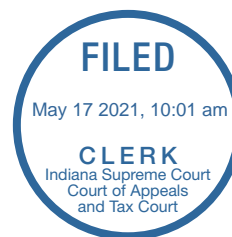


## MEMORANDUM DECISION

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.



---

### ATTORNEY FOR APPELLANT

Jared Michel Thomas  
JMT Law, LLC d/b/a Thomas Law  
Evansville, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

In the Matter of the Paternity of  
D.L.J. (Minor Child):

Desiree L. Jennings,  
*Appellant-Petitioner,*

v.

LeeWayne Johnson,  
*Appellee-Respondent.*

May 17, 2021

Court of Appeals Case No.  
19A-JP-3045

Appeal from the Vanderburgh  
Superior Court

The Honorable Richard G.  
D'Amour, Judge

The Honorable Donald R. Vowels,  
Magistrate

Trial Court Cause No.  
82D07-1004-JP-245

**Bailey, Judge.**

## Case Summary

- [1] Desiree Jennings (“Mother”) appeals the trial court order denying her motion for unsupervised parenting time<sup>1</sup> and finding her in contempt for failure to pay her child support obligation.
- [2] We affirm in part, reverse in part, and remand with instructions.

## Issues

- [3] Mother raises two issues which we restate as follows:
- I. Whether the trial court abused its discretion when it ordered that Mother’s parenting time would continue to be supervised.
  - II. Whether Mother waived her claim regarding her June 8, 2016, motion to modify child support.

## Facts and Procedural History

- [4] Mother and LeeWayne Johnson (“Father”) are the parents of D.J. (“Child”), born April 8, 2010. Father’s paternity of Child was established in 2010. Mother originally had primary physical, and sole legal, custody of Child, and Father had parenting time and was ordered to pay child support per State

---

<sup>1</sup> Mother often refers to “parenting time” as “visitation.” We use the term “parenting time” in this decision unless addressing Mother’s specific references to “visitation.”

guidelines. In 2015, the parties were awarded joint legal and physical custody of Child.

- [5] On May 19, 2016, following a hearing on Father's motion to modify custody, Father was awarded sole legal, and primary physical, custody of Child. Mother was ordered to have reduced supervised parenting time with Child due to her anger issues and inability to care for Child's general hygiene, among other reasons. Mother was also ordered to pay child support.
- [6] On June 8, 2016, Mother filed a pro se motion to modify the child support order. On June 20, 2016, Mother's notice of her appeal of the May 19 custody order<sup>2</sup> was filed in the trial court. On July 8, 2016, the trial court held a hearing on Mother's motion to modify child support; however, because Mother failed to appear at that hearing, the trial court dismissed her motion.
- [7] In *In re Paternity of D.J.*, No. 82A01-1606-JP-1406, 2017 WL 1386197, at \*3 (Ind. Ct. App. Apr. 17, 2017), a panel of this Court affirmed the trial court's custody order but held that the reduction in Mother's supervised parenting time was unsupported by the record. On June 2, 2017, on remand, the trial court increased Mother's parenting time to three one-hour supervised visits per week at the Parenting Time Center, at Mother's expense. On September 27, 2017, Mother filed a motion for temporary modification of parenting time. Following

---

<sup>2</sup> Mother's appeal of the May 19, 2016, order did not include an appeal of the child support order.

a hearing, the court took the motion under advisement and, in an order dated March 22, 2018, denied the motion.

[8] On October 4, 2018, the court conducted a hearing on, among other things, Mother's petition to modify parenting time.<sup>3</sup> In an order dated October 9, 2018, the court denied Mother's petition and stated:

The Court will not consider relaxation of the requirement of supervised parenting time at the Parenting Time Center until such time as the Mother establishes regular visits with the child at the Parenting Time Center of at least twenty additional visits and provides written proof to the Court that she has attended no less than fifteen Dialectical Behavior Therapy [{"DBT"}] group sessions.

