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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Marriage of:
Kristi M. McClendon,
Appellant-Petitioner,

v.

Richard L. Triplett,
Appellee-Respondent.

March 3, 2022

Court of Appeals Case No. 21A-DR-1852

Appeal from the Adams Circuit Court

The Honorable Chad E. Kukelhan, Judge

Trial Court Cause No. 01C01-1604-DR-27

Tavitas, Judge.

Case Summary

[1] Kristi McClendon ("Mother") appeals the trial court's modification of custody of K.T. and D.T. ("Children") in favor of Richard Triplett ("Father"). The trial court granted Father primary physical and sole legal custody of the Children and granted Mother parenting time when distance is a major factor. Mother appeals and argues that the trial court erred by: (1) denying Mother's motion for

a continuance; (2) allowing K.T. to testify outside the presence of Mother and Father; (3) denying Mother's motion to strike the testimony of three witnesses for an alleged violation of a separation of witnesses order; and (4) granting Father's petition for modification of custody. Mother's arguments fail, and we affirm the trial court's modification of custody.

Issues

[2] Mother raises five issues, which we consolidate and restate as:

I. Whether the trial court abused its discretion by denying Mother's motion for a continuance due to the guardian ad litem ("GAL") filing her report two days before the evidentiary hearing.

II. Whether the trial court abused its discretion by allowing K.T. to testify outside the presence of Mother and Father.

III. Whether the trial court abused its discretion by denying Mother's motion to strike the testimony of three witnesses for violating a separation of witnesses order.

IV. Whether the trial court abused its discretion by granting a modification of custody.

Facts

[3] K.T. was born in May 2005 to Mother. Mother and Father married in February 2013, and D.T. was born the same month. Father then adopted K.T.

Mother and Father later separated, and the parties' marriage was dissolved in August 2016. The parties agreed to the following:

> Both parties will have joint legal custody and joint possession custody over the minor children, so long as minor children's education in unaffected by such arrangement. Any necessary changes in custody status must be brought before the appropriate court. When minor children reach the age of 12, they will have the right to choose where they would like to live, so long as that party is capable. Minor child, [K.T], will continue attending school from [Mother's] address.
>
> * * * * *
>
> Parties agree to schedule parenting time in the span of one[-]week intervals. In instances where the scheduling is conflicted, corrections must be made so that parenting time is 50/50, so long as minor children's education is not affected. Minor, [D.T.], is expected to be home schooled when he begins his education. Both parties will be responsible for his education. Any changes to his education that would affect parenting time must be resolved by the appropriate court.

Appellant's App. Vol. II p. 14.

[4] Father lives in Bluffton, Indiana. Mother has moved repeatedly since the parties' separation. In February 2016, shortly after the parties' separation, Mother and the Children moved to South Carolina for six months to be near

the father of her son, D.J.[1] Mother and the Children then moved to Cameron, North Carolina, for a better job that Mother obtained. They moved into an apartment with Mike[2], Mother's new husband, while they were building a house. After the house was completed, Mother and the Children lived there with Mike for approximately one year until Mother and Mike divorced. Mother and the Children then moved into an apartment in Apex, North Carolina, where they lived for approximately one year until the apartment was flooded. They briefly lived with Justin McClendon, who Mother began dating in May 2019, at a house owned by McClendon's family. Mother and the Children later moved into a house with McClendon in Whitsett, North Carolina. Mother and McClendon married in December 2020.

[5] The moves required K.T. to attend at least six different schools and required D.T. to attend three different schools. For a time, the Children were enrolled in a public school with a year-round calendar, which allowed Father to exercise significant parenting time during school breaks. K.T. began an online homeschooling high school program. Mother enrolled D.T. in a private school in August 2020, and the private school's calendar precluded Father from

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[1] The record does not indicate D.J.'s date of birth, but Justin McClendon testified that D.J. was six years old at the time of the hearing. The record indicates that the child's name is D.J., while the trial court's order indicates that the child's name is D.W. We will utilize the name indicated in the record.

[2] The record does not indicate Mike's last name. The trial court's order, however, indicates that his name is Michael Giamoni.

exercising the same amount of parenting time as he did while D.T. was in public school.

[6] Although Father's relationship with K.T. was strained after the dissolution of his marriage with Mother, K.T. and Father have become much closer. For a few years, K.T. has expressed a desire to live with Father.

