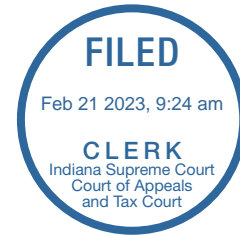


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Susan Lipscomb,
Appellant-Petitioner,

v.

Jason Lipscomb,
Appellee-Respondent.

February 21, 2023

Court of Appeals Case No.
22A-DR-1750

Appeal from the Tippecanoe
Circuit Court

The Honorable Sean M. Persin,
Judge

Trial Court Cause No.
79C01-1411-DR-101

Memorandum Decision by Judge Riley

Chief Judge Altice and Judge Pyle concur

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Petitioner, Susan Lipscomb (Mother), appeals the trial court's modification of joint legal custody of minor children G.L. and S.L. to sole legal custody in favor of Appellee-Respondent, Jason Lipscomb (Father).

[2] We affirm.

ISSUE

[3] Mother presents this court with one issue, which we restate as: Whether the trial court's order modifying joint legal custody is clearly erroneous.

FACTS AND PROCEDURAL HISTORY

[4] Mother and Father (collectively, Parents) are the parents of G.L., born on September 17, 2007, and S.L., born on May 20, 2011 (collectively, Children). The parties' marriage was dissolved on July 17, 2015, and sole legal and physical custody was awarded to Mother. On December 12, 2017, the trial court entered an agreed order which provided that the parties would share joint legal custody of Children.

[5] Parents' exercise of joint legal custody was rife with conflict. Mother and Father both filed multiple motions to modify parenting time and to have the other held in contempt, and the trial court was called upon to resolve disputes regarding decisions as to passports for Children, extracurricular activities, parenting time, and emergency medical care. One area of agreement for Parents was the appointment of a Guardian ad Litem (GAL) for Children,

which occurred on December 3, 2019. Late in 2019, and without consulting Father, Mother had G.L. admitted to Changes, a mental health facility, based on allegations—unsubstantiated by the Department of Child Services (DCS)—that Father had abused G.L. Changes was incorrectly informed that Mother had sole legal custody, and, as a result, Father was prevented from communicating with Changes about G.L.’s care.

- [6] On March 3, 2021, the trial court entered a Parallel Parenting Plan Order identifying Mother and Father as “high conflict parents, as defined in the Indiana Parenting Time Guidelines[,]” and setting forth specific orders on virtually every aspect of Parents’ care of Children, including directives on responsibilities and decision-making, education, healthcare, and dispute resolution. (Appellant’s App. Vol. II, p. 59). The trial court directed Parents to communicate with each other by writing in a book that would travel with Children rather than through in-person contact, calls, or texts so that contact between Mother and Father would be minimal. In an April 30, 2021, order holding Mother in contempt for interfering in Father’s parenting time, the trial court found that Parents had violated the court’s orders by continuing to harass each other, had created unnecessary conflict, and had failed to be the “problem solvers” Children needed. (Appellant’s App. Vol. II, p. 70). The trial court urged Parents to do better. The trial court stayed the execution of its contempt sanction to allow Mother to purge the contempt by strictly complying with the Parallel Parenting Plan.

- [7] After G.L.'s care at Changes was downgraded from full-time to part-time, Mother sought to have G.L. admitted to another mental health facility, again without consulting with Father. G.L. was later discharged from Changes. In March 2020, without consulting Father, Mother had G.L. admitted to Options, a mental health facility, based on more unsubstantiated allegations that Father had abused G.L. Based on Mother's instructions, Options would not communicate with Father about G.L.'s care, and Father was forced to have his counsel intervene in order to prove that he had joint legal custody of G.L. and could receive information about her. G.L. subsequently left Options. Without consulting Father and based upon the unsubstantiated allegations that Father had abused G.L., Mother had G.L. admitted into Bloomington Meadows, a mental health facility, where Father was again not permitted to communicate with G.L.
- [8] On October 5, 2021, Father filed an emergency petition requesting that he exercise sole legal custody of Children, alleging that Mother had violated the Parallel Parenting Plan. On April 28, 2022, the trial court held an evidentiary hearing on Father's emergency custody petition at which, in addition to evidence consistent with the aforementioned facts, the following evidence was admitted. Without any medical basis and without consulting Father, Mother had decided that G.L. had a blood pressure issue and should carry a medical-grade blood pressure cuff with her, a decision that caused G.L. anxiety. Based on a referral for an evaluation for eating issues, Mother had also attempted to

have G.L. admitted into treatment for an eating disorder, after which G.L. was found not to have an eating disorder.

