MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Miranda Holman,
Appellant-Petitioner,

v.

Dakota Holman,
Appellee-Respondent.

January 17, 2023

Court of Appeals Case No. 22A-DC-1356

Appeal from the Jackson Superior Court

The Honorable Bruce Allen MacTavish, Judge

Trial Court Cause No. 36D02-1810-DC-238

Altice, Chief Judge.

Case Summary

[1] Miranda Holman (Mother) and Dakota Holman (Father) (collectively, Parents) are the divorced parents of three minor children, M.H., L.H., and G.H. (collectively, the Children).[1] Mother appeals the trial court's order that modified joint physical and legal custody of the Children solely to Father, claiming that there was no substantial change in circumstances that warranted the modification and that the evidence was insufficient to show that the change of custody was in the Children's best interests.

[2] We affirm.

Facts and Procedural History

[3] Parents married on November 17, 2014, and divorced in 2019. The trial court's dissolution decree, entered on February 26, 2019, awarded "joint custody and shared custody" to Parents "with shared custody to be worked out by the parties on a week to week basis with each party to have the children 50% of the time." *Appellant's Appendix Vol. 2* at 10.

[1] M.H. was born on March 19, 2016, L.H. was born on September 20, 2017, and G.H. was born on November 28, 2014.

[4] On July 2, 2019, Father filed a petition to modify custody because of Mother's alleged emotional instability and her anticipated move from Indiana to Wyoming, Illinois. Thereafter, Parents entered into an agreed interim order on October 17, 2019, which provided that they would continue sharing joint custody of the Children, even though Mother had moved to Illinois. The Children were to be home-schooled in accordance with the Abeka program,[2] with the cost to be divided equally by Parents. No child support was ordered, and each parent was required to provide for the Children's needs when they were in his or her care.

[5] Thereafter, on May 13, 2020, the trial court approved an agreed order entered into by the Parents. The order provided in part that

> **CUSTODY:** The parties acknowledge that Mother resides in Wyoming, Illinois and has all three children there during her periods of parenting time. Father continues to reside in Norman, Indiana and has all three children there during his periods of parenting time. Both parties shall be responsible for planning ahead to have the children at the location for parenting time exchanges in a timely manner, taking into consideration weather, state emergencies, etc.
>
> . . .

[2] The Abeka curriculum—focused on Christian values—uses a traditional philosophy of education with a mission to support and equip students, teachers, and parents with academic resources based upon biblical values for children from pre-K to grade 12.

> **PARENTING TIME:** The prior orders regarding parenting time shall remain in full force and effect. Father shall have the children from May 3, 2020 until May 10, 2020, and alternate weeks thereafter, with the exchanges to occur at 6:00 p.m. on Sunday. Mother shall have the children from May 10, 2020 until May 17, 2020, and alternate weeks thereafter, with the exchanges to occur at 6:00 p.m. on Sunday. This parenting time schedule shall continue until further order of the Court.
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> **SCHOOL**: *All three of the minor children shall be homeschooled with Abeka for elementary school.* Each parent shall purchase their own set of books, and school supplies for use at their respective homes. The cost for the necessary program alone shall be divided and paid equally by the parties.

Appellant's Appendix Vol. 2 at 29-30 (emphasis added).

[6] On January 25, 2021, Father filed a petition for modification, requesting sole physical and legal custody of the Children. Father also requested that the trial court establish parenting time for Mother and enter an order that she pay child support. Six months later, Mother filed a counter-petition for modification of custody seeking primary custody of the Children and asking that Father have parenting time and pay child support. The trial court appointed Melissa Richardson on February 23, 2022, as Guardian Ad Litem (GAL). The order provided in part that

> 2. Upon presentation of this Order to any person, agency, hospital, organization, school, person or office, including the Department of Public Welfare, mental health agencies, pediatricians, psychiatrists or police departments, the aforementioned shall permit the [GAL] to inspect and/or copy

> any records, reports, x-rays, photographs or other matters relevant to the case and the said minor children, to-wit: G.H., age 7; M.H., age 5; and L.H., age 4, including any report of examinations of the children's parents or other persons responsible for the children's welfare, without consent by the children or their parents, Miranda Holman and Dakota Holman, pursuant to I.C. 31-32-2-1- et seq: and I.C. 31-32-3-1 et seq. 1997.
>
> . . .
>
> 7. The [GAL] shall file a written report outlining her findings conclusions and recommendations with the court no less than ten days prior to the final hearing to be scheduled herein.

