

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ashley N. Edwards,
Appellant-Respondent,

v.

Dustin M. Edwards,
Appellee-Petitioner.

March 31, 2022

Court of Appeals Case No.
21A-DC-2160

Appeal from the Franklin Circuit
Court

The Honorable J. Steven Cox,
Judge

Trial Court Cause No.
24C01-2011-DC-616

Brown, Judge.

[1] Ashley N. Edwards (“Mother”) appeals the denial of her motion for relief from judgment requesting that the trial court set aside its order modifying custody, parenting time, and child support. We reverse and remand.

Facts and Procedural History

[2] Mother and D.E. (“Father”) were married and had two children. On January 8, 2021, the parties filed a Waiver of Final Hearing and Custody, Child Support and Property Settlement Agreement which indicated the parties agreed to share joint legal custody of their children, Mother would have primary physical custody, a child support order existed through the State of Ohio, and Ohio would continue to maintain the child support order. On January 11, 2021, the court entered a Summary Decree of Dissolution of Marriage approving the written property settlement agreement and waiver of final hearing.

[3] On March 12, 2021, Father filed a Motion to Modify Child Custody and Parenting Time and the court scheduled a hearing for April 22, 2021. An entry in the chronological case summary (“CCS”) dated March 13, 2021, indicates that an automated “ENotice” and an automated paper notice were issued to the parties. Appellant’s Appendix Volume II at 5. On March 16, 2021, Father filed a motion for continuance. The court granted the motion and rescheduled the hearing for June 1, 2021. On March 24, 2021, Father filed a Notice of Service asserting that Mother was “properly served via certified mail at 203 E. Warren Street, Lebanon, Ohio 45036.” Appellee’s Appendix Volume II at 12. The notice attached a certified mail card which was addressed to Mother “c/o Interfaith Hospitality Network of Warren County.” *Id.* at 13.

[4] On May 6, 2021, Father filed a motion for continuance. The court granted the motion and rescheduled the hearing for July 8, 2021. On May 12, 2021, Father filed a motion to continue. The court granted the motion and rescheduled the hearing for August 5, 2021. On May 13, 2021, Father filed a motion for continuance. The court granted the motion and rescheduled the hearing for September 9, 2021. A CCS entry dated May 15, 2021, indicates that an automated “ENotice” and an automated paper notice were issued to the parties. Appellant’s Appendix Volume II at 6. A CCS entry dated May 26, 2021, references Mother and states: “First Class Mail Returned” and “From C/O Knights Inn/Lebanon Ohio Address, Not Deliverable as Addressed, RTS. (Order Granting Continuance Signed on 5/10/21).” *Id.* at 6-7 (some capitalization omitted).

[5] On May 27, 2021, Father filed a motion to advance the hearing. The court rescheduled the hearing for July 22, 2021. CCS entries dated June 2, 2021 indicate the court issued an “ENotice” and a paper notice to the parties. *Id.* at 7. Three separate CCS entries dated June 17, 2021, indicate that certain documents sent to Mother were “First Class Mail Returned.” *Id.* The entries include the following comments: “Attempted-Not Known (RB-Name Unknown) From the Interfaith Hos Network of Warren Co Address. (Order Granting Motion for Continuance),” “Attempted-Not Known, RTS-Name Unknown (Order for Continuance 8/05/2021 Hearing),” and “Attempted-Not Known, RTS-Name Unknown (Order for Continuance, Hearing Set for 9/09/2021).” *Id.* (some capitalization omitted). A July 21, 2021 CCS entry

also references Mother, indicates “First Class Mail Returned,” and states: “Not Deliverable as Addressed, RTS-Name Unknown. (Order Advancing Modification Hearing).” *Id.* (some capitalization omitted).

[6] On July 22, 2021, the court held a hearing on Father’s motion to modify custody. Mother did not appear. The court stated: “It appears that [Mother] was served at a Knights Inn, Room 238 in Lebanon, Ohio on the blank day of March 2021. A notice of the order advancing modification hearing was sent to [Mother] presumably at that address for today’s date and time.” Transcript Volume II at 4. Father’s counsel stated:

We served her at two different addresses. There was a 203 East Warren Street, Lebanon, Ohio. The East Warren street address was a – it’s called Interfaith Hospitality Network of Warren County; it’s a homeless shelter. And when she went to the homeless shelter, they put her up into Knights Inn because they didn’t have any, I guess, rooms there at the homeless shelter, so that’s why we served her at home. And we – I know on March 24th of 2021, the service came back signed about service at the Interfaith Hospitality Network of Warren County as well.

Id. Father testified that one of the children had been with him throughout the entire summer other than on Mother’s weekends. He indicated that the child struggled because he missed school days while living with Mother. He also testified he was concerned that the children were subjected to bedbugs when they were with Mother. During Father’s testimony, the following exchange occurred:

THE COURT: Where does [O.E.] live when he's with [Mother]?

[Father]: At her house.

