MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stevi Sepulveda,
Appellant-Respondent,

v.

Jose Sepulveda,
Appellee-Petitioner.

November 21, 2022

Court of Appeals Case No. 22A-DC-1415

Appeal from the Allen Superior Court

The Honorable Lori K. Morgan, Judge
The Honorable Beth A. Webber, Magistrate

Trial Court Cause No. 02D08-1904-DC-465

Bradford, Chief Judge.

Case Summary

[1] Stevi Sepulveda ("Mother") and Jose Sepulveda ("Father") (collectively, "Parents") were previously married and are the biological parents of two children, A.S. and Z.S. (collectively, "the Children"). After their marriage was dissolved, Mother was awarded sole legal custody and primary physical custody and Father was awarded parenting time pursuant to the Indiana Parenting Time Guidelines (the "Guidelines") where distance was a factor. Since the dissolution petition was filed, Mother has continually impeded Father's attempts to engage in parenting time with the Children and has been found to be in contempt of the trial court's order. When Mother continued to impede Father's ability to engage in parenting time with the Children, Father subsequently sought to again have Mother found in contempt and requested a modification of the previous custody order. Following a hearing, the trial court determined that it was in the Children's best interests to modify the previous custody order to grant Parents joint legal custody, to grant Father primary physical custody, and to award Mother parenting time pursuant to the Guidelines where distance was a factor. The trial court also found Mother in contempt and ordered Mother to pay $2000 of Father's attorney's fees. Mother challenges the custody modification, contempt citation, and award of attorney's fees on appeal. We affirm.

Facts and Procedural History

[2] Parents were married on June 7, 2011. They are the parents of A.S., born October 2, 2013, and Z.S., born May 21, 2015. On April 16, 2019, Father filed a petition seeking to dissolve he and Mother's marriage. On June 26, 2020, the trial court entered an order dissolving Parents' marriage, granting Mother sole legal custody of the Children, awarding Mother primary physical custody of the Children, and awarding Father parenting time pursuant to the Guidelines where distance is a factor.

[3] Since the dissolution petition was filed, Mother has continually impeded Father's attempts to engage in parenting time with the Children and, prior to the order at issue in this appeal, has twice been found to be in contempt of the trial court's order regarding parenting time. Father subsequently petitioned to have Mother again found in contempt of the trial court's order and requested an award of attorney's fees. On December 16, 2020, Father filed a motion to modify the trial court's prior custody order. Following a hearing, on June 7, 2022, the trial court issued an order in which it granted Father's motion to modify the prior custody order, reaffirmed the latest contempt finding, and ordered Mother to pay $2000 of Father's attorney's fees. As to custody, the trial court awarded Parents joint legal custody, awarded Father primary physical custody, and awarded Mother parenting time pursuant to the Guidelines where distance is a factor.

Discussion and Decision

[4] Mother contends that the trial court abused its discretion in modifying the prior custody order, finding her in contempt, and in ordering her to pay a portion of Father's attorney's fees.

I. Modification of Custody

[5] The Indiana Supreme Court has held that "[i]n a custody modification matter, the standard used by a trial court and that used on appellate review are not the same." *In re Marriage of Richardson*, 622 N.E.2d 178, 179 (Ind. 1993). "The trial judge is entrusted with the responsibility for determining whether there has been a change in circumstances so substantial and continuing as to make the existing order unreasonable." *Id.* "In the appellate review of such determinations, as in other cases tried by a court without a jury, the judgment should not be set aside 'unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.'" *Id.* (quoting Ind. Trial Rule 52(A)).

[6] "We review custody modifications for abuse of discretion, with a 'preference for granting latitude and deference to our trial judges in family law matters.'" *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *In re Richardson*, 622 N.E.2d at 178). In explaining why courts of review grant deference to the trial court in custody matters, the Indiana Supreme Court has stated that courts of review

> 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, or that he should have found its preponderance or the inferences therefrom to be different from what he did.

Brickley v. Brickley, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965).

