MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Amanda Kimmel,
Appellant-Respondent,

v.

Raymond S. Clay,
Appellee-Petitioner

September 14, 2022

Court of Appeals Case No. 22A-JP-467

Appeal from the Noble Circuit Court

The Honorable Michael J. Kramer, Judge

Trial Court Cause No. 57C01-2012-JP-112

May, Judge.

[1] Amanda Kimmel ("Mother") appeals the trial court's decision to modify custody to give primary physical and sole legal custody of E.K. ("Child") to Raymond S. Clay ("Father"). Mother presents four issues for our review, which we consolidate and restate as:

> 1. Whether the trial court's findings were adequate in form and supported by the evidence;
>
> 2. Whether the trial court's conclusions were adequate pursuant to Indiana Trial Rule 52(A) and supported by its findings; and
>
> 3. Whether modification was in Child's best interests and based on a substantial change in one or more factors under Indiana Code sections 31-14-13-2 and 31-14-13-2.3(c).

We affirm.

Facts and Procedural History

[2] Mother gave birth to Child on April 17, 2016. Mother and Father were not married, but Father established his paternity of Child on August 1, 2016. On January 26, 2017, the trial court approved the parties' agreement of joint legal custody and a "phase-in period" of equal parenting time, with Mother as Child's primary physical custodian. (App. Vol. III at 62.)

[3] On December 16, 2020, Father filed a petition for modification of custody, child support, and related matters. On February 19, 2021, Mother filed a

motion for appointment of a Guardian ad Litem ("GAL"). The trial court granted her request the same day and appointed Sally Lehman as the GAL.

[4] Near the end of March 2021, a sewer pipe broke in Mother's home. Mother was unable to fix it immediately, so anything that drained water could not be used in the home, including the toilets and bathing facilities. On April 1, 2021, Father contacted the Department of Child Services ("DCS") to report Mother's home was inappropriate for Child because Mother did not have running water.

[5] On April 5, 2021, the GAL inspected Mother's home for her report. The GAL indicated in her report that "[Mother] stated that the basement is yucky due to the pipe leak so they don't go down there. GAL could smell the odor from the basement and did not go down." (Conf. App. Vol. II at 203.) The GAL also observed "the outside of the home to be piled with stuff on the porch and in the front as well as the back." (*Id*.) The GAL also noted that Mother's older son A., who was thirteen years old, was the subject of a case with DCS because he "was refusing to go [to school] because he said kids were picking on him and the teachers were mean to him and he didn't want to go." (*Id*.)

[6] On April 7, 2021, the GAL inspected Father's home. Father reported

> about three weeks ago [Child] asked him if she could go to the bathroom outside. [Father] stated that she [sic] told her no, that they don't do that. [Father] stated that she then told him that she has been using her little potty outside and dumping it because they cannot use the water in the home due to a broken pipe. [Father] stated that this has been going on for three weeks and

> [Child] says she hasn't been able to brush her teeth during this time as well.

(*Id*. at 204.) Father also told the GAL that Mother did not relay information regarding Child's school performance or parent-teacher conferences. The GAL indicated in her report that Father's house was "a small three bedroom house that was very clean and well organized." (*Id*. at 206.)

[7] On April 7, 2021,[1] the GAL spoke with Child. The GAL observed Child appeared "happy and healthy at the time of the visit at [Mother's] residence." (*Id*. at 207.) Child told the GAL that "daddy's house is clean mommy's is dirty." (*Id*.) When the GAL asked who told Child that information, Child "waved her arm around and stated I can see it." (*Id*.) Child also reported

> she takes baths at her daddy's house because they can't run the water at mommy's . . . she can't brush her teeth [at Mother's house] or use the toilet . . . [and at Mother's house] she goes pee in her potty chair and they dump it in the yard but they poop in a Walmart or Kroger bag.

(*Id*.) Child indicated to the GAL "that she loves both of her parents and she likes staying with each of them." (*Id*.)

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[1] In the GAL's report, she indicated she met with Child on "4/17/2016[.]" (App. Vol. II at 207.) However, the GAL submitted her report on April 9, 2021. The date is a scrivener's error and therefore we assume, based on the context of the report, the GAL met with Child on April 7, 2022.