[7] In September 2020, K.T. and Mother were arguing, and McClendon walked in and grabbed K.T.'s phone out of her hand. K.T. alleges that McClendon scratched her arm when he took the phone. That same month, K.T. again asked to live with Father and asked if she could stay in North Carolina until after Halloween. Initially, Mother agreed, but later that day, Mother entered K.T.'s bedroom and directed K.T. to pack her bags and box up her room because Mother was sending K.T. to Indiana at 6:00 a.m. the next morning. Mother instructed K.T. to notify Father about the change in plans.

[8] The next morning, Mother took K.T. to the airport. According to K.T., when they arrived, Mother wheeled one of K.T.'s suitcases into the airport and left without saying goodbye. When K.T. arrived in Indiana, Father texted Mother to inform her that K.T. had arrived. Mother did not respond and did not contact Father or K.T. for approximately six weeks. Mother did not send K.T.'s boxes of belongings until a couple months after K.T. arrived in Indiana. While K.T. was living with Father, Mother blocked Father from calling or texting Mother's phone, and Father was unable to contact D.T. for four months.

[9] In October 2020, Father filed a petition for modification of custody and requested sole custody of the Children. Father alleged a substantial change in circumstances and that a modification was in the Children's best interest because:

> The parties shared 50/50 parenting time of the children even though they lived in separate states. The minor children of the parties have been home schooled. At the beginning of this school year, [Mother] informed [Father] that they would no longer be doing a 50/50 parenting time split for their minor son. She enrolled their minor son in private school and effectively ended the 50/50 parenting time split. The minor daughter of the parties was sent on an airplane to come live with [Father] effective September 13, 2020. [Father] does want the minor daughter of the parties to reside with him and is willing to keep her with him. For those reasons, [Father] is requesting an order for custody of both minor children.

Appellant's App. Vol. II p. 25.

[10] In December 2020, Mother filed a petition for contempt and alleged that Father had failed to return K.T. to her care. The parties reached a temporary mediated agreement. The parties agreed that K.T. would return to Mother on April 12, 2021, and Father would have parenting time in Indiana with the Children from June 4, 2021, until August 1, 2021.

[11] On April 30, 2021, Father filed a motion for the appointment of a GAL, and on May 3, 2021, the trial court appointed Angelica Fuelling as the GAL. The trial court's order provided: "The Guardian Ad Litem shall have the right to present evidence and/or call witnesses at all hearings or proceedings scheduled in this

cause." *Id.* at 42. Although the trial court did not order the GAL to submit a report, the GAL filed a report two days before the July 23, 2021 hearing. The GAL noted that sixteen-year-old K.T. wished to live with Father, and eight-year-old D.T. wished to live with Mother. The GAL, however, believed that D.T.'s wishes were based "primarily [on] baseball and his friends." *Id.* at 55. Ultimately, the GAL recommended that Father have primary physical custody of K.T. and D.T. and that Mother have parenting time pursuant to Section III of the Indiana Parenting Time Guidelines, where distance between parents is a major factor.

[12] On July 22, 2021, Mother filed a motion to continue the evidentiary hearing due to "the late filing of the Guardian Ad Litem Report." Tr. Vol. I. p. 5.[3] Mother argued that the report was required to be filed ten days prior to the hearing. The trial court denied the motion for continuance and noted that school would be starting soon. The trial court found that, even if the GAL's report was "coming in a little late," having the report ten days before the

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[3] Mother claims that "GAL's stated reason for the delay in filing her report was that she conferred with [Father's] counsel only, and they decided to file it closer to the day of the trial for fear of retaliation from [Mother]." Appellant's Br. p. 15. In support of this assertion, Mother relies upon pages 5 and 6 of the transcript. Pages 5 and 6 of the transcript are argument by Mother's counsel and provide: "The reason stated by the Guardian Ad Litem yesterday was that she was (inaudible) recourse that may have been done by one of the parties and there's certainly no basis for that." Tr. Vol. I p. 6. The cited portions of the record do not support Mother's contention.