[7] "The standard of review to determine whether a trial court has abused its discretion in modifying a support order is well settled." *Meehan v. Meehan*, 425 N.E.2d 157, 161 (Ind. 1981). "We do not weigh the evidence nor judge the credibility of witnesses, but rather consider only that evidence most favorable to the judgment, together with the reasonable inferences which can be drawn therefrom." *Id.* "If, from that viewpoint, there is substantial evidence to support the finding of the trial court, it will not be disturbed, even though we might have reached a different conclusion had we been the triers of fact." *Id.* Stated differently, "[o]n appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal." *Brickley*, 247 Ind. at 204, 210 N.E.2d at 852. "The concern for finality in custody matters reinforces this doctrine." *Baxendale v. Raich*, 878 N.E.2d 1252, 1258 (Ind. 2008).

[8] Indiana Code section 31-17-2-21 provides that

> (a) The court may not modify a child custody order unless:
> (1) the 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 8 … of this chapter.

> (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

[9] Indiana Code section 31-17-2-8 provides, in relevant part, that

> The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no 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 parent or 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 parent or parents;
> (B) the child's sibling; and
> (C) 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.

[10] In modifying the prior custody order, the trial court found that Mother violated the court's prior order when the Children did not travel to Indiana to visit Father in March of 2022 and that she willfully interfered with Father's ability to

exercise his parenting time by affirmatively stating that she was going to purchase the Children's airline tickets but then failing to do so. The trial court further found that Mother had previously been found to be in contempt of the court's order and that there was "ample testimony describing the ways" that Mother had repeatedly interfered with Father's parenting time. Appellant's App. Vol. II p. 19. In total, the trial court found that Father was entitled to sixty-one days of make-up parenting time with the Children.

[11] In addition, the trial court found that Mother admitted that she does not communicate with Father regarding medical and educational issues, that Mother could not name the Children's doctor, that Father could not access the Children's medical or school records, and that Mother has previously refused to allow Father to help the Children with their school work. With regards to the Children's medical care, the trial court found that

> 24. The Court finds that [Mother] did not allow [Father] to take [Z.S.] to the doctor, to a clinic or to be tested for Covid in July of 2020, even though [Z.S.] had a high fever of 103 degrees at times and [Father] was worried about what was happening with [Z.S.] medically.
>
> 25. The Court finds this behavior by [Mother] to be unreasonable and not in the best interests of [Z.S.], with or with[out] Covid 19 and the individual feelings that people have regarding that illness, as there are many childhood illnesses that could result in a fever that need to be diagnosed and addressed for the safety of children.
>
> 26. The Court finds in reviewing the text messages provided that [Mother] was more concerned about following her rule to

> not have [Z.S.] tested for Covid 19 and not take [Z.S.] to the doctor than what [Z.S.'s] condition was, what his temperature was, and what other symptoms or issues could be occurring.

Appellant's App. Vol. II pp. 20–21.

[12] Generally, the trial court found that Mother "dismisses the opinion of [Father] unless it supports what she wants." Appellant's App. Vol. II p. 21. She also limited Father's ability to spend time with the Children while he was in Arizona for a family funeral. The trial court also found that "in just 18 months, [Mother] and the [C]hildren have resided in four different states" and that Mother "did not follow the Court Order from the decree or the statutes regarding relocation and notice." Appellant's App. Vol. II p. 22.

[13] Regarding A.S.'s wellbeing and mental health, the trial court found

> 33. There is a significant disagreement regarding [A.S.] and his desire to be accepted as non-binary.
>
> 34. Both parents acknowledge that they have had discussions with each other regarding [A.S.], his likes and preferences. They agreed before having children that they would allow their children to be who they were, whether it might be a child with Autism, a child with medical issues, or a child that was homosexual, they would work together.
>
> 35. [A.S.] has always enjoyed playing with My Little Pony as a toy, stuffed animals and wearing pink or other outfits that make a statement.
>
> 36. However, [A.S.] has started picking out dresses for some of his outfits.