Id. at 46-47.

[7] Richardson filed her GAL report with the trial court on May 3, 2022, and an addendum to the report three days later. The report cited her interviews with the Children, Parents and their significant others, a grandparent, and various acquaintances and friends of Parents. Richardson also included information about the Children's school and medical records, Mother's social media postings, and a police report from Stark County, Illinois, regarding an instance of domestic violence that involved Mother and her live-in boyfriend.

[8] Richardson believed that joint custody could continue if Parents lived in the same area, but she noted that such an arrangement is not practical given the distance between their current residences. Richardson opined that the Children would be affected "academically and socially in negative ways" if they attended different public schools in different states. *Appellant's Appendix Vol.* 2 at 7.

[9] Richardson also stated in her report that Mother had withheld Father's parenting time and that Mother does not have a clear understanding about the Children's medical care. Richardson thought that "Father appears to be the more stable and structured parent," and she expressed concern about the Children being "raised with drama and emotional manipulation" if they remained primarily with Mother. *Id.*

[10] Given these circumstances, Richardson recommended that Parents continue to share joint legal custody of the Children, but that one parent should have primary physical custody. Specifically, she recommended that only one parent should have the Children for the school week, and the other parent should have more holiday and school break time than what is set forth in the Indiana Parenting Time Guidelines.

[11] Richardson further recommended that G.H. be enrolled in therapy from her "primary home," that the Children's medical providers be based from the "primary home," and that the "second home should establish a pediatrician who can receive records from the primary medical teams. . . ." *Id.*

[12] At the modification hearing that commenced on May 12, 2022, the evidence showed that G.H. suffers from various health disorders affecting her eyesight that requires glasses, an eye patch, and regular applications of eye drops. G.H. was also diagnosed with ADHD that requires treatment with Adderall. M.H. suffers from asthma and requires the use of an inhaler and prescriptions for two different drugs and specialty medical care. Mother was primarily responsible

for taking the Children to doctor's appointments, and text message exchanges established that Mother refused to inform Father of the Children's Illinois physicians and dentists.

[13] The evidence also demonstrated that while Father consistently helped the Children with their Abeka schoolwork, Mother only sporadically participated in the program. Further, Mother had refused to include Father's name on the Abeka registration even though he had paid for books and study materials. At some point, Mother—without notifying Father—ceased using Abeka and enrolled the Children in the Stark County, Illinois school system. Prior to that enrollment, there was approximately one month where the Children had no schooling when they were with Mother. The evidence also showed that G.H. had missed forty-six days in the Stark County school system and M.H. had missed fifty days. In response, Father finished the 2020-2021 school year through the Abeka program and subsequently enrolled the Children in the Bartholomew County School System. Thus, during the next school year, the Children attended an Illinois public school one week when they were with Mother, and an Indiana public school the following week when they were with Father.

[14] Testimony was presented that Mother was often late on the days that Parents exchanged the Children. Mother also had posted disturbing and false accusations on Facebook, where she suggested that issues with G.H.'s vision were causing him to go blind and that Father was to blame for that condition.

[15] In the summer of 2019, Mother alleged that Father had molested G.H. The Indiana Department of Child Services (DCS) investigated and determined that the molestation report was unsubstantiated. G.H. ultimately denied being touched inappropriately or sexually abused by anyone. The DCS caseworker believed that Mother had told G.H. what to say to the authorities about Father. Mother also falsely reported on Facebook that Father's parental rights had been terminated as to G.H. because of the child molest allegations. Mother sent text messages to others stating that she desired to have Father's parenting time suspended and hoped that Father would be arrested.

