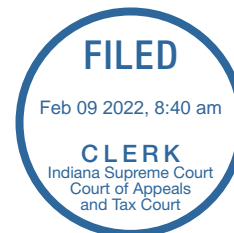


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Christopher A. Maeder,  
*Appellant*

v.

Kristen N. Maeder,  
*Appellee.*

February 9, 2022

Court of Appeals Case No.  
21A-DR-1346

Appeal from the Knox Superior  
Court

The Honorable Jeffrey Fowler  
Meade, Special Judge

Trial Court Cause No.  
42D02-1307-DR-164

**Pyle, Judge.**

### Statement of the Case

- [1] Christopher Maeder (“Father”) appeals the trial court’s order that granted Kristen Maeder’s (“Mother”) motion to modify Father’s parenting time with

the parties' two children ("the Children"). Father specifically argues that: (1) the trial court's modification of his parenting time was improperly based solely upon the information that the Children provided to the trial court judge during an in camera interview; and (2) the trial court abused its discretion when it modified his parenting time. Concluding that: (1) the trial court's modification of Father's parenting time was not based solely upon the information that the Children provided to the trial court judge during an in camera interview; and (2) the trial court did not abuse its discretion when it modified Father's parenting time, we affirm the trial court's judgment.

[2] We affirm.

## **Issues**

1. Whether the trial court's modification of Father's parenting time was based solely upon the information that the Children provided to the trial court judge during an in camera interview.
2. Whether the trial court abused its discretion when it modified Father's parenting time.

## **Facts**

[3] Father and Mother were married in September 2000. Their son, D.M. ("D.M."), was born in January 2005, and their son, R.M. ("R.M."), was born in September 2007. The parties' marriage was dissolved in September 2013, and, pursuant to a court order, Father was awarded parenting time consistent with the Indiana Parenting Time Guidelines ("the IPTG").

[4] In November 2014, Father relocated to Florida for employment opportunities in the concert lighting industry, and Mother and the Children remained in Vincennes, Indiana. Eight months later, in July 2015, Father married Dayna Maeder (“Stepmother”), who has two young children. The Children had not had “the opportunity to get to know [Stepmother] in a well-informed way” before the marriage, and Father did not invite the Children to the wedding or tell them about it. (Tr. Vol. 2 at 75). Rather, five months after the wedding, a third-party told the Children that Father had remarried.

[5] In May 2016, Mother filed a motion for modification or clarification of parenting time. In her motion, Mother explained that, since Father’s relocation to Florida, Father had voluntarily failed to exercise parenting time pursuant to the 2013 court order. Mother further explained that Father had recently begun requesting parenting time and that she and Father had been unable to reach an agreement regarding a modification of the 2013 court order. Mother requested that the trial court either modify or clarify the 2013 court order.

[6] In October 2016, following a hearing, the trial court issued an order modifying Father’s parenting time. Specifically, this order awarded Father parenting time pursuant to the IPTG when distance is a major factor, which provided as follows at the time of the trial court’s October 2016 order:

(C) Child 5 Years of Age and Older. For a child 5 years of age and older who attends a school with a traditional school calendar, seven (7) weeks of the school summer vacation period and seven (7) days of the school winter vacation plus the entire spring break, including both weekends if applicable. Such

parenting time, however, shall be arranged so that the custodial parent shall have religious holidays, if celebrated, in alternate years.

Indiana Parenting Time Guidelines, Section III. The trial court's 2016 order further provided that Father could "choose to exchange one (1) summer week in order to exercise parenting time over the [C]hildren's Fall or Thanksgiving scholastic 'breaks.'" (App. Vol. 2 at 27).

[7] Several times over the subsequent three years, the Children told Mother that they were unhappy spending their summers with Father in Florida. According to the Children, they did not get to spend one-on-one time with Father during the visits. Rather, the Children told Mother that they typically spent a lot of time together in their bedroom while in Florida. The Children had attempted to talk to Father about their concerns. However, their conversations with Father had not "go[ne] anywhere." (Tr. Vol. 2 at 43). When the Children returned from their summer 2020 visit to Florida, the Children told Mother that they "w[ould] not survive another summer down there." (Tr. Vol. 2 at 39).