[8] On April 16, 2021, Father filed a petition for emergency modification of custody and parenting time based on the GAL's recommendation that Child not stay in Mother's home until she repaired the broken sewer pipe. The same day, Father, upon advice of his counsel, refused to return Child to Mother's care as scheduled. On April 18, 2021, Mother filed a motion for rule to show cause and request for sanctions because Father would not return Child to her care. On April 19, 2021, the trial court ordered Father to return Child to Mother. On April 20, 2021, upon confirmation the sewer pipe had been fixed, Father returned Child to Mother's care and Mother's missed parenting time was made up the following week. On April 21, 2021, DCS investigated Father's complaint that Mother's home was inappropriate for Child and found the complaint unsubstantiated because Mother's home "met the minimum standards for DCS policy." (Tr. Vol. II at 131.)

[9] After a number of continuances, the trial court held a hearing on Father's petition to modify custody and child support on October 7, 2021. On December 7, 2021, the trial court issued its order modifying custody to primary physical and sole legal custody in Father with Mother to exercise parenting time pursuant to the Indiana Parenting Time Guidelines. The order also required Father to pay $300 in Mother's attorney's fees and cede to Mother Child's next birthday as a sanction for withholding Child from Mother on Child's birthday in 2021. Mother filed a motion to correct errors on January 4, 2022, in which she alleged the trial court made erroneous findings of fact and conclusions of law based on the evidence before it. The trial court held a

hearing on Mother's motion to correct error on March 1, 2022, and denied the motion on March 3, 2022.

Discussion and Decision

[10] When a party requests modification of custody, we review the court's decision for an abuse of discretion because we give wide latitude to our trial court judges in family law matters. *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1256 (Ind. Ct. App. 2010). A petitioner seeking modification has the burden to demonstrate the existing custody arrangement needs to be altered. *Id*. "Indeed, this 'more stringent standard' is required to support a change in custody, as opposed to an initial custody determination where there is no presumption for either parent, because 'permanence and stability are considered best for the welfare and happiness of the child.'" *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *Lamb v. Wenning*, 600 N.E.2d 96, 98 (Ind. 1992)).

[11] Our legislature has defined the circumstances under which a custody order may be modified following determination of paternity:

> (a) The court may not modify a child custody order unless:
>
> (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 section 2 and, if applicable, section 2.5[2] of this chapter.

Ind. Code § 31-14-13-6. The factors the court may consider under Ind. Code § 31-14-13-2 include, in relevant part:

> (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 home, school, and community.
>
> (6) The mental and physical health of all individuals involved.

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[2] Indiana Code section 31-14-13-2.5 lists factors the trial court must consider in a situation involving a de facto custodian. There is no de facto custodian in the case before us and thus those factors are not relevant.

(7) Evidence of a pattern of domestic or family violence by either parent.

[12] Additionally,

> When evaluating whether a change of circumstances has occurred that is substantial enough to warrant a modification of custody, the context of the whole environment must be judged, "'and the effect on the child is what renders a change substantial or inconsequential.'" [*In re Marriage of*] *Sutton*, 16 N.E.3d [481,] 485 [(Ind. Ct. App. 2014)] (quoting *Jarrell v. Jarrell*, 5 N.E.3d 1186, 1193 (Ind. Ct. App. 2014), *trans. denied*). Generally, cooperation or lack thereof with custody and parenting time orders is not an appropriate basis for modifying custody. It is improper to utilize a custody modification to punish a parent for noncompliance with a custody order. *In re Paternity of M.P.M. W.*, 908 N.E.2d 1205, 1208 (Ind. Ct. App. 2009). "However, '[i]f one parent can demonstrate that the other has committed misconduct so egregious that it places a child's mental and physical welfare at stake, the trial court may modify the custody order.'" *Maddux v. Maddux*, 40 N.E.3d 971, 979 (Ind. Ct. App. 2015) (quoting *Hanson v. Spolnik*, 685 N.E.2d 71, 78 (Ind. Ct. App. 1997), *trans. denied*).

Montgomery v. Montgomery, 59 N.E.3d 343, 350-1 (Ind. Ct. App. 2016), *trans. denied*.