App. at 83. In an order dated January 24, 2019, the court noted that the Parenting Time Center could apparently only accommodate one one-hour supervised visit per week for Mother. Therefore, the trial court granted a motion by Mother to change supervised parenting time to one one-hour visit per week at the Parenting Time Center and two weekly one-hour visits during Child's lunch time at Child's school.

[9] On April 18, 2019, Mother filed a Motion to Modify Visitation in which she noted that she had met all the requirements of the court's October 9, 2018,

---

<sup>3</sup> It is not clear from the Chronological Case Summary ("CCS") when Mother filed her additional petition to modify parenting time, or what that petition alleged. Mother has not provided a copy of that petition in the record on appeal, and it is not in the Odyssey computer system under the lower court case number.

order and sought unsupervised parenting time. Mother noted that her parenting time with Child was taking place at Child's school during Child's lunch time, but the school year was soon ending. On August 19, 2019, Mother filed a petition to modify child support, and the trial court conducted a hearing on that petition, Mother's pending motion to modify parenting time, and Father's pending petition for contempt regarding child support. The hearing continued and concluded on September 9, 2019. On September 27, 2019, the trial court issued its order finding Mother in contempt for failure to pay child support, ordering Mother to pay child support arrearage, granting Mother's petition to modify child support by reducing it, and denying Mother's motion to modify parenting time. In reaching the latter decision, the trial court stated, in relevant part:

[T]he Mother has complied with the Court's Order of the 9th day of October, 2018, requiring that she have at least twenty (20) parenting time visits with the parties' minor child at The Parenting Time Center and attend no less than fifteen (15) Dialectical Behavior Therapy group sessions. The Mother has not utilized The Parenting Time Center since approximately December, 2018[,] and with the exception of one (1) visit with the parties' minor child during the summer of 2019, she has not exercised parenting time with the child since her last school lunch visit with the child at the conclusion of school in May, 2019. The Mother testified that she terminated her parenting time visits at The Parenting Time Center because of the increased costs due to her being accompanied by her other children. The Mother shall resume her parenting time with the parties' minor child at The Parenting Time Center and she shall attend such visits alone. The Mother shall resume her three (3) weekly school lunch visits with the parties' minor child. The Mother

shall have reasonable telephone contact with the parties' minor child every other day at 7:00 p.m. or at such other time as may be agreed upon by the parties.

Appealed Order at 3-4.

[10] On October 28, 2019, Mother filed a Motion to Correct Error in which she asserted that the trial court erred in continuing the supervised parenting time because: Mother had complied with the court's prior orders; Father had failed to present evidence that Child would be harmed if Mother had unsupervised visitation; and the trial court did not find that unsupervised visitation would harm Child. Mother also argued the trial court erred by finding her in contempt for failure to pay child support when she had no ability to purge herself of said contempt, citing Indiana Code Section "24-47-3-5."<sup>4</sup> On November 25, 2019, the trial court held a hearing on Mother's motion to correct error and denied the same. This appeal ensued.

## Discussion and Decision

[11] First, we note that Father did not file an appellee's brief. Therefore, "we do not undertake the burden of developing appellee's arguments, and we apply a less stringent standard of review[;] that is, we may reverse if the appellant establishes prima facie error." *Meisberger v. Bishop*, 15 N.E.3d 653, 656 (Ind. Ct.

---

<sup>4</sup> Mother's citation appears to contain a typographical error; it appears she meant to cite Indiana Code Section 34-47-3-5.

App. 2014). Prima facie error is “error at first sight, on first appearance, or on the face of it.” *Universal Auto, LLC v. Murray*, 149 N.E.3d 639, 642 (Ind. Ct. App. 2020) (quotation and citation omitted). However, we review questions of law de novo. *Meisberger*, 15 N.E.3d at 656.

[12] Mother appeals the trial court’s denial of her Motion to Modify Visitation and her Motion to Correct Error.

