MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Crystal Stultz,
Appellant-Respondent,

v.

George D. Stultz and
Janet D. Stultz,
Appellees-Petitioners

February 3, 2021

Court of Appeals Case No.
20A-MI-1530

Appeal from the
Hancock Superior Court

The Honorable
Marie Castetter, Judge

Trial Court Cause No.
30D01-1912-MI-2476

Vaidik, Judge.

Case Summary

[1] Crystal Stultz appeals the trial court's order awarding custody of her daughter to her former in-laws George (Dan) and Janet Stultz. We affirm.

Facts and Procedural History

[2] Crystal is the mother of A.B., born in March 2006. A.B.'s father is unknown.

[3] Crystal married Geoffrey Stultz in 2014, and they have two children together. Crystal also has two children with another man. In 2016, Crystal and Geoffrey lived in Westfield with their two children and A.B. During this time, Crystal took online college courses and was in the National Guard. On July 24, Crystal drove to the Greenfield home of Geoffrey's father and stepmother, Dan and Janet, who have been married since 1994, and asked them "to take custody of" ten-year-old A.B. Tr. Vol. II p. 25. A.B. had run away from home two weeks earlier, and Crystal wanted A.B. to have discipline and a stable home life. Dan and Janet agreed to do so with the caveat A.B. stayed with them until she turned eighteen. They didn't want A.B. to be moved around from house to house. The next day, Dan and Janet drove to Crystal and Geoffrey's house to pick up A.B. Crystal had packed up "everything" belonging to A.B., even the rug on her bedroom floor. *Id.* at 79. Crystal also executed a limited power of attorney giving Dan and Janet the authority to act on A.B.'s behalf, and Crystal renewed it every year until the last one expired at the end of December 2019.

[4] In August 2018, after A.B. had been living with Dan and Janet for two years, Crystal went on "active duty" in the Army. *Id.* at 16; Tr. Vol. III p. 33. Crystal, Geoffrey, and their two children moved to Georgia, and A.B. remained with Dan and Janet in Greenfield. After Crystal went to Fort Sill, Oklahoma, for additional training, she was deployed to South Korea.

[5] Crystal and Geoffrey divorced in April 2019. That December, Crystal had a disagreement with Dan and Janet about A.B. On December 29, Crystal had her brother, Ryan Swayne, travel from Fort Drum, New York, where he was stationed, to Greenfield to get A.B. and take her back with him to New York. The next day, December 30, Dan and Janet filed a Petition to Establish De Facto Custodian and Motion for Custody of A.B. as well as a Motion for Temporary Restraining Order in Hancock Superior Court. The trial court issued a temporary restraining order prohibiting A.B. from being removed from Hancock County until further order and set a hearing for the next day at 2:30 p.m.

[6] Only Dan and Janet appeared at the December 31 hearing, as A.B. was already in New York with Ryan and Crystal had not yet been served since she was in South Korea.[1] *See* Tr. Vol. II p. 97. On January 3, 2020, the trial court issued an order addressing several matters. First, the court said it declined to issue a preliminary injunction following its issuance of the temporary restraining order "for the reason that the child is already likely to be outside of the county of Hancock and the State of Indiana." Appellant's App. Vol. II p. 24. Second, the court found Dan and Janet were A.B.'s de facto custodians under Indiana Code section 31-9-2-35.5. Last, the court found that under the Servicemembers Civil Relief Act of 2003, it had to grant a delay of at least ninety days for a hearing on custody. The court set a custody hearing for March 24 and appointed a

[1] Crystal was served on February 27, 2020.

Guardian ad Litem (GAL). The hearing was eventually reset to July 28 because Crystal, who was still in South Korea, could not travel due to COVID-19.

[7] In the meantime, Crystal filed a motion to set aside the December 30 temporary restraining order and the January 3 order finding Dan and Janet were A.B.'s de facto custodians because she was in South Korea and had not yet been served. The court denied her motion.

[8] At the time of the July 28 hearing, A.B. was fourteen years old and still living with Ryan in New York. In addition, Crystal had just flown back to the United States from South Korea. However, she was in quarantine and had to appear remotely.

[9] Dan and Janet testified that while A.B. was in their care from July 2016 to December 2019, she attended fifth grade, sixth grade, seventh grade, and half of eighth grade at public schools in Greenfield. Dan, who had recently retired, volunteered at A.B.'s schools. In addition, Dan and Janet testified they provided all of A.B.'s transportation and nearly all of her financial support, including out-of-pocket medical expenses, school expenses, extracurricular expenses, summer camps, clothing, and food. They also gave A.B. an allowance. Although Crystal paid for A.B.'s cell phone and occasionally bought her clothes, she did not give "one (1) dime" to Dan and Janet for A.B. Tr. Vol. II p. 33.

