MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

In Re: The Paternity of D.J.;

Desiree Jennings,

Appellant-Petitioner

v.

Leewayne Johnson,

Appellee-Respondent

March 11, 2025

Court of Appeals Case No.
24A-JP-1116

Appeal from the Vanderburgh Superior Court

The Honorable Donald Vowels, Magistrate

Trial Court Cause No.
82D07-1004-JP-245

Memorandum Decision by Judge Pyle

Judges Weissmann and Felix concur.

Pyle, Judge.

Statement of the Case

[1] Desiree Jennings ("Mother") appeals the trial court's order that granted Leewayne Johnson's ("Father") motion to modify Mother's parenting time with the parties' fourteen-year-old daughter, D.J. ("D.J."). Mother specifically argues that the evidence does not support the trial court's finding that during Mother's parenting time with D.J., Mother left D.J. at home to babysit her half-siblings while Mother went to Bally's Casino ("the Casino"). Concluding that the evidence supports the trial court's finding, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether the evidence supports the trial court's finding.

Facts

[3] The facts most favorable to the judgment reveal that Father has had primary physical custody of D.J. since she was five years old. Over the years, Mother

has exercised both supervised and unsupervised parenting time with D.J. In July 2022, Father filed a motion to modify Mother's parenting time. In September 2023, Mother filed a motion to modify her parenting time.

[4] The trial court held a hearing on the motions in January, February, and March 2024. At the time of the hearing, Mother had unsupervised parenting time with D.J. every other weekend and for four hours on Wednesdays.

[5] At the hearing, Guardian Ad Litem Kelly Ferguson ("GAL Ferguson") testified that she had met individually with Mother, Father, and D.J. and filed her report with the trial court in December 2023. GAL Ferguson's report revealed that D.J. did not like visiting Mother and did not feel safe in Mother's home because Mother had previously "put her hands on [D.J.] . . . and [had] chok[ed] her." (Tr. Vol. 2 at 110). In addition, GAL Ferguson's report revealed that D.J. felt "like she [was] a live[-]in babysitter" when visiting Mother because Mother frequently went to the Casino and left D.J. to watch her half-siblings. (Tr. Vol. 2 at 112). GAL Ferguson recommended reunification therapy for Mother and D.J. because their relationship was not healthy, safe, or appropriate at that time. In addition, GAL Ferguson recommended that Mother's parenting time with D.J. be left to the discretion and direction of the reunification therapist.

[6] D.J. also testified at the hearing. Specifically, D.J. testified that she did not feel safe at Mother's home and that Mother went to the Casino a "[m]ajority of the time" during her parenting time with D.J. (Tr. Vol. 2 at 141). D.J. further

testified that Mother had told her that she wished that D.J. had never been born and that she wished that D.J. would kill herself.

[7] The Casino's Director of Regulatory Compliance, Kerry Woosley ("Director Woosley"), also testified at the hearing. During Director Woosley's testimony, the trial court admitted into evidence Father's Exhibit 2 ("Father's Exhibit 2"), which included the Casino's records tracking the use of Mother's casino rewards card ("the rewards card") in gambling transactions at the Casino over the previous ten years. According to the Casino's records, the rewards card had been used over seventy-five times in 2023. Director Woosley further testified that it would be fraud if one person used another person's rewards card.

[8] The trial court also admitted into evidence Mother's Exhibit B, which included four W-2G Forms that the Casino had issued to Mother regarding her gross winnings in 2023. Specifically, those forms revealed that Mother had won $1,925 in April 2023, $1,313 in May 2023, $1,954 in May 2023, and $2,810 in May 2023. Director Woosley testified that with respect to the W-2G forms, the Casino would have had to definitively identify the person named in the forms before issuing them.

[9] Also, at the hearing, Mother denied leaving D.J. at home during Mother's parenting time to go gambling at the Casino. In addition, Mother denied making the gambling transactions set forth in Father's Exhibit 2. According to Mother, she had allowed family and friends to use the rewards card. She also testified that she had only gone to the Casino to pick up gifts that she had

earned on the rewards card, such as a vacuum cleaner and a sweatshirt. When asked whether D.J. had been dishonest when she had told GAL Woosley that Mother had gone to the Casino during her parenting time with D.J. and had left D.J. to watch her half-siblings, Mother responded, "Absolutely." (Tr. Vol. 3 at 29).

[10] Following the hearing, in April 2024, the trial court issued an order explaining that through numerous hearings on the matter, the trial court had had the opportunity to evaluate the demeanor and credibility of both Mother and D.J. The trial court specifically found that D.J. had "presented credible testimony[.]" (App. Vol. 2 at 105). The trial court further found that Mother's testimony had "lack[ed] credibility." (App. Vol. 2 at 105). In addition, the trial court found, among many other things, that during Mother's parenting time with D.J., Mother had left D.J. at home to babysit her half-siblings while Mother went to the Casino.