The GAL explained that, although she was appointed by the trial court on May 6, 2021, she requested information and a synopsis of the case from Mother's counsel on June 11, 2021, and June 15, 2021. The GAL received Mother's contact information on June 23, 2021, and spoke with Mother on July 1, 2021, and July 9, 2021. Mother's counsel provided a synopsis of the case on July 8, 2021. On July 12, 2012, Mother provided the names of additional people for the GAL to contact. The GAL informed the trial court that she completed the report as quickly as she could given the delays.

hearing would not have "made anything different for [Mother] and being able to defend against it . . . ." *Id.* at 10.

[13] At the evidentiary hearing, the trial court ordered a separation of witnesses at Mother's request. Father called Kristina Affolder, who babysat D.T. during his stays with Father. At the end of her testimony, Mother asked if Affolder spoke to K.T. while she was waiting to testify. Affolder responded that she was talking with K.T. and Shannon Camden, the mother of Father's seventeen-year-old daughter, A., in the hallway while waiting to testify, but no conversations about Father or the hearing took place.

[14] Father also called Camden as a witness. Camden was also questioned about her conversations with K.T. and Affolder while waiting to testify. Camden testified that she knew of the separation of witnesses order but that the conversations did not involve "talking about the case." *Id.* at 125.

[15] Mother called her husband, McClendon, as a witness, and he testified that he heard K.T., Affolder, and Camden talking in the hallway on the day of the hearing. According to McClendon, they discussed K.T.'s relationship with Father, the local high school K.T. might attend and whether K.T. had toured the high school yet, K.T.'s current summer job and possible jobs in Indiana, and whether K.T. calls Father by his name or by "dad." *Id.* at 151.

[16] Mother called K.T. as a witness. The trial court discussed whether Mother and Father should be present for K.T.'s testimony or whether the testimony would occur in front of the attorneys only. K.T. stated that she preferred to testify

without Mother and Father present to which Mother objected. The trial court overruled Mother's objection, and K.T. was questioned and cross-examined by counsel without her parents in the courtroom. K.T. testified that her relationship with Mother is "rocky"; that she wants to live with Father; that Mother forces K.T. to communicate messages between Mother and Father because Mother has blocked Father's calls; and that she is uncomfortable with the arguments between Mother and McClendon. *Id.* at 165.

[17] K.T. also testified that she met Affolder on the day of the hearing and that she was "just chit chatting [sic]" with Affolder and Camden while they waited to testify. *Id.* at 183. Among other things, they discussed job opportunities and the schools in Bluffton; Affolder agreed with K.T. that Father was "a good guy"; and K.T. told them that Mother was on her fourth marriage. *Id.* at 186. K.T. testified that she was excited to hear about the school and that the conversation made her feel good about Father. After K.T.'s testimony, Mother moved for "either a mistrial or to exclude the testimony of [K.T.]," Affolder, and Camden. *Id.* at 208. The trial court took the alleged separation of witnesses violation under advisement.

[18] After Father and Mother presented their evidence, the GAL testified and was questioned by both Mother and Father. The trial court issued findings of fact and conclusions thereon and granted Father's petition for modification of custody on August 16, 2021. The trial court found multiple substantial changes in circumstances and found that modification of custody was in the Children's best interests. The trial court awarded Father "primary physical and sole legal

custody of the parties' minor children" and awarded Mother "parenting time with the minor children pursuant to subsection (C) of Section 3 of the Indiana Parenting Time Guidelines when distance is a major factor." Appellant's App. Vol. II p. 121. The trial court also found "no violation of its separation of witnesses order . . . because the conversations in question occurred prior to any witnesses' testimonies" and, thus, denied Mother's motion to exclude the testimony of K.T., Affolder, and Camden. Appellant's App. Vol. II p. 120. Mother now appeals.

Analysis

I. Motion for Continuance

[19] Mother challenges the trial court's denial of her motion for a continuance. Mother argues that the GAL's report was required to be filed ten days before the hearing pursuant to Indiana Code Section 31-17-2-12 and, due to the untimely filing, the trial court should have granted Mother's motion for a continuance.

[20] Indiana Trial Rule 53.5 provides: "Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence." In general, "a trial court's decision to grant or deny a motion to continue is subject to abuse of discretion review." *In re K.W.*, 12 N.E.3d 241, 243-44 (Ind. 2014). "An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion," but "no abuse of

discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial." *Id.* at 244. "Whether good cause existed is a fact-specific inquiry that requires us to review the circumstances at the time of the motion and the reasons presented to the trial court." *Powers v. Blunck*, 109 N.E.3d 1053, 1055 (Ind. Ct. App. 2018).