[16] Additionally, evidence was presented that Mother tended to overreact in various circumstances. On one occasion, M.H. had a runny nose when she picked him up from Father's house. Mother took M.H. to Riley Hospital and posted on Facebook that M.H. "could not breathe," had collapsed in the lobby, and his "oxygen level was sixty." *Transcript Vol. 2* at 65. Father obtained the medical records that related to that incident, and it was determined that M.H. had not collapsed and his oxygen level was "90 to 95 percent." *Exhibit Vol.* 4. In another instance, Mother became upset at one of G.H.'s doctor's appointments and told various family members that G.H. was autistic. G.H., however, was never diagnosed with that disorder.

[17] Father also expressed concern that Mother had not been properly supervising the Children when they were in her care, as she did not have an established bedtime routine and would put the Children to bed very late. The Children's

babysitter testified that they "are tired and can sleep 'til noon" after returning to Father following their time with Mother. *Transcript Vol. 2* at 156.

[18] Father also presented evidence of the Children's exposure to domestic violence. That is, Mother had contacted Illinois police on June 25, 2021, and reported that her live-in boyfriend, while in the Children's presence, was intoxicated and had grabbed and pushed her.

[19] The evidence also showed that Mother makes disparaging remarks about Father in front of the Children, and she instructed them to refer to Father's fiancé, Ashley, as "Miss Piggy." *Id.* at 184. Mother attributed all of her inappropriate behavior to being "off of her medication." *Id.* at 148.

[20] On the other hand, the evidence demonstrated that Father maintained a regular routine for meals, baths, homework, and the Children's bedtimes. The Children seemed to be very happy with Father, and they liked his fiancé, who is "very well-balanced and nice to the children." *Id.* at 25.

[21] GAL Richardson testified that the "children need to be in one school" and she believed that Mother manipulates others "to say what she wanted them to say" and that she may have coached G.H. about the child molest allegations. *Transcript Vol.* 3 at 3, 7-9, 11. Richardson also testified that Mother fails to communicate properly, and she believed it best for the Children to be with Father during the school year because they would be in school while Father was working.

[22] After reviewing the evidence and exhibits, the trial court entered an order on June 2, 2022, and summarily concluded that there was a substantial change in circumstances relating to the factors for custody set forth in Indiana Code 31-7-2-8. The trial court also found that it was in the Children's best interests to transfer legal and physical custody to Father. Mother was awarded parenting time and was ordered to pay child support.

[23] Mother appeals, challenging the custody modification. Additional information will be provided below as needed.

Discussion and Decision

I. Standard of Review

[24] We initially observe that neither party requested findings of fact and conclusions pursuant to Indiana Trial Rule 52(A), and the trial court did not enter findings sua sponte. Thus, the trial court's decision is reviewed as a general judgment. *Baxendale v. Raich,* 878 N.E.2d 1252, 1257-58 (Ind. 2008). We will not reweigh the evidence or consider witness credibility and will affirm the judgment if it is sustainable upon any theory consistent with the evidence. *Id.*

[25] In family law matters, we review custody modifications for abuse of discretion, with a preference for granting latitude and deference to our trial judges. *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind. 1993). Deference to trial 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 v. Best,* 941 N.E.2d 499, 502 (Ind. 2011). 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." *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002). We will not substitute our own judgment for that of the trial court if any evidence or legitimate inferences support the trial court's judgment. *Id*. The trial court's decision will be reversed only upon a showing of manifest abuse of discretion. *L.C. v. T.M.*, 996 N.E.2d 403, 407 (Ind. Ct. App. 2013).

II. Mother's Claims

[26] Mother argues that the trial court abused its discretion in modifying custody of the Children because no substantial change had occurred since the original custody order and the evidence failed to show that a custody award to Father was in the Children's best interest. Mother further asserts that the trial court abused its discretion in declining to grant *her* petition for primary custody of the Children.

[27] In the initial custody determination, both parents are presumed equally entitled to custody, but a petitioner seeking subsequent modification bears the burden of demonstrating that the existing custody arrangement should be altered. *Id.* Pursuant to Ind. Code § 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 enumerated in I.C. § 31-17-2-8. *Nienaber v. Nienaber*, 787 N.E.2d 450, 456 (Ind. Ct. App. 2003). Such factors are:

> (l) 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 (l4) years of age.
> (4) The interaction and interrelationship of the child with:
>
> > (A) the child's parent or parents;
> > (B) the child's siblings; and
> > (C) any other person who may significantly affect the child's best interest.
>
> (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 . . . .