[10] In addition, Dan and Janet testified about A.B.'s activities while she was in their care. Specifically, A.B. participated in cross country, dance, and karate.

For karate, A.B. competed in a local competition, a regional competition in Chicago, and a national competition in Fort Lauderdale. Dan and Janet did other traveling with A.B. They visited Monticello and Appomattox Court House in Virginia, Niagara Falls in New York, and Gettysburg in Pennsylvania. They also took A.B. to meet Eva Kor at the Holocaust Museum in Terre Haute, Indiana. Dan and Janet thought it was important to expose A.B. to many different experiences. They also ensured A.B. spent time with her four half-siblings.

[11] Finally, Dan and Janet testified that while Crystal still lived in Indiana, she did not spend any "regular" time with A.B.; rather, she typically saw her on the holidays. *Id.* at 27, 81-82. Although Crystal texted A.B., she never called Dan or Janet to check on her. *See id.*

[12] The GAL testified A.B. wanted to live with Dan and Janet in Greenfield. In addition, the GAL believed it was in A.B.'s best interests for Dan and Janet to have custody of her because "she needs the stability of living in one place." *Id.* at 162. The GAL explained A.B. had established "roots" with Dan and Janet in Greenfield, and it would be beneficial for her to attend and graduate from high school in Greenfield, where her support system was located.

[13] Crystal testified she was being assigned to Fort Sill and wanted her brother to have custody of A.B. for a couple more weeks, at which point she would take A.B. with her to Fort Sill. Tr. Vol. III pp. 18, 32, 40. Crystal said she would be at Fort Sill for three or four years.

[14] On August 14, 2020, the trial court issued an order finding "Dan and Janet are the de facto custodians of [A.B.]." Appellant's App. Vol. II p. 111. The court also found Dan and Janet rebutted the presumption Crystal should have custody of A.B. and that it was in A.B.'s best interests for Dan and Janet to have custody of her. *Id.* That same day, Dan and Janet drove to New York and took custody of A.B. Crystal filed a motion to stay the trial court's order, which the court denied.

[15] Crystal now appeals.

I. Custody

[16] Crystal first contends the trial court erred in awarding custody of A.B. to Dan and Janet as de facto custodians. Indiana Code section 31-9-2-35.5 defines "de facto custodian" as a person who has been "the primary caregiver for, and financial support of," a child who has resided with the person for at least: (1) six months if the child is less than three years old or (2) one year if the child is at least three years old. Crystal does not challenge the trial court's finding in its August 14, 2020 order that Dan and Janet are the de facto custodians of A.B.

[17] Indiana Code section 31-17-2-8 governs custody determinations and provides:

> The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

(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.**

(Emphasis added). Once a court determines a de facto custodian exists and the de facto custodian has been made a party to a custody proceeding, in addition to the best-interests factors outlined above in Section 31-17-2-8, the court shall consider these factors:

> (1) The wishes of the child's de facto custodian.
>
> (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
>
> (3) The intent of the child's parent in placing the child with the de facto custodian.
>
> (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to:
>
> (A) seek employment;
>
> (B) work; or
>
> (C) attend school.

Ind. Code § 31-17-2-8.5(b); *see also A.J.L. v. D.A.L.*, 912 N.E.2d 866, 871 (Ind. Ct. App. 2009). "The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child." I.C. § 31-17-2-8.5(d).

[18] As our appellate courts have recognized, there is a strong presumption a natural parent should have custody of their child. *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002); *A.J.L.*, 912 N.E.2d at 871-72; *In re Guardianship of L.L.*, 745 N.E.2d 222, 230 (Ind. Ct. App. 2001), *trans. denied*. A third party bears the burden of overcoming this presumption by clear and convincing evidence. *B.H.*, 770 N.E.2d at 287. The presumption can be overcome by, among other things, evidence (1) the natural parent is unfit, (2) the natural parent has long acquiesced in custody by a third person, or (3) a strong emotional bond has formed between the child and the third person. *B.H.*, 770 N.E.2d at 287; *A.J.L.*, 912 N.E.2d at 872; *L.L.*, 745 N.E.2d at 230-31. If the presumption is rebutted, the trial court engages in a best-interests analysis based on the factors listed in Sections 31-17-2-8 and 31-17-2-8.5. *A.J.L.*, 912 N.E.2d at 872; *L.L.*, 745 N.E.2d at 231.