[21] Mother argues that she established good cause because the GAL's report was untimely. First, we note that the trial court's order here did not require the GAL to file a report with the trial court. The order provided, in part: "The Guardian Ad Litem shall have the right to present evidence and/or call witnesses at all hearings or proceedings scheduled in this cause." Appellant's App. Vol. II p. 42. The GAL, in fact, testified at the hearing and was subject to cross-examination by both Mother and Father.

[22] Although the trial court's order did not directly specify the statutory authority by which it appointed a GAL[4], Mother relies upon Indiana Code Section 31-17-2-12, which provides:

> (a) *In custody proceedings after evidence is submitted upon the petition, if a parent or the child's custodian so requests*, the court may order an investigation and report concerning custodial arrangements for

[4] A trial court in a custody modification proceeding "under IC 31-17-2 . . . may appoint a guardian ad litem, a court appointed special advocate, or both, for a child at any time." Ind. Code § 31-17-6-1. Under Indiana Code Section 31-17-6-6, a guardian ad litem appointed by a trial court under Indiana Code Chapter 31-17 "may subpoena witnesses and present evidence regarding: (1) the supervision of the action; or (2) any investigation and report that the court requires of the guardian ad litem or court appointed special advocate."

> the child. The investigation and report may be made by any of the following:
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> * * * * *
>
> (5) A guardian ad litem or court appointed special advocate appointed for the child by the court under IC 31-17-6 (or IC 31-1-11.5-28 before its repeal).
>
> (b) . . . . *If the requirements of subsection (c) are fulfilled, the investigator's report*:
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> (1) *may be received in evidence at the hearing*; and
>
> (2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent.
>
> (c) The court shall mail the investigator's report to counsel and to any party not represented by counsel *at least ten (10) days before the hearing*. . . .

(emphasis added).

[23] We find that, reading the plain language of the statute, this statute is not applicable to the facts of this case. Moreover, because the court did not order the GAL to prepare a report, the fact that a report was prepared and submitted to the court two days in advance of the hearing is of no moment. Mother, having been made aware of K.T.'s wishes and allegations in the GAL report, was in a better position than she would have been had a report not been submitted.

[24] Mother has failed to demonstrate that she was prejudiced by the denial of her motion to continue. Mother merely argues that the GAL's report "contained many negative allegations against [Mother] and [McClendon], specifically from [K.T.], that [Mother] did not have an opportunity to explore due to the late disclosure of the report." Appellant's Br. p. 21. Mother does not specifically identify which allegations she was unable to refute. The GAL testified in a manner that was consistent with her report, and the GAL was subject to cross-examination by both Mother and Father regarding her investigation and recommendations. Moreover, Mother's conduct was a substantial factor in the GAL's delay in filing the report. Under these circumstances, Mother has failed to demonstrate that she was prejudiced by the denial of her motion to continue. We conclude, therefore, that the trial court did not abuse its discretion when it denied Mother's motion for a continuance.

II. K.T.'s Testimony

[25] Next, Mother challenges the trial court's decision to allow sixteen-year-old K.T.'s testimony outside the presence of Mother and Father. Mother contends that the trial court's procedure violated Mother's due process rights under the United States Constitution and the Indiana Constitution because Mother was deprived of her right to confront a witness.[5] The Fourteenth Amendment

[5] In support of her argument, Mother cites only to *S.M. v. Elkhart Cnty. Off. of Fam. & Child.*, 706 N.E.2d 596, 600 (Ind. Ct. App. 1999), which involved the termination of parental rights and statutory provisions that authorized only two methods for presenting a child's testimony outside the courtroom in termination of parental rights proceedings: closed circuit television or videotape. Those statutory provisions are not at issue here, and we do not find *S.M.* persuasive.

prohibits any state from depriving any person of "life, liberty, or property, without due process of the law." U.S. Const. amend. XIV, § 1. Article 1, Section 12 of the Indiana Constitution provides: "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law." "'Generally stated, due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses.'" *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind. 2008) (quoting *Ind. State Bd. of Educ. v. Brownsburg Cmty. Sch. Corp.*, 842 N.E.2d 885, 889 (Ind. Ct. App. 2006)). Whether a party is denied due process is "a question of law," which "we review de novo." *Id.*

[26] Mother called K.T. as a witness in the proceedings; the trial court, however, excluded Mother and Father from the hearing so that K.T. would "feel more free to speak", tell the truth, and not feel "pressure from anybody", despite Mother's objection. Tr. Vol. I p. 159. Counsel for both Mother and Father, however, were allowed to remain in the courtroom to question and cross-examine K.T.