I.C. § 31-17-2-8.

[28] We have previously determined that the trial court must "consider" the statutory factors and find there has been a substantial change to warrant modification. *Kanach v. Rogers,* 742 N.E.2d 987, 989 (Ind. Ct. App. 2001). A substantial change in any one of the "best interests factors" will suffice. *Jarrell v. Jarrell,* 5 N.E.3d 1186, 1193 (Ind. Ct. App. 2014), *trans. denied.*

[29] The evidence presented at the modification hearing demonstrated several substantially changed circumstances since the entry of the prior agreed order.

For instance, while the Children were home-schooled through the Abeka program, Mother had refused to include Father on the registration materials or advise him of the enrollment specifics. At some point thereafter, Mother unilaterally removed the Children from Abeka and enrolled them in Illinois public schools on the alternating weeks that they were with her. Thus Father—who was not initially advised about Mother's actions—was compelled to enroll the Children in an Indiana school system on the weeks that they were with him. As GAL Richardson testified, "we need to get these kiddos at one school. . . . I'm sure they're both fine schools but it's just, it's no way to go academically, so they've got to be at one school or the other; . . . [otherwise], the Children would be academically and socially [harmed]." *Transcript Vol. 3* at 3; *Appellant's Appendix Vol. 2* at 7. In short, the current shared custody arrangement was not working for the Children.

[30] We also note that Mother refused to disclose the identity of the Children's medical and dental providers to Father after she moved to Illinois, falsely accused Father of molesting G.H. and posted those allegations on Facebook and exaggerated the Children's medical and vision problems on her Facebook posts. Both the GAL and DCS caseworkers were concerned that Mother had prompted G.H. to falsely accuse Father.

[31] At some point, Mother's live-in boyfriend was arrested for domestic violence when he was intoxicated and in the Children's presence. Safety concerns for the Children also surfaced when Mother consistently ignored the trial court's order that the Children should wear helmets when they were riding horses.

[32] Father is aware of the Children's needs, and he helps them with their schoolwork. Father also has an established schedule for their bedtimes and study time. According to the GAL and Father's witnesses, the Children appear happy and closely bonded with Father and his fiancé. No evidence was presented that Father had behaved maliciously or that he tried to manipulate the Children. We find that there is a sufficient change in circumstances to support a custody modification, which both parties, in fact, sought.

[33] As to whether the modification is in the Children's best interests, we note that while the GAL believed that the Children had bonded with each parent and had adjusted to their respective communities, Mother consistently defied prior court orders, and her actions negatively affected the Children. More particularly, Mother refused to provide Father with truthful information about the Children's schooling and their healthcare treatment and providers. There was also evidence that Mother manipulated G.H. to falsely accuse Father of improperly touching her, and Mother has consistently alienated the Children from Father and interfered with his parenting time. Moreover, it was clearly not in the best interests of the Children to attend school in one state one week and in another the following week.

[34] The trial court here was placed in a position of choosing one parent to have custody of the Children, as joint custody was clearly not working. More particularly, the joint physical custody arrangement was no longer reasonable in light of Mother's move to Illinois and her unilateral withdrawal of the Children from the Abeka program. Similarly, the existing joint legal custody

arrangement was not feasible because of Parents' inability to cooperate and work together.

[35] Notwithstanding Mother's assertions that G.H. had a preference to reside with her and that the Children had adjusted to each home, were closely bonded with each parent, and had adjusted to both communities, the evidence does not support Mother's contention that she is better able than Father to provide stability for the Children. In short, Mother's argument is nothing more than an invitation to reweigh the evidence and assess witness credibility, which we decline. *See Hecht v. Hecht,* 142 N.E.3d 1022, 1028 (Ind. Ct. App. 2020). That said, looking solely to the evidence and all inferences favorable to the judgment, we conclude that the trial court did not err in modifying the custody order and awarding Father sole custody of the Children because there is evidence to support the determination that there was a substantial change in circumstances and that modification is in the Children's best interests.

[36] Judgment affirmed.

Brown, J. and Tavitas, J., concur.