A decision about parenting time requires us to give foremost consideration to the best interests of the child. *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). Generally, parenting time decisions are reviewed for an abuse of discretion. *Id.* If the record reveals a rational basis for the trial court’s determination, there is no abuse of discretion. *In re Paternity of G.R.G.*, 829 N.E.2d 114, 122 (Ind. Ct. App. 2005). We will not reweigh evidence or reassess the credibility of witnesses. *Id.* We review a trial court’s denial of a motion to correct error for an abuse of discretion, reversing only where the trial court’s judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs as a matter of law. *Perkinson*, 989 N.E.2d at 761.

*Id.*

## Modification of Parenting Time

[13] Because parenting time rights are a “precious privilege that should be enjoyed by noncustodial parents,” a noncustodial parent in a paternity action is generally entitled to “reasonable parenting time rights.” *In re Paternity of W.C.*, 952 N.E.2d 810, 816 (Ind. Ct. App. 2011). However, the right of parenting time is “subordinate to the best interests of the child.” *Id.*

[14] Indiana Code Section 31-14-14-1 outlines the parenting time rights of a noncustodial parent in a paternity action.

(a) A noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time might:[<sup>5</sup>]

(1) endanger the child’s physical health and well-being; or

(2) significantly impair the child’s emotional development.

A trial court may modify a parenting time order “whenever modification would serve the best interests of the child.” Ind. Code § 31-14-14-2. Thus, a court modifying parenting time “must make a specific finding of physical endangerment or emotional impairment before placing a restriction on the noncustodial parent’s parenting time.” *W.C.*, 952 N.E.2d at 816.

[15] In her April 18, 2019, Motion to Modify Visitation, Mother alleged there was a “substantial and continuing change in circumstances since the last order[,]” i.e., October 9, 2018. *In the Matter of the Paternity of [D.L.J.]*, No. 82D07-1004-JP-245 (April 18, 2019, Petitioner’s Verified Motion to Modify Visitation).<sup>6</sup>

---

<sup>5</sup> Indiana appellate courts have construed the word “might” in this section to mean “would;” i.e., a court may not restrict parenting time unless it finds that such parenting time *would* endanger or impair the child. *E.g.*, *W.C.*, 952 N.E.2d at 816.

<sup>6</sup> This is one of several relevant documents from the trial court that Mother did not include in the appellate record but is accessible via the court’s Odyssey system under Case No. 82D07-1004-JP-245. We note that the record on appeal includes “all proceedings before the trial court ..., whether or not ... transmitted to the Court on Appeal.” Ind. Appellate Rule 27.



Specifically, Mother alleged that she had met all the requirements of the October 9, 2018, order regarding her parenting time, that the school year was ending so she would not be able to visit Child at school during lunch over the summer, and that continued supervised visitation would be a hardship on Mother and Child. Mother asked that the court award her unsupervised visitation. At the hearing on Mother's motion, Mother provided written evidence that she had complied with the October 9, 2018, court order. She also testified that she had not visited with Child since May of 2019 because she could no longer afford to pay for supervised visitation at The Parenting Time Center and she could not visit with Child at school lunch time because Child's school was closed for the summer.

[16] In its order denying Mother's motion to modify parenting time, the trial court did not state any basis for that denial. It did state that Mother had not "exercised parenting time with the child since her last school lunch visit with the child at the conclusion of school in May, 2019." Appealed Order at 3. However, as that statement itself acknowledges, Child's school closed for the summer; therefore, parenting time during school lunch time was no longer possible. And Mother timely filed her motion for unsupervised visitation rights in April, i.e., prior to the end of the school year. It does not appear to be

Mother's fault that the court did not set a hearing on that motion until October of that year.<sup>7</sup>

[17] Moreover, the trial court did not enter any findings that unsupervised parenting time with Mother would physically endanger or emotionally impair Child, as required by statute; in fact, the court did not note any way in which unsupervised parenting time with Mother would harm Child. Nor is it apparent from the record that any evidence would support such a finding. Under such circumstances, this Court has reversed orders restricting parenting time, *see, e.g., In re Paternity of Snyder*, 26 N.E.3d 996, 999 (Ind. Ct. App. 2015), and/or remanded for appropriate findings or removal of the restriction, *see, e.g., Hazelett v. Hazelett*, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019).