[27] We frown upon parents calling their minor children as witnesses in custody proceedings that "pit" a child against the other parent.[6] The process employed

[6] We note that one of the factors that the trial court "shall consider" in custody modification proceedings includes "[t]he wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age." Ind. Code § 31-17-2-8; Ind. Code § 31-17-2-21. Moreover, as part of their dissolution decree, the parties agreed: "When minor children reach the age of 12, they will have the right to choose where they would like to live, so long as that party is capable." Appellant's App. Vol. II p. 14. K.T.

by the trial court to protect K.T. is similar to that allowed by Indiana Code Section 31-17-2-9, which governs *in-camera* interviews of children during custody proceedings and provides:

> (a) The court may interview the child in chambers to ascertain the child's wishes.
>
> (b) The court may permit counsel to be present at the interview. If counsel is present:
>
> (1) a record may be made of the interview; and
>
> (2) the interview may be made part of the record for purposes of appeal.

[28] The decision concerning whether to conduct an *in-camera* interview pursuant to Indiana Code Section 31-17-2-9 is within the trial court's discretion. *Cunningham v. Cunningham*, 787 N.E.2d 930, 937 (Ind. Ct. App. 2003). "The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment." Ind. Evid. R. 611.

[29] Here, rather than interview K.T. in chambers, the trial court allowed the parties' counsel to question K.T. outside the presence of Mother and Father,

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was sixteen years old at the time of the hearing, and K.T.'s wishes were certainly relevant to the trial court's custody modification decision.

which allowed K.T. to testify consistent with Rule 611. Under these circumstances, we cannot say that Mother's due process rights were violated or that the trial court abused its discretion.

III. Separation of Witnesses

[30] Next, Mother argues that the trial court abused its discretion when it denied Mother's motion to strike the testimony of K.T., Affolder, and Camden for violations of the trial court's separation of witnesses order. "[W]e review a trial court's determination regarding an alleged violation of a separation of witnesses order for abuse of discretion." *Griffith v. State*, 59 N.E.3d 947, 956 (Ind. 2016).

[31] In general, a separation of witnesses order is governed by Indiana Evidence Rule 615, which provides:

> At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:
>
> (a) a party who is a natural person;
>
> (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney; or
>
> (c) a person whose presence a party shows to be essential to presenting the party's claim or defense.

[32] "The basic premise of Rule 615 is that, upon request of any party, witnesses should be insulated from the testimony of other witnesses." *Long v. State*, 743

N.E.2d 253, 256 (Ind. 2001). Rule 615 "allows litigants to move for separation of witnesses so they cannot hear each other's testimony." *Griffith*, 59 N.E.3d at 956. "The primary purpose of a separation of witnesses order is to prevent witnesses from gaining knowledge from the testimony of other witnesses and adjusting their testimony accordingly." *Morell v. State*, 933 N.E.2d 484, 489 (Ind. Ct. App. 2010). "Separating witnesses from each other promotes the truthfulness of their testimony." *Harris v. State*, 165 N.E.3d 91, 95 (Ind. 2021). "It ensures memories [are not] tainted by hearing others testify and denies witnesses the opportunity to shape their testimony to match or contradict what others have said." *Id.*

[33] Here, the trial court granted Mother's oral motion for a separation of the witnesses and ordered the witnesses in the courtroom to "go out and sit out in the hall." Tr. Vol. I p. 11. The trial court also ordered the witnesses not to "talk about the case." *Id.* at 12. The record does not indicate which witnesses were in the courtroom at the time.[7]

[34] While waiting in the hallway to testify, K.T., Affolder, and Camden engaged in "chit cha[t] [sic]" about various subjects, including K.T.'s summer job; the availability of jobs in Bluffton; and the schools in Bluffton. *Id.* at 183. Affolder