[13] Where, as here, the trial court was asked to modify joint legal custody to sole legal custody in Father, the court also needed to consider the factors listed in Indiana Code section 31-14-13-2.3(c). *See Julie C.*, 924 N.E.2d at 1260 (discussing Indiana Code section 31-17-2-15, which is the parallel statute for use

in a dissolution context). Indiana Code section 31-14-13-2.3(c) states, in relevant part, that the court should consider:

> (1) the fitness and suitability of each of the persons awarded joint legal custody;
>
> (2) whether the persons awarded joint legal 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 legal custody;
>
> (5) whether the persons awarded joint legal custody:
>
> (A) live in close proximity to each other; and
>
> (B) plan to continue to do so;
>
> (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody; and
>
> (7) whether there is a pattern of domestic or family violence.

Additionally, it is well-established that

> [o]rders of joint custody will not be reversed unless the court is attempting to impose an intolerable situation upon the parties. If the parties demonstrate a willingness and ability to communicate

> concerning the child, then joint custody is appropriate even against the wishes of one parent. However, if the parties have made child-rearing a battleground, then joint custody is not appropriate.

Periquet-Febres v. Febres, 659 N.E.2d 602, 605 (Ind. Ct. App. 1995), *trans. denied*.

[14] When a party requests special findings under Indiana Trial Rule 52(A), we may set aside the trial court's judgment only if it is clearly erroneous. *Dunson v. Dunson*, 769 N.E.2d 1120, 1123 (Ind. 2002). The trial court's judgment is clearly erroneous "only if (i) its findings of fact do not support its conclusions of law or (ii) its conclusions of law do not support its judgment." *Quillen v. Quillen*, 671 N.E.2d 566, 576 (Ind. Ct. App. 1996). We will disturb the judgment if there exists no evidence to support the trial court's findings. *Yoon v. Yoon*, 711 N.E.2d 1265, 1268 (Ind. 1999). "We do not reweigh the evidence; rather we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment." *Id*. We also give due regard to "the opportunity of the trial court to judge the credibility of the witnesses." Indiana Trial Rule 52(A).

1. Findings of Fact

1.1 Adequacy in Form

[15] Mother argues the trial court's findings of fact "are inadequate to support" a judgment because they "merely recite witness testimony and procedural history without any indication the evidence was evaluated and adopted by the court." (Mother's Br. at 11) (formatting omitted). Mother relies on *Pitcavage v.*

Pitcavage, 11 N.E.3d 547 (Ind. Ct. App. 2014), *reh'g denied*, which sets forth our standard of review to determine the adequacy of findings:

> Findings of fact are a mechanism by which a trial court completes its function of weighing the evidence and judging witnesses' credibility." *Garriott v. Peters*, 878 N.E.2d 431, 438 (Ind. Ct. App. 2007), *trans. denied*. A satisfactory finding of fact "is a simple, straightforward statement of what happened." *Perez v. U.S. Steel Corp.*, 426 N.E.2d 29, 33 (Ind. 1981). "A court or an administrative agency does not find something to be a fact by merely reciting that a witness testified to X, Y, or Z. Rather, the trier of fact must find that what the witness testified to is the fact." *In re Adoption of T.J.F.*, 798 N.E.2d 867, 874 (Ind. Ct. App. 2003) (citation omitted). As such, where a trial court's findings are merely recitations of a witness' testimony, they cannot be construed as "true factual determinations." *Garriott*, 878 N.E.2d at 438. We treat the trial court's inclusion of these findings as "mere surplusage" rather than harmful error. *Perez*, 426 N.E.2d at 33. However, where the trial court has adopted the witness' testimony, such a "'finding' may be considered a finding of fact." *In re Adoption of T.J.F.*, 798 N.E.2d at 874.

Id. at 553.

[16] In its order, the trial court found:

> 1. [Child] was born on April 17, 2016.
>
> 2. Paternity for [Child] was established on August 1, 2016, and the court granted [Mother] temporary custody and granted [Father] parenting time pursuant to the Indiana Parenting Time Guidelines based upon [Child's] age.

3. On January 26, 2017 the court approved an agreement by the parties for joint legal custody and a phase in period, resulting in equal parenting time.