[18] Mother has made a prima facie showing that the trial court abused its discretion when it ordered that her parenting time be supervised despite the lack of evidence or findings that unsupervised parenting time was not in Child's best interests because it would physically endanger or emotionally impair Child.<sup>8</sup>

---

<sup>7</sup> Mother filed a motion for change of judge on the same date as her motion to modify visitation. Over two months passed between the time Mother filed the motion for a change of judge and the order granting that motion. In addition, the hearing on Mother's motion to modify parenting time was subsequently rescheduled once, apparently on the court's own motion.

<sup>8</sup> In a single sentence of her brief, Mother asserts that we "should find that there was insufficient evidence to support the trial court's findings that a modification of custody to sole custody of the parties' minor child to [Father] was in the best interest of the parties." Appellant Br. at 13. However, the issue of custody was not before the trial court at the August 19 and September 9 hearings; thus, it was not addressed by the trial court in the September 27, 2019, appealed order. An argument or issue raised for the first time on appeal generally is waived. *See e.g., First Chicago Ins. Co. v. Collins*, 141 N.E.3d 54, 61 (Ind. Ct. App. 2020). Moreover, Mother

## Waiver

[19] Mother maintains that the trial court abused its discretion when it denied her October 28, 2019, motion to correct error as to the child support order. She asserts that the court erred because it failed to address her June 8, 2016, motion to modify child support. However, Mother provides no cogent argument and cites no legal authority for that assertion. The record discloses that the trial court dismissed her June 8, 2016, motion on July 8, 2016, when Mother failed to appear for the hearing scheduled on the motion. And, while Mother argues that the trial court was without jurisdiction to rule on her motion in July of 2016 because she had an appeal pending at that time, that pending appeal did not challenge any rulings regarding child support. Contrary to Appellate Rule 46(A)(8), Mother cites no statutory or common law support for her position that the trial court was nevertheless divested of jurisdiction on that issue. *Cf.*, *Sollers Point Co. v. Zeller*, 145 N.E.3d 790, 797 (Ind. Ct. App. 2020) (noting that, although a trial court order issued after an appeal is initiated is generally void, one exception is where the order relates to matters that are independent of and do not interfere with the subject matter of the appeal).

[20] Moreover, at the August 19, 2019, hearing, the trial court specifically stated that the June 8, 2016, motion for modification of child support was “moot” and proceeded to address the August 19, 2019, motion to modify child support. Tr.

---

has failed to cite legal authority or make cogent argument as to the custody issue, as required by Indiana Appellate Rule 46(A)(8). The issue of modification of custody is waived.

at 8. Mother’s counsel not only failed to object to that ruling but agreed with it.

*Id.* “Failure to object waives [an] issue for review.” *Monroe Guar. Ins. Co. v.*

*Magwerks Corp.*, 829 N.E.2d 968, 974 (Ind. 2005).

[21] Mother’s claim regarding her June 8, 2016, motion to modify child support is waived. *See Id.*; App. R. 46(A)(8).

## Conclusion

[22] Because the trial court failed to enter any finding that unsupervised parenting time between Mother and Child would physically endanger or emotionally impair Child, we reverse the parenting time order and remand to the trial court with instructions to either enter an order containing findings sufficient to support a parenting time restriction under Indiana Code Sections 31-14-14-1 and -2 based on the evidence already in the record, or else enter an order that does not contain a parenting time restriction.

[23] Mother’s only other claim on appeal—relating to her June 8, 2016, motion to modify child support—is waived.

[24] Affirmed in part, reversed in part, and remanded with instructions.

May, J., and Robb, J., concur.