[7] The separation of witnesses order, such as it is, is difficult to enforce. A better practice would be to: (1) specify exactly what the witnesses are allowed to do; (2) make a record of the witnesses in the courtroom at the time of the order; and (3) admonish counsel to communicate the existence and scope of the order to other potential witnesses who were not in the courtroom at the time of the order. Many issues, such as the issues in this case, could be avoided by utilizing these practices.

agreed with K.T. that Father was "a good guy", and K.T. told them that Mother was on her fourth marriage. *Id.* at 186. K.T. testified that she was excited to hear about the school and that the conversation made her feel good about Father. The trial court found that the conversation did not violate its separation of witnesses order because "the conversations in question occurred prior to any witnesses' testimonies." Appellant's App. Vol. II p. 120.

[35] The trial court correctly noted that the conversations occurred prior to the testimony of K.T., Affolder, or Camden. As we have noted, the "purpose of a separation of witnesses order is to prevent witnesses from *gaining knowledge from the testimony of other witnesses* and adjusting their testimony accordingly." *Morell*, 933 N.E.2d at 489 (emphasis added). As the conversation occurred prior to any of the three witnesses testifying, the witnesses did not adjust their testimony based upon the testimony of another. Additionally, a separation of witnesses order does not require witnesses to refrain from all communication with other witnesses. Here, the trial court excluded the witnesses from the courtroom and ordered the witnesses to refrain from talking about the case.

[36] Moreover, even if a violation occurred, Mother was not prejudiced by the denial of her motion to exclude the witnesses. "Prejudice is presumed when a violation of a separation of witnesses order occurs, but the presumption can be overcome if the non[-]movant can show that there was no prejudice." *Ray v. State*, 838 N.E.2d 480, 488 (Ind. Ct. App. 2005), *trans. denied*. There is no indication that the conversation between K.T., Affolder, and Camden impacted any of their testimony. Affolder was D.T.'s babysitter and testified regarding

her impressions of Father. Camden, the mother of Father's daughter, testified regarding her relationship with Father. K.T.'s testimony regarding her relationships with Mother and Father and her wishes was consistent with her earlier statements to the GAL. Under these circumstances, any violation of the separation of witnesses order was harmless. *See, e.g., id.* (holding that any violation of the separation of witnesses order was harmless).

IV. Modification of Custody

[37] Finally, Mother challenges the trial court's modification of custody. When reviewing judgments with findings of fact and conclusions of law, we "shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). We neither reweigh the evidence nor reassess witness credibility, and we view the evidence most favorably to the judgment. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). "'Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.'" *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). We review the trial court's legal conclusions de novo. *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013).

[38] "Appellate deference to the determinations of our trial court judges, especially in domestic relations matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time." *Best*, 941 N.E.2d at 502. "Thus enabled to assess credibility and character through both factual testimony and intuitive discernment, our trial

judges are in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children." *Id.*

> Additionally, there is a well-established preference in Indiana "for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind. 1993). 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." *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)). "On 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." *Id*.

Steele-Giri v. Steele, 51 N.E.3d 119, 124 (Ind. 2016).

[39] The modification of physical and legal custody is governed by Indiana Code Section 31-17-2-21, which provides in relevant part:

> The 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 [Indiana Code Section 31-17-2-8] and, if applicable, [Indiana Code Section 31-17-2-8.5].

Indiana Code Section 31-17-2-8 provides that the trial court shall consider all relevant factors, including:

> (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.

> (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 8.5(b) of this chapter.
>
> (9) A designation in a power of attorney of:
>
> (A) the child's parent; or
>
> (B) a person found to be a de facto custodian of the child.

[40] Mother also argues that the factors of Indiana Code Section 31-17-2-15 are relevant here with respect to the trial court's modification of joint legal custody to sole legal custody:

> In determining whether an award of joint legal custody under section 13 of this chapter 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 custody have agreed to an award of joint legal custody. The court shall also consider:
>
> (1) the fitness and suitability of each of the persons awarded joint custody;
>
> (2) whether the persons awarded joint 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 custody;

(5) whether the persons awarded joint custody:

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

(B) plan to continue to do so; and

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

A. Substantial Changes in I.C. § 31-17-2-8 Factors

[41] The trial court found substantial changes in:

3. The wishes of [K.T.], who is over the age of 14, to primary [sic] reside with [Father] qualifies as a substantial change supporting a modification of custody.