THE COURT: I thought she was in a homeless shelter or a Knights Inn.

[Father]: She was. She's recently moved out of the homeless shelter to Section 8 housing in Springsboro.

THE COURT: So she has a house now?

[Father]: Or a – an apartment.

THE COURT: Okay.

Id. at 10-11. Father testified that he had been to Mother's apartment but never been inside.

[7] On July 28, 2021, the court entered an order granting Father's motion to modify custody. The court found that Mother failed to appear at the hearing but was properly served, substantial changes in circumstances had occurred in that the children had been placed in a living environment where bedbugs were present, improper supervision occurred with the eldest child, truancy issues had occurred, and Mother relocated without proper notice. The court also found that the parties had been exercising a revised visitation schedule for the summer months. It awarded Father primary physical custody of the children and ordered that no support shall be required by either party.

[8] On August 3, 2021, an attorney filed an appearance for Mother and a Verified Petition to Set Aside Order Modifying Parenting Time and Custody. Mother

denied that she was aware of the court date. She asserted that the CCS revealed four attempts to serve her by first class mail were returned to the court after Father filed his motion to advance the hearing. She asserted the CCS listed her address as an apartment at 56 Edgebrook Drive while her actual address was an apartment at 65 Edgebrook Drive. She alleged she first discovered on July 29, 2021, that there had been a hearing held on July 22, 2021, when she was consulting with an attorney over the telephone about the hearing she thought was scheduled for September 9, 2021, and the attorney informed her the hearing had already been held and an order issued.

[9] Father's counsel filed an objection to Mother's petition in which he asserted: "Counsel believes that [Father] testified that he and [Mother] discussed this matter and he indicated that she would not be making an appearance." Appellant's Appendix Volume II at 27. The court scheduled a hearing for September 7, 2021. On August 13, 2021, Father filed a motion to continue. The court granted Father's motion and rescheduled the hearing to September 9, 2021.

[10] On September 9, 2021, the court held a hearing. Mother testified that the hearing was scheduled for May 26th, she called on May 25th to confirm the date of the hearing, and someone at the clerk's office notified her that the hearing had been rescheduled for September 9th. She testified she did not receive the paperwork and gave the person she spoke with her address of 65 Edgebrook Drive, Apartment D. She testified the CCS states that her address was 56 Edgebrook Drive. She stated that she did not receive paperwork

indicating that the hearing had been advanced and Father never informed her. She indicated she called an attorney on July 29th to obtain counsel who looked “at the court information via the Internet” and informed her that the court had already held a hearing. Transcript Volume II at 24. Mother stated that the attorney advised her to call someone else to represent her as soon as possible because she was on vacation and could not represent her. She testified that she hired other counsel that same day. When asked if the statement in Father’s objection to her petition in which he asserted that she told him she did not want to attend the hearing was true, Mother answered: “That’s absolutely not true. I did not say that.” *Id.* at 27. She also testified that she would have attended the hearing if she had notice.

[11] On cross-examination, when asked if she filed any notice of intent to relocate with the court, Mother answered: “No. On – on May 25th I told them my correct address.” *Id.* at 28. Mother acknowledged that she was served with Father’s motion to modify custody when it was sent to the Interfaith Hospitality Network.

[12] Mother’s mother testified that Mother did not know of the July court date and Mother thought the hearing was going to be held in September. She described a conversation between Mother and Father occurring on August 1st during an exchange of the children in which Father asked Mother why she did not appear in court, Mother told Father she did not know about the hearing, Father told her it was her responsibility to provide the court with correct information, and Mother replied that she did and called the court and her address was updated.

[13] During the direct examination of Father by Mother's counsel, when asked if he had any reason to believe Mother knew of the court date, Father answered: "To my knowledge, no. I don't know. We don't speak about anything other than pertinent information with the kids." *Id.* at 32. Father agreed with the testimony of Mother's mother that he asked Mother why she was not at the hearing. Mother's counsel asked: "And she told you she didn't know about it?" *Id.* at 33. Father answered affirmatively.

[14] On cross-examination, Father testified that he had not had a discussion about a hearing since he initially filed a motion for modification of custody in March. When asked "if there's a reference and any type of objection, that would have been a miscommunication error between myself and you," Father answered affirmatively. *Id.* Father's counsel asked if Mother was aware of pending matters regarding custody, and Father answered: "As far as I know." *Id.* He indicated that Mother relocated "a couple of times" since the divorce. *Id.* at 34. When asked "you never received anything through the court system of her new addresses," Father answered: "Negative." *Id.*

[15] Upon questioning by the court, Father testified that he always visited with his children and knew where Mother lived. He also indicated that he had not physically typed in or noticed where her paperwork should be going since the time she was properly served. Father stated: "On the 22nd of July when we had court here, at the end of court, he, my lawyer, had asked what her address was" and Mother's address at that time was 65 Edgebrook. *Id.* at 36. When asked by the court if he knew the documents were being sent to Mother at 56

Edgebrook, Father answered in the negative. The court stated: “But the docket says 65 instead of 56, or I may be getting that backwards.” *Id.* at 38.