37. The Court finds that Father and his live[-]in girlfriend are supportive of this. Mother is not supportive of this.

38. The Court finds that Mother is questioning whether they should allow [A.S.] to make these types of decisions at this young age. Father and his girlfriend are allowing [A.S.] to talk about his emotions, likes and dislikes, pick his colors and clothes, and help explain things and allow him to ask questions about these types of issues. Mother does not hold the same belief at this time in the child's life due to his age.

39. The Court finds that Mother believes that while the [C]hildren [were with Father] over Christmas and met one of [F]ather's girlfriend's friends who was non-binary, it started [A.S.] asking these questions. She also feels that this is where the encouragement to wear dresses has come from.

40. The Court finds that both parents testified to issues with [A.S.] well before Christmas of 2021 that would lead him to start asking questions and being curious about these issues in today's social climate.

41. The Court finds that Father and his girlfriend are open and supportive of [A.S.] with all of his choices.

Appellant's App. Vol. II p. 23.

[14] The trial court further found that Mother's mother "is providing much of the care for the [Children] due to Mother's work and sleep schedule" and that much of the Children's time while in Mother's care revolves around screen time, while their time in Father's care involves activities with Father and his girlfriend. Appellant's App. Vol. II p. 24. Finally, the trial court found that

> if Father had custody of the children, that he would treat [Mother] the way he wished he was treated. He believes he would encourage the relationship between the [C]hildren and [Mother]. He would take away outside stimulus when they were video chatting or on the telephone. He would allow as much parenting time as possible and not restrict her access to the [C]hildren.

Appellant's App. Vol. II p. 24. Based on these findings, the trial court concluded that "modification of physical custody regarding [the Children] is in the best interests of [the Children] and that there has been a substantial change in circumstances that warrant[s] a modification" of both physical and legal custody. Appellant's App. Vol. II p. 27.

[15] In challenging the trial court's findings, Mother argues that the findings fail to show that there has been a substantial change in the circumstances that would warrant a change of custody. Specifically, Mother asserts that because many, if not all, of the ongoing problems regarding Mother's failure to allow Father to exercise parenting time or to be involved with the Children's medical needs and education predate the original custody order, the continuing nature of the problems cannot be said to amount to a substantial change in the circumstances. For his part, Father argues that the evidence is sufficient to prove that the change of custody was in the Children's best interests.

[16] Mother admitted that she and the Children have moved multiple times in the two years leading up to the hearing on Father's petition to modify custody, A.S. has attended three different schools in the three years that A.S. has been in

school, and Z.S. has attended two different schools in the two years that Z.S. has been in school. Mother also admitted that her employment requires her to work long hours and that her mother often cares for the Children while she works and sleeps. Mother further admitted that she did not send the Children's report cards to Father or inform him when the Children visit the doctor or dentist because Father was not "in her forethought." Tr. Vol. II p. 113. Father is not listed in the Children's medical records, the Children have had three different doctors in three years, and the Children did not even have a dentist during the time they resided with Mother in California. In addition, despite the fact that Father has relatives that live in Arizona, Mother refuses to "go out of her way" to allow the Children to visit with their paternal relatives, claiming that "that's [Father's] responsibility." Tr. Vol. II p. 116. Unlike Mother's employment, Father's employment is flexible and accommodating and, given that he works from home, he would be able to provide care for the Children.

[17] The evidence before the trial court showed that since Mother and the Children moved away from Indiana, the Children have experienced numerous changes in where they lived, school, and healthcare. Mother has continued to interfere with Father's attempts to exercise his court-ordered visitation and has refused to allow Father to access the Children's medical and education records. Father has also demonstrated more of a willingness to address A.S.'s mental needs and to refer to A.S. in the manner preferred by A.S.