[8] In January 2021, Mother filed a petition to modify visitation, wherein she explained that the Children were now older than they had been at the time of the trial court's 2016 parenting time order. Specifically, at the time Mother filed the 2021 petition, D.M. was sixteen years old and a sophomore in high school, and R.M. was thirteen years old and in the seventh grade. According to Mother's petition, since the time of the 2016 parenting time order, the Children had become more engaged in scholastic, extra-curricular, employment, and

other similar activities during school breaks. Mother's petition further stated that the Children had "expressed to both parents their desire to modify the present visitation arrangements." (App. Vol. 2 at 32). Mother's petition did not include a specific parenting time proposal.

[9] In February 2021, Mother filed a motion asking the trial court to conduct an in camera interview with the Children. According to Mother's motion, "the effect of recent substantial changes in the emotional state of the [C]hildren may best be ascertained by a court interview with the [C]hildren in chambers." (App. Vol. 2 at 43).

[10] Also in February 2021, Father filed a counter-petition for modification of parenting time. In his petition, Father requested additional parenting time to include the Martin Luther King, Jr., holiday weekend in January, the President's Day holiday weekend in February, nine weeks in the summer, the Children's fall, Thanksgiving, and spring breaks, and one week of their Christmas break.

[11] The day before the April 2021 hearing on the petitions, Father filed a motion requesting that the trial court enter findings of fact and conclusions of law pursuant to Indiana Trial Rule 52. At the hearing on the petitions, the trial court heard the evidence as set forth above. In addition, Mother testified that D.M., a high honor roll student, participated in baseball, cross-country, and varsity basketball. According to Mother, D.M. was also being scouted for

college basketball scholarships. Mother further testified that R.M. also made good grades and participated in baseball and basketball.

[12] Mother also testified that the Children had frequently complained that they had not gotten one-on-one time with Father when they had visited him in Florida. In addition, Mother testified that R.M. frequently had “stomach issues” when he visited Father. (Tr. Vol. 2 at 17). Mother further testified that she was “seeking – from what the [Children] ha[d] asked of [her], . . . to not make the summers as long, and that [the Children would be] available to be [in Indiana] for important events in their li[ves].” (Tr. Vol. 2 at 36). Mother also testified that her modification petition had not included a specific proposal because she “simply want[ed] the [trial court] [j]udge to listen to the [Children.]” (Tr. Vol. 2 at 27). According to Mother, “this [was] [the Children’s] time for their voice[s] to be heard.” (Tr. Vol. 2 at 27).

[13] At the end of the day, the trial court granted Mother’s motion requesting that the trial court judge conduct an in camera interview with the children. The trial court judge also told the parties that he was available to interview the Children at that time. Father did not object to the in camera interview, and the trial court allowed Father’s counsel time to make a list of questions for the trial court judge to ask the Children during the interview. Following the interview, the trial court judge returned to the courtroom and told the parties, “you got some good kids there. They’re mature[.] [T]hese kids love both their parents and they really want quality time with both parents[.]” (Tr. Vol. 2 at 63, 65). In addition, the trial court pointed out that the parties needed to schedule a second

day for the hearing and that it wanted to “get an order out before summer even start[ed].” (Tr. Vol. 2 at 60).

[14] The second day of the hearing was held in May 2021. Father testified that he was unaware of how the Children had learned about his marriage and conceded that he had not told them about it. Father also could not recall whether he had attended any of the Children’s award ceremonies, faith confirmations, junior high school graduations, or sporting events. In addition, Father testified that, even though his mother lives in Florida, Father had not arranged for the Children to see their paternal grandmother while the Children were in Florida because Father and his mother had had several disagreements. Father also testified that the Children’s summer 2020 visit had been difficult for everyone and that, during the course of the visit, he had found R.M. crying in his bedroom.