4. The provision in the Decree, which differs from the age warranting more consideration for a child's wishes in Ind. Code 31-17-2-8 is irrelevant under the present facts. The Court affords little weight to [D.T.'s] wish to continue to [sic] the arrangement, based on his age.

5. Based on [K.T.'s] testimony, a change in the relationship between [K.T.] and [Mother] has occurred since [Mother] married [McClendon], which qualifies as a substantial change warranting a custody modification. *Robertson v. Robertson*, 60 N.E.3d 1085, 1091 (Ind. Ct. App. 2016).

6. The change in [D.T.'s] education, which altered and hindered [Father's] ability to exercise parenting time pursuant to the

> Decree, is also a substantial change. Further, [Father's] change in education also qualifies as a substantial change based on the Decree's express condition of the parenting time arrangement on [D.T.'s] expected homeschooling and the minor children's education. *Blue v. Brooks*, 261 Ind. 338, 341 (Ind. 1976).
>
> 7. Lastly, [K.T.'s] arrival in Indiana, which the Court finds to be a permanent move at [Mother's] direction, serves as a substantial change.

Appellant's App. Vol. II p. 119.

[42] Mother argues that, despite the trial court's order, no substantial changes exist to warrant a modification of custody because: (1) a child's preference to live with one parent over another is not a changed circumstance that would support modification; (2) Mother's moves to advance her career or family life are not substantial changes; (3) the fact that K.T. has anxiety or is happier at Father's residence is not a substantial change; and (4) Father acquiesced in the change in D.T.'s schooling.

[43] The evidence demonstrated substantial changes here in addition to K.T.'s wishes. Father demonstrated that K.T.'s relationship with Mother and McClendon was strained, and the strain culminated in Mother placing K.T. on a plane to Indiana with minimal notice to either K.T. or Father. As for D.T.'s education at a private school, Father testified that Mother texted Father the night before school started and she had already enrolled D.T. Mother testified that Father agreed to D.T. attending school rather than homeschool.

[44] Mother's argument regarding the lack of substantial changes is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The trial court's findings were extensive and were supported by the evidence. The trial court's findings were more than sufficient to support the finding of a substantial change.

B. Best Interest

[45] The trial court found a modification of custody was in the Children's best interests due to: (1) Father's ability to provide stability and promote contact between the Children and extended family; (2) Mother's multiple moves and the impact on the Children's education; (3) Mother's failure to support necessary communication with Father and between Father and D.T. and "failure to act in a manner consistent with the support of positive relationships between [Father] and the minor children and the improbability she would act in the future to preserve those relationships"; (4) Mother's concerning statements and actions toward K.T. Appellant's App. Vol. II pp. 119-20.

[46] Mother argues regarding the Children's best interests that: (1) the Children have thrived with her in North Carolina; (2) D.T. is attending one of the best private schools in North Carolina, and Mother wants K.T. to attend the school also; (3) the Children have strong bonds to their siblings and step-siblings in North Carolina; (4) Mother and McClendon provide a structured parenting-style, while Father is more permissive; (5) K.T. lost weight while living with Father; (6) Mother's home is larger than Father's home; and (7) Mother and McClendon are more religious than Father.

[47] Again, Mother is merely requesting that we reweigh the evidence and re-evaluate the credibility of the witnesses, which we cannot do. The trial court placed more weight on Father's stability. Mother's multiple moves have impacted the Children and their education. Mother has failed to promote positive communication between the Children and between Father and the Children. Father demonstrates his willingness to promote the Children's relationships with other family members, including maternal family members. Under these circumstances, the trial court's finding regarding the Children's best interests was supported by the evidence. As such, the trial court's modification of physical and legal custody is not clearly erroneous.

Conclusion

[48] Mother has failed to demonstrate that she was prejudiced by the denial of her motion to continue; that the trial court abused its discretion by allowing K.T. to testify without her parents in the courtroom; that the trial court's denial of her motion to exclude testimony of three witnesses was erroneous; or that the trial court erred by granting Father's motion for modification of physical and legal custody. Accordingly, we affirm.

[49] Affirmed.

Bradford, C.J., and Crone, J., concur.