4. On December 16, 2020, [Father] filed a Verified Petition for Modification of Custody, Parenting Time, Child Support, and Related Matters.

5. Presently, [Father] lives in the Central Noble School District and [Mother] lives in the East Noble School District. [Child] will soon be starting school.

6. Both parents are involved in [Child's] life.

7. [Mother] has two older children: a daughter who did not finish high school, but who has since received a High School Equivalency diploma, and a son who failed to attend school. [Mother] was unsuccessful in getting the son to go to school and classes. After [Mother] worked with the school and police, she then reported the problem to the juvenile probation department. The son was placed with his grandparents and is now attending school.

8. At some point in time, a sewage pipe in [Mother's] basement broke, prohibiting the use of toilets and anything that drained water or sewage for about three weeks. [Mother] testified that she stuffed the pipe leaving the property with items to limit the smell. [Mother] testified that the repairs to the pipe were delayed because the plumber she arranged to do the repairs failed to show up and other plumbers took some time to come due to their schedules.

9. While the pipe was broken and until it was repaired, [Child] did not stay in [Mother's] house overnight. [Mother] failed to let

[Father] know about the plumbing problems or that [Child] was not at her home overnight. The pipe was broken at the time the Guardian Ad Litem visited [Mother's] home. [Mother] did not tell the Guardian Ad Litem that [Child] was spending nights elsewhere.

10. When [Father] learned of the broken pipe, he refused to return [Child] to [Mother]. He refused to allow her to attend a planned birthday party that was to take place at [Child's] uncle's house. [Child] had helped plan the party. [Child] was not allowed to speak to [Mother] on the telephone on her birthday.

11. [Father] complained that [Mother's] home is dirty and houses a number of cats and dogs. He testified [Child] has had lice in her hair twice while in [Mother's] care.

12. [Father] expressed concerns about [Child] smelling like smoke when she visits him. [Mother] testified that she does not smoke around [Child].

13. [Father] testified that [Child] returns to him with scrapes and bruises. The photographs he introduced do not appear to show more than the normal injuries of childhood. There is no evidence that medical treatment was required.

14. The parties agree that they do not communicate well and there have been difficulties when [Child] is exchanged. [Mother] sent someone else to pick up or deliver [Child]. [Father] testified that he only wants to communicate via text messages. Information about [Child's] preschool has not been forwarded to [Father]. The preschool will not send information directly to him.

15. [Mother] testified that she notifies [Father] of all of [Child's] doctor appointments.

16. [Father] married a woman who is employed as a nurse. Due to the amount of her income, [Father] quit his job.

17. [Mother] has held a number of jobs since the last hearing. Since nearly September, 2021, she has been on FMLA from her job, which is at IHop [sic] restaurant. She did not identify any course of present income to support herself or her children.

18. [Mother] has had a number of romantic partners since the last custody order.

19. The Guardian Ad Litem recommended shared legal custody and primary physical custody with [Father].

20. The court finds that since the last order, [Child] obviously is older. She will be starting to attend school in less than a year.

21. The court finds that both parents love [Child], but that love does not extend to cooperation with the other parent to make [Child's] life better.

22. The lack of cooperation and communication has led to further deterioration of relations between [Mother] and [Father]. [Mother] failed to let [Father] know about the plumbing problem and that [Child] was spending nights elsewhere. When [Father] found out, he did not let [Child] return to [Mother] and caused her to miss her birthday party that she had helped to plan.

23. The court has concerns about [Mother's] stability in her relationships, which effects the stability of [Child's] living situation with [Mother]. Failing to forward preschool

> information to [Father] is not in [Child's] best interests. While [Mother] had problems with her son's school attendance, she appears to have done everything in her powers to get him to go to school.
>
> 24. [Mother] frequently sent others to drop off or pick up [Child].
>
> 25. The court has some concern about what appears to be almost an obsession in documenting and photographing every rash and scrape that [Child] has experienced. Not letting [Child] attend her party, even limitations [sic], was not in her best interests.
>
> 26. The continuing changes in circumstances and lack of communication and lack of cooperation since January 26, 2017 render the present order unreasonable.