[9] Therapist Kristine Ping (Ping), who had treated G.L. from January 2021 to December 2021, testified that G.L. never disclosed any abuse by Father and that Father had listened to suggestions on how to better communicate with G.L. Ping recounted that, after she had given notice to Parents that she was no longer able to work with G.L., Father had immediately agreed with Ping's suggestion of a highly-regarded therapist to replace her. However, Mother had initially rejected Ping's suggestion and insisted on a replacement therapist who was found not to be qualified to counsel G.L. The result was that, although Mother ultimately agreed to Ping's suggested replacement, G.L., who had been displaying self-harm behaviors, went without therapy for three and one-half months. According to Ping, Parents' communication style put G.L. "right in the middle" and caused G.L. anxiety. (Tr. Vol. II, p. 29). Ping thought that G.L. had done the best when Parents were following the Parallel Parenting Plan that restricted their contact, but that if only one parent were to have legal custody, it should be Father, as he listened to G.L.'s professional healthcare providers and did not subject G.L. to unnecessary assessments and treatments.

[10] GAL also testified at the April 28, 2022, evidentiary hearing. Although GAL did not agree with Ping that Father should have sole legal custody, she testified that there was conflict between Parents on G.L.'s medical and mental health issues and that Mother had a tendency to create or exaggerate medical issues for G.L. GAL acknowledged that, while Father had moved on from the

divorce, Mother had not. Regarding Parents' communication on G.L.'s medical care, GAL testified that

they're just on the wrong page, instead of both of them saying ok here's what we perceive to be the problem, let's talk to the doctor about it together and let's come up with a plan. One makes one decision. One makes the other decision and I gave you six or seven different examples of the medical related things that have come up that were somewhat of concern to me . . . I think it's more of a power struggle th[a]n anything. Each of them wants to be right, wants to have their way.

(Tr. Vol. II, p. 59).

[11] Father testified that he had been reported to DCS seven times and had been investigated twelve times by law enforcement for abusing G.L., but that none of the allegations had been substantiated and no charges had been filed against him. Father believed that G.L.'s placement in multiple mental health facilities based on the false abuse allegations had been detrimental to her and that she had learned some of her self-harm behaviors from the other patients who had actually been abused. Father testified that G.L. should receive treatment based on her symptoms and that, if he received sole legal custody, he would act reasonably and take Mother's opinion into consideration.

[12] On June 24, 2022, the trial court issued its order, granting sole legal custody of Children to Father. The trial court cited the statutes applicable to legal custody modifications and summarized the parties' conduct since the entry of their December 2017 agreement to share joint legal custody. The trial court found

that joint legal custody was no longer in Children’s best interests, which necessitated an award of sole legal custody to one parent. The trial court observed that Mother and Father both had the capability to be good parents but that they had both acted unreasonably at times, and it denied what it considered to be Parents’ “request to award legal custody based on which parent has been right or wrong more often.” (Appellant’s App. Vol. II, p. 87). Rather, the trial court chose to focus “on the willingness of each parent to include the other when making major decisions.” (Appellant’s App. Vol. II, p. 87). Emphasizing the continuing need for Parents to communicate on major decisions even when one parent has sole legal custody, the trial court stated that “Father is being trusted with this important responsibility because the [c]ourt believes he will include Mother and not alienate her, particularly since he understands the impact of being excluded.” (Appellant’s App. Vol. II, p. 88). The trial court emphasized that Mother was still to be listed as an emergency contact and have access to Children’s educators and healthcare providers, Mother still had the ability to make daily decisions about Children when they were in her care, and that its order granting Father sole legal custody “merely addresses Father’s authority to act *on major decisions* involving [Children], if there is a genuine dispute *after meaningful consultation* with Mother.” (Appellant’s App. Vol. II, p. 88) (emphasis in the original).

[13] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[14] Mother challenges the trial court's modification of legal custody in favor of Father. There is a well-established preference in Indiana to accord latitude and deference to trial courts in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). As such, we review child custody modifications only for an abuse of the trial court's discretion. *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002). Here, the trial court entered sua sponte findings of fact and conclusions thereon. "In such a case, the specific findings control only with respect to issues they cover, and a general judgment standard applies to issues outside the findings." *Montgomery v. Montgomery*, 59 N.E.3d 343, 349 (Ind. Ct. App. 2016), *trans. denied*. In conducting our review, we will set aside the trial court's judgment only if it is clearly erroneous. *Id.* A finding is 'clearly erroneous' when there are no facts or inferences drawn therefrom to support it. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). Our supreme court has recognized that "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." *D.C. v. J.A.C.*, 977 N.E.2d 951, 956-57 (Ind. 2012) (internal quotation omitted). Accordingly, in conducting our review, this court neither reweighs the evidence nor judges the credibility of the witnesses, and we will consider only the evidence most favorable to the judgment. *Steele-Giri*, 51 N.E.3d at 124. "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.” *Id.*

II. *Custody Modification Statutes*

[15] Parents who exercise joint legal custody share the “authority and responsibility for the major decisions concerning the child’s upbringing, including the child’s education, health care, and religious training.” Ind. Code § 31-9-2-67. Indiana Code section 31-17-2-21(a) provides that a trial court may only modify a child custody order if “(1) the modification is in the best interests of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under [Indiana Code section 31-17-2-8.]” In turn, section 31-17-2-8 provides that the trial court is to consider “all relevant factors”, including:

- (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[.]