[16] During the closing argument of Mother’s counsel, the following exchange occurred:

THE COURT: . . . the system did the only thing it knew to do.

[Mother’s Counsel]: Right. And the system – there was – but there was error in it. And I – what I am saying is he –

THE COURT: Well, but she – but it was corrected on May 25th, according to your client’s testimony.

[Mother’s Counsel]: Actually, according to her testimony, the correction – there was a mistake. There was a clerical error on May 22nd –

THE COURT: Right. But that –

[Mother’s Counsel]: – the 65 –

THE COURT: – was – that was fixed, right?

[Mother’s Counsel]: No, no. That’s when she changed her address from one place to 56 – or 65 and her address was – the –

THE COURT: I understood her testimony to be that on [M]ay the 25th, she talked directly to the clerk and fixed the address problem.

[Mother’s Counsel]: No, Your Honor. Her testimony –

THE COURT: Well, then I misunderstood her testimony. That’s what I understood her to say.

Id. at 44. After further discussion, Mother’s counsel stated that Mother made a good faith effort to make the court aware of the correct address, and the court stated that it agreed and the record supported that assertion. On September 20, 2021, the court entered an order denying Mother’s petition to set aside the order modifying parenting time and custody.

Discussion

- [17] Mother argues the trial court deprived her of her fundamental right to due process when it did not set aside the order modifying custody. Father argues Mother’s due process rights were not violated.
- [18] The Fourteenth Amendment to the United States Constitution “protects the traditional right of parents to establish a home and raise their children.” *In re G. Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009), *reh’g denied*. Indeed, the parent-child relationship is “one of the most valued relationships of our culture.” *Bester v. Lake Cty. Office of Family & Child.*, 839 N.E.2d 143, 145 (Ind. 2005). Due process is essentially “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Due process requires notice of certain proceedings after the initiation of a lawsuit. *Moore v. Terre Haute First Nat’l Bank*, 582 N.E.2d 474, 478 (Ind. Ct. App. 1991), *reh’g denied*.
- [19] We generally review trial court rulings on motions for relief from judgment for an abuse of discretion. *Speedway SuperAmerica, LLC v. Holmes*, 885 N.E.2d 1265, 1270 (Ind. 2008), *reh’g denied*. Relief from judgment under Ind. Trial Rule 60 is

an equitable remedy within the trial court's discretion. *In re Adoption of C.B.M.*, 992 N.E.2d 687, 691 (Ind. 2013).

[20] Ind. Trial Rule 60(B) provides:

On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:

- (1) mistake, surprise, or excusable neglect;
- (2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;

* * * * *

- (6) the judgment is void;

* * * * *

- (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

* * * * *

A movant filing a motion for reasons (1), (2), (3), (4), and (8) must allege a meritorious claim or defense. . . .

[21] Following Father's March 12, 2021 motion requesting primary custody of the children, the court granted four of Father's motions to continue the hearing. The court then granted Father's motion to advance the hearing and rescheduled the hearing from September 9, 2021, to July 22, 2021. Three separate CCS entries dated June 17, 2021, indicate that certain documents sent to Mother were returned. A July 21, 2021 CCS entry also indicates that the notice of the order advancing the trial date was returned as not deliverable. At the July 22, 2021 hearing, while Father's counsel stated that Mother was served at two addresses and mentioned a homeless shelter as well as a Knights Inn, Father later testified that Mother moved into different housing. Upon questioning by the court, Father testified that Mother had an apartment. Despite the statement of Father's counsel that Mother was served at two addresses, his mention of only a homeless shelter and a Knights Inn, Father's testimony that Mother lived at an apartment, and the multiple CCS entries indicating mail to Mother had been returned, the court did not inquire at the hearing whether Mother was served at the apartment and stated in the July 28, 2021 order that Mother was properly served. Six days after the court's July 28, 2021 order, Mother filed a Verified Petition to Set Aside Order Modifying Parenting Time and Custody. Contrary to the assertion by Father's counsel in the objection to Mother's petition, which stated that Father testified he and Mother discussed the matter and he indicated that she would not be making an appearance, the transcript of the July 22, 2021 hearing does not reveal such testimony and Father acknowledged at the September 9th hearing that Mother told him she did not know about the hearing. Father also testified at the September 9th hearing that

he always visited with his children and knew where Mother lived. Moreover, Mother's counsel asserted that Mother made a good faith effort to make the court aware of her correct address, and the court stated that it agreed and that the record supported that assertion. In light of the record and under these circumstances involving child custody, we conclude that reversal is warranted.

[22] For the foregoing reasons, we reverse and remand to the trial court for an expedited evidentiary hearing on Father's Motion to Modify Child Custody and Parenting Time.

[23] Reversed and remanded.

May, J., and Pyle, J., concur.