(App. Vol. II at 41-3.) Despite Mother's argument to the contrary, these findings are not mere recitations of testimony and instead give context to the trial court's decision to modify custody. They are thus adequate to satisfy the minimum quality required to permit our review. *See Bowyer v. Indiana Dept. of Nat. Resources,* 944 N.E.2d 972, 984 (Ind. Ct. App. 2011) (despite some findings indicating the testimony of some witnesses, the trial court's findings were adequate because the order referenced additional evidence to suggest it regarded the findings reciting testimony as fact), *reh'g denied*.

1.2 Challenged Findings

[17] Mother challenges nine of the trial court's findings. We note Mother does not challenge the other seventeen findings and thus we accept those findings as

correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) ("Because Madlem does not challenge the findings of the trial court, they must be accepted as correct."). We address each challenged finding in turn.

1.2.1 Finding 11

[18] Mother argues Finding 11 is not supported by the evidence. Finding 11 states: "[Father] complained that [Mother's] home is dirty and houses a number of cats and dogs. He testified [Child] has had lice in her hair twice while in [Mother's] care." (App. Vol. II at 42.) Mother contends there was "no testimony Father ever entered the interior of [her] home" and thus there was no evidence from which the trial court could make Finding 11. (Mother's Br. at 16.)

[19] During the hearing on Father's petition, Father testified he was concerned about the "upkeep of it um, the dirtiness of [Mother's house] and the fact they were living in it without actual plumbing or water for an extended period of time." (Tr. Vol. II at 17.) Father testified pictures taken at Mother's house were accurate depictions of the state of the interior of Mother's house. Mother acknowledged during the hearing that she had received a "rubbish citation" from the Kendallville Police Department because of "various items in [her] front porch and yard[.]" (*Id*. at 88.) Mother testified one of the bedrooms in her house "had stuff piled up in it due to us moving stuff around[.]" (*Id*.) The DCS investigator testified "there was an odor there" when he went to Mother's home to investigate Father's complaint on April 21, 2021. (*Id*. at 131.)

[20] Regarding the number of animals in Mother's home, Mother testified she had four dogs in her home, specifically three Pitbulls and one Pekingese-Shih tzu. She also testified she had one cat and a rat. Additionally, regarding Child's contraction of lice, Father testified Child arrived at his house "twice with lice[.]" (*Id*. at 20.) Mother confirmed Father told her that Child had lice and that Father would treat the lice at his home. Mother's arguments regarding Father's presence in her home, the characterization of the number of animals in her home, and the origin of the lice infestations are invitations for us to reweigh evidence or judge the credibility of the witnesses, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

1.2.2 Finding 14

[21] Mother argues Finding 14 is not supported by the evidence. Finding 14 states:

> The parties agree that they do not communicate well and there have been difficulties when [Child] is exchanged. [Mother] sent someone else to pick up or deliver [Child]. [Father] testified that he only wants to communicate via text messages. Information about [Child's] preschool has not been forwarded to [Father]. The preschool will not send information directly to him.

(App. Vol. II at 42.) Mother contends that she tries to communicate with Father but he refuses to do so, that Father denied her parenting time when she has never denied him the same, that Father refuses to meet her fiancé, and that Father received the same information she did regarding Child's preschool activities.

[22] At the hearing Father testified he did not know about "one of the parent teacher conferences or the zoo trip the school took." (Tr. Vol. II at 25.) Father also testified Child's preschool teacher refused to "make sure the information got home to both parents[.]" (*Id*.) Father indicated information was sent home in Child's folder, Father did not have access to the information sent home when Child was in Mother's care, and Mother did not communicate any relevant information regarding preschool to him. Mother does not dispute others are responsible for parenting time exchanges or the parties have difficulty communicating. Father testified he was unwilling to meet Mother's fiancé. Father also testified he preferred to communicate via text messages. Thus, Finding 14 was supported by evidence in the record. Mother's alternate versions of events are invitations for use to reweigh the evidence, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

1.2.3 Finding 17

[23] Mother argues Finding 17 is not supported by the evidence. Finding 17 states "[Mother] has held a number of jobs since the last hearing. Since nearly September, 2021, she has been on FMLA from her job, which is at IHop [sic] restaurant." (App. Vol. II at 43.) Mother argues that, while she had five positions in five years, she was continuously employed, and she had not yet been released from medical leave to return to work at IHOP.