In addition, when determining whether an award of legal custody should be modified, a trial court must also consider the following factors:

(1) the fitness and suitability of each of the persons awarded joint custody;

(2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;

(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) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;

(5) whether the persons awarded joint custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so; and

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

I.C. § 31-17-2-15; *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1260 (Ind. Ct. App. 2010). In determining whether a modification of legal custody is necessary, the Indiana courts have emphasized that section 15's factor (2), whether the parents

are willing and able to cooperate in advancing the child's welfare, is of particular importance. *Hecht v. Hecht*, 142 N.E.3d 1022, 1031 (Ind. Ct. App. 2020). Indeed, we have recognized that where the parties have made child-rearing a battleground, joint custody is inappropriate and that “to award joint legal custody to individually capable parents who cannot work together is tantamount to the proverbial folly of cutting the baby in half to effect a fair distribution of the child to competing parents.” *Id.* (quoting *Swadner v. Swadner*, 897 N.E.2d 966, 974 (Ind. Ct. App. 2008)).

III. *Modification of Legal Custody*

[16] Here, the basis for the trial court's modification of legal custody to Father was its determination that the parties could no longer effectively communicate, as it focused “on the willingness of each parent to include the other when making major decisions.” (Appellant's App. Vol. II, p. 87). Mother first contends that there was insufficient evidence of a substantial change in the parties' willingness to communicate, as their communication had always been contentious. However, the last change in legal custody of Children occurred in December 2017 through an agreed entry, which was evidence that, at least at that time, Parents were willing to agree that they would share in major decision making. After this agreed entry on joint legal custody, Mother made multiple unilateral decisions to have G.L. admitted for mental health treatment based on false allegations of abuse by Father, and she unilaterally attempted to have G.L. admitted for treatment for an eating disorder that she did not have. Without

any justification, Mother refused to endorse Ping's recommendation of a therapist, agreed upon by Father, which resulted in G.L. going without therapy at a time when she was demonstrating self-harm behaviors. In addition, without consulting Father, Mother also decided, in the absence of any demonstrated medical need, that G.L. had a blood pressure issue that necessitated that G.L. carry a monitoring device. These were events which took place after Parents' December 2017 agreed entry on legal custody, evinced Parents' inability to communicate on major decisions regarding G.L.'s care as testified to by Ping and GAL, and which supported the trial court's determination that a substantial change had occurred in Parents' willingness and ability to communicate and coordinate in advancing G.L.'s welfare. *See* I.C. § 31-17-2-15(2). In light of this evidence, we cannot conclude that the trial court's order was clearly erroneous. *See Best*, 941 N.E.2d at 502.

- [17] In furtherance of her argument that there was no substantial change in the parties' communication meriting a change in custody, Mother cites *Montgomery*, in which we reversed a legal and physical custody modification order and observed that "to the extent Mother and Father have a highly-acrimonious relationship when it comes to A.M., that is not a new or recent development or a changed circumstance." *Montgomery*, 59 N.E.3d at 351. However, we find *Montgomery* to be factually distinguishable, as in that case legal custody had not been previously established through an agreed entry, the parties were not exercising joint legal custody prior to the modification, and that case did not involve multiple instances of one parent making unilateral healthcare decisions

that negatively impacted a child. *Id.* at 345-48. In addition, Mother’s observation that the trial court did not enter a specific finding reciting what circumstance substantially changed under section 8 does not convince us that the trial court’s order is deficient. As we have already noted, our review of the trial court’s order revealed the basis for its decision—the substantial change in Parents’ ability to communicate. We have long held that trial courts are not required to enter specific findings and conclusions thereon when modifying custody. *Matter of Paternity of A.R.S.*, 198 N.E.3d 423, 431 (Ind. Ct. App. 2022). Rather, we will presume that the trial court followed the law absent any clear indication to the contrary, and we will not find an order insufficient simply because it does not explicitly discuss the statutory factors. *Id.*

[18] Mother also argues that the trial court abused its discretion in considering the parties’ willingness to include the other parent in major decision making, arguing that this was a “non-statutory” factor that the trial court was not permitted to consider. (Appellant’s Br. p. 14). We reject this argument for at least two reasons. Inclusion in decision-making is a prerequisite for communication. Therefore, the trial court’s finding regarding each Parent’s willingness to include the other in major decision making is a finding regarding the parties’ willingness and ability to communicate, which is a statutory factor. *See* I.C. § 31-17-2-15(2). Even so, if this were indeed a ‘non-statutory’ factor, we have recognized that the list of statutory factors that a trial court may consider when determining whether to modify legal custody is a non-exhaustive

list. *Julie C. v. Andrew C.*, 924 N.E.2d at 1259-60. Accordingly, Mother has failed to show any clear error or abuse of discretion on the trial court's part, and we do not disturb the trial court's legal custody modification order. *See Kirk*, 770 N.E.2d at 307.

CONCLUSION

[19] Based on the foregoing, we conclude that the trial court's legal custody modification order is not clearly erroneous.

[20] Affirmed.

[21] Altice, C. J. and Pyle, J. concur