[15] In June 2021, the trial court issued a detailed eleven-page order, which granted Mother’s motion to modify Father’s parenting time and denied Father’s motion to modify his parenting time. This order contained fifty findings of fact, fifteen conclusions of law, and ten detailed paragraphs. Six of the fifty findings of fact concerned the trial court judge’s in camera interview with the Children. In those six findings, the trial court found that the Children had expressed the following concerns during the in camera interview: (1) the current parenting time plan with Father causes them anxiety, depression, tension, and conflict; (2) a large source of the emotional turmoil is related to Father’s inability or refusal to spend quality time with them; (3) Father and Stepmother often negatively

question the Children regarding their Indiana lives and activities, Mother, and Mother's relationship with her boyfriend; (4) Father is not engaged with the Children, does not visit them in Indiana, does not attend their sporting events, graduations, or awards ceremonies, and does not participate in their lives outside of his parenting time in Florida; (5) Stepmother controls their relationship with Father and determines his level of engagement with them by fabricating emergencies when Father has scheduled activities with them; and (6) based upon Father's actions and words, Father prefers to participate in activities with Stepmother and her children as opposed to being an active Father to them. The remaining forty-four findings of fact concerned the history of the case and the testimony of both Mother and Father.

[16] The trial court's order concluded as follows:

(11) That based upon the testimony of the parties, the in camera interview of the young men, and the evidence presented, the Court finds and concludes that continued parenting time per the previous Orders of the Court is not in the best interests of [D.M.] and [R.M.]

(12) That based upon the testimony of the parties, the in camera interview of the young men, and the evidence presented, the Court finds and concludes that continued parenting time per the previous Orders of the Court will significantly impair the emotional development of both [D.M.] and [R.M.]

(App. Vol. 2 at 22-23).

[17] Thereafter, the trial court ordered the modification of Father's parenting time to include the following: (1) three weeks of parenting time in Florida to be



exercised in two or three installments depending on the Children’s summer school, extracurricular, and related schedules; (2) the Children’s four-day Thanksgiving break; (3) one week of the Children’s Christmas break; (4) five days of the Children’s spring break; and (5) the Children’s four-day Easter break.

[18] Father now appeals.

## Decision

[19] At the outset, 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.* (internal citations omitted). “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.* (internal citations omitted). “Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Id.* (internal citations omitted).

[20] We further note that Father requested specific findings and conclusions pursuant to Indiana Trial Rule 52. The purpose of Trial Rule 52(A) is to provide the parties and the reviewing court with the theory upon which the trial

court decided the case in order that the right of review for error may be effectively preserved. *In re Paternity of S.A.M.*, 85 N.E.3d 879, 885 (Ind. Ct. App. 2017). When a trial court enters findings of fact and conclusions of law pursuant to Trial Rule 52, we apply the following two tiered standard of review: (1) whether the evidence supports the findings; and (2) whether the findings support the judgment. *Hazelett v. Hazelett*, 119 N.E.3d 153, 157 (Ind. Ct. App. 2019). The trial court’s findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting the judgment. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* We neither reweigh the evidence nor assess the credibility of the witnesses but consider only the evidence most favorable to the judgment. *Id.* We now turn to the issues in this case.

[21] Father argues that: (1) the trial court’s modification of his parenting time was improperly based solely upon the information that the Children provided to the trial court judge during an in camera interview; and (2) the trial court abused its discretion when it modified his parenting time. We address each of Father’s arguments in turn.

### **1. In Camera Interview**

[22] Father first argues that “[t]he trial court erred in solely basing its order . . . on . . . information received from the in camera interview with the [C]hildren.”

(Father's Br. 12). According to Father, "[t]o do so [was] reversible error."

(Father's Br. 12).

[23] INDIANA CODE § 31-17-4-1 permits a trial court to conduct an in camera interview of a child or children in chambers within parenting time proceedings. *Moorman v. Andrews*, 114 N.E.3d 859, 866 (Ind. Ct. App. 2018). The statute provides as follows:

(a) [A] parent not granted custody of the child is entitled to reasonable parenting time unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(b) The court may interview the child in chambers to assist the court in determining the child's perception of whether parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

IND. CODE § 31-17-4-1.