[24] At the hearing, Mother testified that, since 2017, she has worked at Tastee's Doughnuts, Keystone RV, Ameritex, and IHOP. Mother testified she had not

worked since September 6, 2021, because she had direct exposure to COVID and then had "medical surgery" from which she was recovering. (*Id*. at 80.) Mother anticipated she would return to work after October 13, 2021. Mother testified her fiancé was employed but did not indicate his salary or his ability to support Mother and Child. Mother's argument is an invitation for this court to reweigh the evidence, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

1.2.4 Finding 18

[25] Mother also argues Finding 18 is not supported by the evidence. Finding 18 states: "[Mother] has had a number of romantic partners since the last custody order." (App. Vol. II at 43.) Mother argues the trial court's finding mischaracterizes the number of relationships she has had since the court's last order because she has had only one new relationship since that time.

[26] Mother testified she dated Jessica Atkins from 2016 until 2021. Mother testified she began dating Jesse Cason in April 2021 and the two were engaged to be married, despite the fact that Cason had yet to be divorced from his current spouse. The evidence supports the trial court's finding that Mother had more than one, or a number, of romantic partners since the trial court's last custody order. Mother's arguments to the contrary are invitations for us to reweigh the evidence, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

1.2.5 Finding 23

[27] Mother argues Finding 23 is not supported by the evidence. Finding 23 states:

> The court has concerns about [Mother's] stability in her relationships, which effects the stability of [Child's] living situation with [Mother]. Failing to forward preschool information to [Father] is not in [Child's] best interests. While [Mother] had problems with her son's school attendance, she appears to have done everything in her powers to get him to go to school.

(App. Vol. II at 43.) Mother reiterates her arguments regarding Findings 14 and 18. As we have determined those findings are supported by the evidence, we do the same here. Mother's argument therefore is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Julie C.*, 924 N.E.2d at 1256 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

1.2.6 Finding 7

[28] Mother argues the portion of Finding 7 – which states "[Mother] has two older children: a daughter who did not finish high school, but who has since received a High School Equivalency Diploma" – is not supported by the evidence presented to the trial court. (App. Vol. II at 42.) Mother also contends the trial court should not have considered her daughter's academic status, because her daughter completed her high school equivalency coursework prior to the court's earlier order.

[29] Mother is correct regarding the trial court's consideration of her older daughter's academic status. A "change of custody must result from changes in conditions since the last court order which necessitates a change in custody[.]" *Loeser v. Loeser*, 160 Ind. App. 236, 240, 311 N.E.2d 636, 638 (1974), *trans. denied*, *cert. denied* 419 U.S. 1122 (1975). Mother's older daughter testified she received her high school equivalency diploma "at the end of 2016[.]" (Tr. Vol. II at 137.) The trial court entered its initial order regarding Child's custody at the beginning of 2017. Thus, the trial court erred when it considered the academic status of Mother's older daughter and that portion of the finding was in error. However, the error does not significantly affect the trial court's decision, as it is not a factor for consideration pursuant to Indiana Code sections 31-14-13-2 or 31-14-13-2.3(c). Therefore, it is surplusage and not a ground for reversal. *See Lasater v. Lasater*, 809 N.E.2d 380, 398 (Ind. Ct. App. 2004) ("Findings, even if erroneous, do not warrant reversal if they amount to mere surplusage and add nothing to the trial court's decision.").

1.2.7 Findings Regarding Plumbing Issue

[30] Mother argues Findings 9 and 10, which concern the plumbing issue at Mother's house, are not supported by the evidence. Findings 9 and 10 state:

> 9. While the pipe was broken and until it was repaired, [Child] did not stay in [Mother's] house overnight. [Mother] failed to let [Father] know about the plumbing problems or that [Child] was not at her home overnight. The pipe was broken at the time the Guardian Ad Litem visited [Mother's] home. [Mother] did not tell the Guardian Ad Litem that [Child] was spending nights elsewhere.