[18] In *Walker v. Nelson*, 911 N.E.2d 124, 129 (Ind. Ct. App. 2009), we concluded that although "any one factor" may not have necessarily warranted a change in

custody, the circumstances demonstrated that a change of custody was in the child's best interests. We reach a similar conclusion here determining that evidence of Mother's frequent moves and the frequent changes in the Children's education and healthcare, together with Mother's continuing acts impeding Father's ability to spend time with the Children and to be involved in their lives was sufficient to demonstrate a substantial change in circumstances. Mother's challenge in this regard amounts to little more than an invitation to reweigh the evidence, which we will not do. *Id.*

[19] Again, we will affirm the judgment of the trial court in custody determinations if "there is substantial evidence to support the finding of the trial court, … even though we might have reached a different conclusion had we been the triers of fact." *Meehan*, 425 N.E.2d at 161. In this case, the trial court was in the best position to assess the evidence and the witnesses and there is evidence in the record that supports the trial court's findings and conclusions thereon. As such, we will not disturb the trial court's determination that a change of custody was in the Children's best interests.

II. Contempt Determination

[20] Mother next contends that the trial court abused its discretion in finding her in contempt of the court's prior orders.

> Whether a party is in contempt is a matter left to the sound discretion of the trial court. We reverse the trial court's finding in contempt matters only if it is against the logic and effect of the evidence before the trial court or is contrary to law. When

> reviewing a contempt order, we will neither reweigh the evidence nor judge the credibility of witnesses. We will affirm the trial court's judgment unless a review of the entire record leaves us with a firm and definite belief that a mistake has been made.

Himes v. Himes, 57 N.E.3d 820, 829 (Ind. Ct. App. 2016) (internal citations omitted), *trans. denied*.

[21] "To hold a party in contempt for a violation of a court order, the trial court must find that the party acted with willful disobedience." *Id.* (internal quotation omitted). "A person failing to abide by the court's order bears the burden of showing that the violation was not willful." *Adler v. Adler*, 713 N.E.2d 348, 354 (Ind. Ct. App. 1999). Mother argues that the evidence does not demonstrate that she willfully denied Father parenting time. We disagree.

[22] The evidence demonstrates that Mother willfully interfered with Father's ability to exercise parenting time with the Children. The record clearly establishes that Mother interfered with Father's ability to exercise parenting time with the Children despite being aware of the court order granting Father said time. Father was denied sixty-one days of his parenting time between June of 2020 and January of 2022. Further, with regard to the Children's spring break in 2021, despite notifying Father in writing that she would purchase airline tickets for the Children to visit Father over spring break and that Father would then reimburse her for the cost of the tickets, Mother failed to do so. Mother also restricted Father's parenting time with the Children when Father traveled to the area where the Children resided with Mother and Mother impeded Father's

ability to have video or telephone conversations with the Children. The evidence establishes that Mother knew of the trial court's order granting Father parenting time with the Children and that she willfully acted in a manner contrary to the trial court's order. Mother's argument to the contrary amounts to nothing more than an invitation to reweigh the evidence, which we will not do. *See Himes*, 57 N.E.3d at 829.

III. Attorney's Fees

[23] Mother last contends that the trial court abused its discretion in ordering her to pay $2000 of Father's attorney's fees. In post-dissolution proceedings, the trial court may order a party to pay a reasonable amount for attorney's fees. Ind. Code § 31-16-11-1. "The trial court has broad discretion in awarding attorney fees." *Gilbert v. Gilbert*, 777 N.E.2d 785, 795 (Ind. Ct. App. 2002). "We will reverse the trial court's decision only when it is against the logic and effect of the facts and circumstances before the court." *Id.*

[24] Mother bases her argument that the trial court abused its discretion on her claim that Father should not have been the prevailing party below. However, given our conclusions that the trial court acted within its discretion both in modifying custody and in finding Mother to be in contempt, Mother's claim in this regard is without merit. Mother has failed to establish that the trial court abused its discretion in ordering her to pay $2000 of Father's attorney's fees.

[25] The judgment of the trial court is affirmed.

Bailey, J., and Pyle, J., concur.