MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE
COURT OF APPEALS OF INDIANA

Jerry Wayne Pharis,
Appellant-Petitioner,

v.

Whitley Lorenzi,
Appellee-Respondent.

December 9, 2022

Court of Appeals Case No. 22A-JP-01498

Appeal from the Hamilton Superior Court

The Honorable William Hughes, Judge

The Honorable Christopher Barrows, Commissioner

Trial Court Cause No. 29D03-1307-JP-000865

Mathias, Judge.

[1] Jerry Wayne Pharis ("Father") appeals the Hamilton Superior Court's order modifying custody of his child with Whitley Lorenzi ("Mother") and finding

him in contempt for failure to pay child support. Father presents two dispositive issues for our review:

I. Whether the trial court erred when it modified custody of the parties' child.

II. Whether the trial court erred when it found him in contempt.

[2] We affirm.

Facts and Procedural History

[3] Father and Mother (collectively, "Parents") are the parents of A.L. ("Child"), who was born January 2, 2012. In August 2013, Parents submitted to the trial court an agreed final paternity decree whereby they would share custody of Child and neither party would pay child support to the other. Father has three children from a prior relationship. In June 2015, Father married Bridget Pharis ("Stepmother"). Father and Stepmother have since had two children together.

[4] In November 2016, Parents submitted an agreed entry to the trial court whereby Father paid child support to Mother and Father agreed to pay 75% of the cost of Child's extracurricular activities. In 2019, Parents enrolled Child in tutoring at Sylvan Learning Center ("Sylvan"). Child "has an IEP [at school] and her primary disability is Specific Learning Disability, with a secondary disability of Language Impairment/Speech Impairment." Appellant's App. Vol. 2, p. 66. After Stepmother's driver's license was suspended for one year due to her third drunk driving conviction, Child's attendance at Sylvan was spotty.

[5] On July 6, 2021, Mother filed a motion to modify custody alleging that there had been a substantial and continuing change in circumstances since the last custody order. Mother alleged that

> Father's work schedule results in the child primarily being cared for by [Stepmother, who] has a history of alcohol abuse and convictions of alcohol related crimes; [i]ssues with the child's academic progress and assistance while in Father's care; issues of hygiene while in Fathers care; issues of space and attention while at Father's house; and that Father does not respond to Mother often on issues related to the child's schooling[.]

Id. at 39. The trial court appointed a Guardian ad Litem ("GAL") to assess the best interests of Child. In her report to the trial court, the GAL recommended no changes to custody or parenting time. On April 7, 2022, Mother filed a motion for rule to show cause why Father should not be held in contempt for his failure to pay 75% of Child's extracurricular activities.

[6] During a hearing on Mother's motion to modify custody and motion for rule to show cause, Mother testified that, since the court's 2016 custody order, Father had two children with Stepmother, so there are eight people living together in Father's house; Father had filed for bankruptcy; Stepmother was convicted of driving while intoxicated for the third time and had her driver's license suspended for one year; Father's home has no table where the family can sit together and eat; Child has been diagnosed with a learning disability; Child is in fourth grade, but she reads at a second-grade level; Child shares a room with a half-sibling at Father's house; and Mother has a new three-bedroom house

where only she and Child live together. Mother also testified that Father owed $1,378 towards Child's gymnastics classes.

[7] In June 2022, the trial court issued its order granting Mother's motion to modify custody and her motion for rule to show cause. The court identified eight significant changes of circumstances to support its conclusion that modification of custody is in Child's best interests. And the court found that Father was in contempt of the court's order that he pay 75% of Child's extracurricular activities. The court ordered Father to pay $1,378 towards Child's gymnastics classes, and the court imposed a sanction of $500 towards Mother's attorney's fees. The trial court also ordered Father to pay an additional $2,500 towards Mother's attorney's fees. This appeal ensued.

Discussion and Decision

Standard of Review

[8] Our standard of review is well settled:

> When reviewing judgments with findings of fact and conclusions of law, Indiana's appellate courts "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). Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment. *See Ind. Dep't. of Child Servs. v. LaPorte Circuit Court (In re T.S.)*, 906 N.E.2d 801, 804 (Ind. 2009); *J.I. v. J.H. (In re K.I.)*, 903 N.E.2d 453, 457 (Ind. 2009); *Dunson v. Dunson*, 769 N.E.2d 1120, 1123 (Ind. 2002). "Findings are clearly erroneous only when the record contains no facts to support them either directly or by

> inference." *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (quoting *Estate of Reasor v. Putnam County*, 635 N.E.2d 153, 158 (Ind. 1994)). 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. 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.