> 10. When [Father] learned of the broken pipe, he refused to return [Child] to [Mother]. He refused to allow her to attend a planned birthday party that was to take place at [Child's] uncle's house. [Child] had helped plan the party. [Child] was not allowed to speak to [Mother] on the telephone on her birthday.

(App. Vol. II at 42.) Mother contends Finding 9 is consistent with only portions of the evidence, specifically evidence regarding Father's knowledge of the plumbing issue and Child's overnights in a place other than Mother's home during the time of the plumbing issue. However, she challenges the chronological order of events as set forth in Findings 9 and 10.

[31] We agree the trial court's timeline of relevant events is incorrect, specifically when Father was first aware of the plumbing issue. However, this error does not significantly affect the trial court's decision, as it is not a factor for consideration pursuant to Indiana Code section 31-14-13-2. Therefore, it is surplusage and not a ground for reversal. *See Laseter*, 809 N.E.2d at 398 ("Findings, even if erroneous, do not warrant reversal if they amount to mere surplusage and add nothing to the trial court's decision.").

1.2.8 Finding 20

[32] Mother argues Finding 20 is not supported by the evidence. Finding 20 states: "The court finds that since the last order, [Child] obviously is older. She will be starting to attend school in less than a year." (App. Vol. II at 43.) Mother notes Child started school in August 2021. Mother is correct. Father testified Child was in kindergarten at "Central Noble" at the agreement of the parties. (Tr. Vol. II at 11.) As the hearing was held in October 2021, Child would have

started school in August 2021. Therefore, the portion of the finding regarding Child's school status is erroneous. However, the remaining portion of the finding, that Child is older than she was at the time of the original order in 2017, is true and a factor for consideration pursuant to Indiana Code section 31-14-13-2. Therefore, Child's academic status is surplusage and not a ground for reversal. *See Laseter*, 809 N.E.2d at 398 ("Findings, even if erroneous, do not warrant reversal if they amount to mere surplusage and add nothing to the trial court's decision.").

2. Trial Court's Conclusions

2.1 Adequacy of Trial Court's Conclusions

[33] As an initial matter, Mother asserts the trial court's conclusions do not comport with her request for specific findings and conclusions pursuant to Indiana Trial Rule 52(A). Generally, when determining whether a modification of child custody is in the best interest of the child and there has been a substantial change in at least one circumstance as set forth in Indiana code section 31-14-13-2, "the trial court is not necessarily required to make specific findings on each factor unless requested to do so by the parties." *H.H. v. A.A.*, 3 N.E.3d 30, 36 (Ind. Ct. App. 2014). However, when, as here, a party requests specific findings and conclusions pursuant to Indiana Trial Rule 52(A), the trial court must make findings in writing as to each factor the trial court considered. *See M.G. v. S.K.*, 162 N.E.3d 544, 549 (Ind. Ct. App. 2020) (trial court must make specific findings and conclusions regarding each factor considered in a modification action if a party requested such pursuant to Indiana Trial Rule

52(A)). "[T]he purpose of Rule 52(A) is to provide the parties and the reviewing court with the theory upon which the trial judge decided the case in order that the right of review for error may be effectively preserved." *Nunn Law Office v. Rosenthal*, 905 N.E.2d 513, 517 (Ind. Ct. App. 2009).

[34] Here, the trial court made several findings regarding Child's change in age, Mother's and Father's living situations, and Mother's and Father's inability to communicate. Based thereon, the trial court made multiple conclusions regarding Child's best interests and the substantial changes in certain circumstances. These findings and conclusions comport with the requirements for special findings and conclusions, as they indicate to this court the reason the trial court made its decision to modify custody in favor of Father. *Contra M.G.*, 162 N.E.3d at 548-9 (holding trial court's sole conclusion stating, "[t]he court FINDS Father capable of providing for [Child]'s best interests and thereby GRANTS the petition to modify custody and parenting time" insufficient when mother requested specific findings and conclusions pursuant to Indiana Trial Rule 52(A)).

2.2 Challenged Conclusions

[35] Mother asserts some of the trial court's conclusions are not supported by its findings. The trial court concluded,[3] in relevant part, based on its findings:

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[3] We note the trial court relied upon the statutes that govern the modification of custody following a custody order as part of a dissolution rather than the statutes that govern modification of custody when the parents were never married. The differences between the factors considered pursuant to Indiana Code section 31-14-

D. There has been a substantial change in circumstances due to the inability or refusal of the parties to communicate and cooperate. That change renders the current custody order unreasonable.