[19] Here, the trial court found Dan and Janet had "demonstrated Crystal Stultz's long acquiescence in Dan and Janet's custody of [A.B.], and by showing such long acquiescence Dan and Janet have rebutted the presumption" Crystal should have custody of A.B. Appellant's App. Vol. II p. 108. The record supports this finding. Crystal asked Dan and Janet to "take custody of" A.B. in July 2016. A.B. had run away from home, and Crystal wanted A.B. to be in a

safe environment. Dan and Janet agreed with the caveat A.B. stayed with them until she turned eighteen so she wouldn't have to move from house to house. Crystal then executed a limited power of attorney allowing Dan and Janet to act on A.B.'s behalf. A.B. lived with Dan and Janet from July 2016 to December 2019, nearly three-and-a-half years. During this time, Dan and Janet were A.B.'s primary caregivers and provided nearly all of her financial support. From July 2016 to August 2018, when Crystal lived about an hour away from A.B., Crystal did not regularly see her. Instead, she saw her on holidays. Although Crystal texted A.B., she did not call Dan or Janet to check on her.

[20] Nevertheless, Crystal claims she did not acquiesce to Dan and Janet having custody of A.B. because the reason she left A.B. with them is that she went on active duty. But the record does not reflect this is the reason Crystal left A.B. with them. Instead, the record shows Crystal went on active duty in August 2018 but placed A.B. with Dan and Janet twenty-five months earlier in July 2016 when A.B. ran away from home. The trial court did not err in finding Dan and Janet rebutted the presumption Crystal should have custody of A.B. *See A.J.L.*, 912 N.E.2d at 874 (concluding evidence that an aunt and uncle "had been the primary caretakers of the [c]hildren for at least the past year" supported the trial court's finding their mother voluntarily relinquished them).[2]

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[2] In support of her claim she did not acquiesce to Dan and Janet having custody of A.B., Crystal cites *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453 (Ind. 2009). However, that case is easily distinguishable because the evidence in that case showed the father "exercised visitation with [his child] on a regular basis and the two spent a

[21] The trial court also found it was in A.B.'s best interests for Dan and Janet to have custody of her. The record supports this finding as well. Crystal placed A.B. with Dan and Janet in July 2016 after A.B. ran away from home. Crystal wanted A.B. to be in a safe environment. From July 2016 to December 2019, Dan and Janet were A.B.'s primary caregivers and provided nearly all of her financial support. They also ensured she was involved in extracurricular activities and saw her four half-siblings, and they took her on many trips. Although Crystal went on active duty in August 2018, by that time A.B. had already been with Dan and Janet for twenty-five months. And during those twenty-five months when Crystal lived about an hour away, she did not see A.B. on a regular basis. In addition, Dan and Janet want to have custody of A.B., and A.B. wants to live with them in Greenfield. Furthermore, the GAL believes it is in A.B.'s best interests to be in the custody of Dan and Janet. The trial court did not err in finding it is in A.B.'s best interests for Dan and Janet to have custody of her. We therefore affirm the court's order awarding custody of A.B. to Dan and Janet.

II. Motion to Set Aside

[22] Crystal next contends the trial court erred in issuing the December 30 temporary restraining order preventing A.B. from being removed from Hancock County until further order and the January 3 order finding Dan and Janet were

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significant amount of time together." *Id.* at 456. That is not the evidence in this case. *See* Appellant's App. Vol. II p. 59 (A.B. telling the GAL Crystal had been "out of [her] life for 4 years.").

A.B.'s de facto custodians because she was deployed to South Korea and had not yet been served in the case. Crystal claims these orders were issued in violation of the Servicemembers Civil Relief Act and the court erred by failing to set them aside.

[23] But as Dan and Janet respond, Crystal cannot demonstrate any prejudice from the trial court's denial of her motion to set aside. First, the temporary restraining order was valid for one day only, from December 30 to 31, because the trial court refused to grant a preliminary injunction at the December 31 hearing. Accordingly, when Crystal filed the motion to set aside, the temporary restraining order was no longer in effect. Second, although Crystal had not yet been served and therefore did not appear at the December 31 hearing, the court held another hearing at which Crystal was represented by counsel and appeared remotely, and the de facto custodian issue was litigated anew. Notably, Crystal filed a reply brief but did not respond to Dan and Janet's argument she cannot demonstrate any prejudice from the trial court's denial of her motion to set aside. We affirm the trial court on this issue.

[24] Affirmed.

Brown, J., and Pyle, J., concur.