Best v. Best, 941 N.E.2d 499, 502 (Ind. 2011).

Issue One: Custody Modification

[9] Father first argues that the trial court abused its discretion by granting Mother's petition to modify custody. Pursuant to Indiana Code section 31–17–2–21, a trial court may not modify an existing custody order unless: (1) the modification is in the best interests of the child, and (2) there has been a substantial change in one or more of the statutory factors set forth in Indiana Code section 31–17–2–8. *Collyear-Bell v. Bell*, 105 N.E.3d 176, 184 (Ind. Ct. App. 2018). The factors a trial court is to consider under Section 31–17–2–8 are:

> (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….

All that is required to support custody modification under Section 31–17–2–21 is a finding by the trial court that (1) change would be in the child's best interests, (2) a consideration of the factors listed above, and (3) a finding that there has been a substantial change in one of those factors. *Collyear-Bell*, 105 N.E.3d at 184.

[10] Father contends that Mother did not present evidence of "substantial changes" in circumstances to support the modification of custody. Appellant's Br. at 12. Father states that "[t]he alleged change in circumstances is evaluated in the

context of the child's environment, and the effect of the change on the child is what makes it either substantial or inconsequential." *Id.* at 15 (citing *In re Marriage of Sutton*, 16 N.E.3d 481, 485 (Ind. Ct. App. 2014)). And he asserts that several of the changes identified by the trial court have not had an adverse impact on Child, while the remaining changes are not attributable to Father. But Father's argument on appeal amounts to a request that we reweigh the evidence, which we cannot do.

[11] Again, the trial court need only have found a substantial change in one of the statutory factors to support a modification of custody. *See Collyear-Bell*, 105 N.E.3d at 184. Mother testified that, since the 2016 custody order, Child has been diagnosed with a learning disability, and she is reading at a second-grade level despite being in the fourth grade. Mother testified further that, due to Father's busy work schedule and Stepmother's suspended driver's license, Child missed several appointments at Sylvan to assist in her reading skills. Moreover, Mother testified that she assists Child with reading almost every evening at her house, but Father often does not get home from work until 9:00 p.m., when Child goes to bed. Mother did not know how much Child was reading when she was at Father's house, and Father did not offer any testimony on that issue.

[12] The trial court identified eight significant changes in circumstances, including the diagnosis of Child's learning disability, specifically her second-grade reading level. Based on that single factor and Parents' disparate levels of involvement in assisting Child with her reading, the trial court did not err when it found that modification of custody is in Child's best interests. *See id.* In any event, the

evidence also supports the other seven changed circumstances identified by the trial court, and each of those changes also independently supports the modification of custody, as well.

Issue Two: Contempt

[13] Father next contends that the trial court abused its discretion when it found him in contempt of court. Whether a party is in contempt of court is a matter within the trial court's discretion, and its decision will be reversed only for an abuse of that discretion. *J.M. v. D.A.*, 935 N.E.2d 1235, 1243 (Ind. Ct. App. 2010). "'The trial court's finding that a parent is not excused from his or her failure to pay support is a negative judgment which will be reversed only if there is no evidence to support the trial court's conclusion.'" *Id.* (quoting *Esteb v. Enright by State*, 563 N.E.2d 139, 141 (Ind. Ct. App. 1990)).

[14] To find a party in contempt for failure to pay child support, the trial court must find that the party had the ability to pay child support and willfully refused to do so. *Woodward v. Norton*, 939 N.E.2d 657, 662 (Ind. Ct. App. 2010). Here, Father contends that there is no evidence that Father knew about the money he owed for Child's gymnastics classes. Thus, he maintains that he could not have willfully refused to pay.

[15] Again, Father asks that we reweigh the evidence, which we cannot do. During the hearing on Mother's motion to modify custody, Father was asked whether he had paid his share of the cost of gymnastics classes for Child. Father acknowledged that he had not paid, and he stated, "From my understanding

she hasn't finished" the classes, which was non-responsive. Tr. p. 23. Father then testified that there were "a few" reasons why he had not paid his share of the gymnastics classes, but Father did not state what those reasons were. *Id.* at 24. We cannot say that the trial court abused its discretion when it found that Father had willfully refused to pay for his share of Child's gymnastics classes.[1]

[16] Affirmed.

Robb, J., and Foley, J., concur.

[1] Father also challenges the trial court's award of attorney's fees to Mother. But he states that we need only address that issue "if Father prevails" on the issues of custody modification and contempt. Appellant's Br. at 22. Because we affirm the trial court on those two issues, we need not address the attorney's fee award.