a trial court's discretion to make a modification of child support relate back to the date the petition to modify is filed or any date thereafter. *Quinn v. Threlkel*, 858 N.E.2d 665, 674 (Ind. Ct. App. 2006).

[13] Father has shown no abuse of discretion here. In February 2021, Father stopped playing in the NBA and moved to modify his child support. Father, however, stopped paying child support altogether while his motion was pending. As the trial court detailed, during this time Father continued to bring in money and spend a large amount of money on things other than child support: "Father's monthly expenses (withdrawals from his bank account) averaged \$70,000 per month after he stopped playing professional basketball.

Father has averaged \$603.00 per month on haircuts, spent thousands of dollars for travel (for himself and others), and spent thousands on cryptocurrency after February 22, 2021.” As Mother says, “It appears that Father paid for everything **but** his court-ordered child support.” Appellee’s Br. p. 26. We therefore affirm the trial court’s determination that Father’s new child-support obligation did not take effect until June 17, 2022.

### III. Attorney’s Fees

[14] Finally, Father contends the trial court erred in ordering him to pay \$12,000 of Mother’s attorney’s fees. We review a trial court’s award of attorney’s fees for an abuse of discretion. *In re Paternity of S.A.M.*, 85 N.E.3d 879, 890 (Ind. Ct. App. 2017).

[15] In paternity actions, the trial court may order a party to pay “a reasonable amount for attorney’s fees, including amounts for legal services provided and costs incurred, before the commencement of the proceedings or after entry of judgment.” I.C. § 31-14-18-2(a). “In making such an award, the trial court must consider the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and to earn adequate income, and such factors that bear on the reasonableness of the award.” *S.A.M.*, 85 N.E.3d at 890

(quotation omitted). “When one party is in a superior position to pay fees over the other party, an award of attorney fees is proper.” *Id.* (quotation omitted).<sup>3</sup>

[16] Father says he shouldn’t have to pay any of Mother’s attorney’s fees because he retired from the NBA. But as the trial court found, even though Father stopped playing professional basketball, he has more resources than Mother. That is, from November 10, 2020 through December 18, 2021, Father’s average monthly deposits into his bank account were \$67,194.77. Meanwhile, Mother worked two jobs, and her 2021 gross income was \$72,062. In other words, Father’s average monthly deposits into his bank account nearly equaled Mother’s entire income for 2021. Father also argues he shouldn’t have to pay any of Mother’s attorney’s fees because they contemplated a future modification to physical custody and parenting time upon his retirement. Even so, this does not change the fact that Father is in a superior position to pay attorney’s fees. The court did not abuse its discretion in ordering Father to pay \$12,000 of Mother’s attorney’s fees.

[17] Affirmed.

Tavitas, J., and Foley, J., concur.

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<sup>3</sup> A trial court “may also consider any misconduct by one party that causes the other party to directly incur additional fees.” *S.A.M.*, 85 N.E.3d at 890 (quotation omitted). Here, the court also found that Father “engaged in conduct designed to cause Mother to incur additional attorney’s fees.” Appellant’s App. Vol. II p. 54. Even if Father did not cause Mother to incur more fees, Father’s superior earning ability supports the award.