[11] Thereafter, the trial court granted Father's motion to modify Mother's parenting time and denied Mother's motion to modify her parenting time. Specifically, the trial court suspended Mother's parenting time and ordered her to participate in reunification therapy with D.J. The trial court further ordered that Mother's parenting time with D.J. be determined by the reunification therapist.

[12] Mother now appeals.

Decision

[13] At the outset, we direct the parties' counsels to Indiana Appellate Rule 46. "The purpose of our appellate rules, especially Indiana Appellate Rule 46, is to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case." *Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003). Indiana Appellate Rule 46(A)(6) requires an appellant to provide a narrative statement of facts presented in accordance with the standard of review appropriate to the judgment or order being appealed. Ind. App. R. 46(A)(6)(b) and (c). Here, Mother's twenty-five-page statement of facts, which includes the three-page guardian ad litem report as well as more than fifteen pages of block-quoted witness testimony from two different hearings, does not comply with Indiana Appellate Rule 46.

[14] Further, Father's statement of facts simply "concedes with the Appellant's presentation of the facts of this matter." (Father's Br. 4). Although Indiana Appellate Rule 46(B)(1) authorizes the appellee to "omit the statement of . . . facts if the appellee agrees with the statements in the appellant's brief[,]" this authorization is only applicable if the appellant's statement of facts complies with Indiana Appellate Rule 46(A).

[15] We caution both parties' attorneys to comply with the appellate rules in future appeals. Failure to follow the appellate rules may result in waiver of an issue on appeal. *See Vandenburgh v. Vandenburgh*, 916 N.E.2d 723, 729 (Ind. Ct. App. 2009) (explaining that "[a]lthough the failure to comply with the appellate rules does not necessarily result in waiver of an issue, it is appropriate where noncompliance impedes our review."). We now turn to

Mother's specific argument that the evidence does not support one of the trial court's findings.

[16] As a preliminary matter, we note that there is a well-established preference in Indiana for granting latitude and deference to the trial court in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). Appellate courts "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence." *Id*. (cleaned up). "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." *Hahn-Weisz v. Johnson*, 189 N.E.3d 1136, 1141 (Ind. Ct. App. 2022) (cleaned up). "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*. (cleaned up).

[17] Our standard of review in parenting time decisions is generally for an abuse of discretion. *In re B.J.N.*, 19 N.E.3d 765, 769 (Ind. Ct. App. 2014). However, when the trial court sua sponte enters findings and conclusions pursuant to

Indiana Trial Rule 52, as it did here,[1] we apply a two-tiered standard of review to any issue covered by the findings. *Steele-Giri*, 51 N.E.3d at 123. That is, we look to whether the evidence supports the findings, and whether the findings support the judgment. *Id*. In conducting our review, we neither reweigh the evidence nor reassess witness credibility. *Id*. at 124. In addition, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[18] Here, Mother argues that the evidence does not support the trial court's finding that during Mother's parenting time with D.J., Mother left D.J. at home to babysit her half-siblings while Mother went to the Casino. Further, according to Mother, "[t]he trial court's ruling relied heavily upon this erroneous finding, and the Order of the trial court granting the Father's Verified Motion to Modify Custody should be vacated, remanding the matter for a new hearing." (Mother's Br. 35).

[19] However, our review of the evidence reveals that GAL Woosley's report indicated that D.J. felt "like she [was] a live[-]in babysitter" when visiting Mother because Mother frequently went to the Casino and left D.J. to watch her half-siblings. (Tr. Vol. 2 at 112). In addition, D.J. testified that Mother went to the Casino a "[m]ajority of the time" during her parenting time with D.J. (Tr. Vol. 2 at 141). Further, the Casino's records revealed that the

[1] The record does not disclose, and the parties do not tell us, whether either party requested findings. Therefore, we assume the trial court entered findings sua sponte.

rewards card had been used at the Casino more than seventy-five times in 2023. This evidence supports the trial court's finding that during Mother's parenting time with D.J., Mother left D.J. at home to babysit her half-siblings while Mother went to the Casino.

[20] We further note that although Mother denied leaving D.J. at home during Mother's parenting time to go gambling at the Casino and testified that she had allowed family and friends to use the rewards card, the trial court specifically found that D.J.'s testimony was credible and that Mother's testimony was not credible. Mother's argument is a request that we reweigh the evidence, which we will not do. *See Steele-Giri*, 51 N.E.3d at 124.[2] .

[21] Affirmed.

Weissmann, J., and Felix, J., concur.

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[2] Mother further argues that "[t]he trial court erroneously found that Mother's testimony was incredible[.]" (Mother's Br. 4). However, as set forth above, we do not reassess witness credibility. *See Steele-Giri*, 51 N.E.3d at 124.