[24] Although trial courts are afforded latitude in parenting time decisions, a trial court's judgment "may not rest primarily upon the results of a private in camera interview." *McCauley v. McCauley*, 678 N.E.2d 1290, 1292 (Ind. Ct. App. 1997), *trans. denied*. In *McCauley*, this Court determined that the trial court had abused its discretion by relying primarily upon the results of a private in camera interview in order to deny visitation to a parent because we could find no evidence in the remainder of the record supporting the trial court's decision. *Id.*

[25] Father cites *McCauley* in support of his argument that the trial court committed reversible error because its modification of his parenting time was improperly based solely upon the information that the Children provided to the trial court judge during the in camera interview. However, the facts in the case before us are distinguishable from those in the *McCauley* case. First, the trial court's order in this case specifically states that the order was based upon the testimony of the parties, the in camera interview, *and* the evidence presented. Further, the trial court's order included fifty findings of fact and only six of those findings concerned the trial court judge's in camera interview with the Children. Lastly, we are able to locate sufficient evidence both in the remaining forty-four findings and in the record to support the trial court's findings and conclusions regarding the modification of Father's parenting time with the Children. Specifically, this evidence reveals that the Children had frequently complained that they had not gotten one-on-one time with Father while in Florida. Rather, the Children had often spent time together alone in their bedroom while visiting Father. In addition, although the Children had attempted to talk to Father about their concerns, Father had failed to make any changes in the time that he spent with the Children. R.M. frequently had stomach problems when he visited Father. In addition, Father admitted that the Children's summer 2020 visit had been difficult for everyone and that, during the course of the visit, he had found R.M. crying in his bedroom. The trial court did not base its order solely on the information that the Children provided to the trial court judge during the in camera interview, and we find no error.

## 2. Modification of Parenting Time

[26] Father also argues that the trial court abused its discretion when it modified his parenting time. Specifically, Father contends that “there is no evidence on the record that a modification of parenting time below that set forth in the Indiana Parenting Time Guidelines is in the [C]hildren’s best interests or that restrictions to the parenting time should have occurred.” (Father’s Br. 14).

[27] We review modifications of parenting time for an abuse of discretion. *Miller v. Carpenter*, 965 N.E.2d 104, 108 (Ind. Ct. App. 2012). An abuse of discretion occurs only when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences to be drawn therefrom. *Barber v. Henry*, 55 N.E.3d 844, 850 (Ind. Ct. App. 2016). “Therefore, 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.” *Moorman*, 114 N.E.3d at 864. A trial court may modify parenting time “whenever modification would serve the best interests of the child.” IND. CODE § 31-17-4-2. Thus, unlike a modification of physical custody, a modification of parenting time does not require a showing of substantial change. *Moorman*, 114 N.E.3d at 864.

[28] Here, the trial court concluded that it was in the Children’s best interests to spend shorter but more frequent time periods in Florida with Father. Specifically, the trial court ordered the modification of Father’s parenting time to include the following: (1) three weeks of parenting time in Florida to be

exercised in two or three installments depending on the Children's summer school, extracurricular, and related schedules; (2) the Children's four-day Thanksgiving break; (3) one week of the Children's Christmas break; (4) five days of the Children's spring break; and (5) the Children's four-day Easter break. Our review of the evidence reveals that, as previously discussed, the Children had frequently complained that they had not gotten one-on-one time with Father while in Florida. Rather, the Children had often spent time together alone in their bedroom while visiting Father. In addition, although the Children had attempted to talk to Father about their concerns, Father had failed to make any changes in the time that he spent with the Children. R.M. frequently had stomach problems when he visited Father. In addition, Father admitted that the Children's summer 2020 visit had been difficult for everyone and that, during the course of the visit, he had found R.M. crying in his bedroom. Our review of the evidence further reveals that D.M., who is a high honor roll student, participates in baseball, cross-country, and varsity basketball. D.M. is also being scouted for college basketball scholarships. In addition, R.M. participates in baseball and basketball. This evidence neither positively requires the conclusion contended for by Father nor provides the basis for reversal. *See id.* Rather, this evidence provides a rational basis for the trial court's parenting time order, which balanced Father's parenting time with the Children's concerns about spending so much time together alone in Florida and missing activities in Indiana. We find no abuse of the trial court's discretion. *See id.*

[29] Affirmed.

May, J., and Brown, J., concur.