E. Joint legal custody is unreasonable due to the lack of co-parenting.

F. The court finds both advantages and disadvantages in each party as a parent.

G. [Father] has a more stable living situation, which would benefit [Child].

H. The court grants Legal and primary physical custody of [Child] to [Father], subject to the Indiana Parenting Time Guidelines.

I. [Father] violated the orders of the court by his refusal to, in the very least, make accommodations for [Child] to see or talk to [Mother] and to attend her party. Because of the violation, the court orders [Mother] to have [Child] on [Child's] next birthday that would be [Father's] under the guidelines. The court also orders [Father] to pay $350.00 towards [Mother's] attorney's fees within 60 days.

(App. Vol. II at 44-5.)

13-2 and 31-17-2-8 are not relevant to the case before us. We, however, note there is a difference between the consideration of modification of child custody pursuant to a dissolution order and a paternity order and ask that the trial court be mindful thereof when drafting its orders.

[36] Mother challenges two of the trial court's conclusions, Conclusion D and Conclusion G, and argues they are not supported by the trial court's findings. First, Mother contends Conclusion D is unsupported by the findings because the findings indicate it was Father, not Mother, who was the source of the communication breakdown and lack of cooperation. The trial court found Father failed to communicate and cooperate in some instances, such as when he withheld Child from Mother during the plumbing issue at Mother's house or when he stated he had no intention of meeting Mother's fiancé. However, other findings indicate Mother also did not communicate well with Father, specifically that she did not share information regarding Child's school schedule with Father and did not immediately inform Father of the plumbing issue at her house. As we give great deference to the trial court in family law matters, we cannot say Conclusion D is erroneous. *See In re Paternity of A.S.*, 948 N.E.2d 380, 388 (Ind. Ct. App. 2011) (affirming modification of custody because parents were unable to effectively parent because of a breakdown in communication, for which both parties were to blame).

[37] Mother also argues Conclusion D is not supported by the trial court's findings because the communication issues between Mother and Father were not a "new or changed condition" because "this lack of full cooperation existed both when the 2017 order was entered and when the hearing was held in October." (Mother's Br. at 22.) Mother directs us to the GAL's testimony that "my hope was the shared custody arrangement that we put in place uh, four (4) years ago I believe would have helped but it doesn't appear to have made any uh,

significant change in these parties' willingness to co-parent[.]" (Tr. Vol. II at 160.) However, this testimony does not indicate the parties' acrimonious relationship existed at the time of the 2017 order because the parties agreed to joint physical and legal custody at that time. Based on the findings, while the parties' inability to communicate was not recent in time based on the date of the October 2021 hearing, the issue was ongoing since Child started to attend preschool based on Father's testimony that he was not receiving school information. The more recent breakdown in communication between the parties occurred in April 2021 when the parties failed to communicate regarding Mother's plumbing problem. Based thereon, we conclude the trial court's conclusion that there had been "a substantial change in circumstances due to the inability or refusal of the parties to communicate and cooperate" is supported by the trial court's findings. (App. Vol. II at 44.)

[38] Mother also challenges Conclusion G, which states, "[Father] has a more stable living situation, which would benefit [Child]." (*Id*.) Mother contends the trial court erroneously determined "the unemployed [F]ather to be more financially stable" and the trial court's decision was based "entirely on his self-serving testimony in Court or his self-serving statements repeated in the Guardian ad Litem report." (Mother's Br. at 23.) However, the trial court found Father's wife was a nurse and Father quit his job because her income was sufficient to support the family. Additionally, the trial court found the GAL recommended Father have primary physical custody of Child. Mother did not challenge those findings, and thus they stand proven, *see Madlem*, 592 N.E.2d at 687 ("Because

Madlem does not challenge the findings of the trial court, they must be accepted as correct."), and are sufficient to support the trial court's conclusion.

3. Modification Requirements

[39] Pursuant to Indiana Code section 31-14-13-6, the trial court may not modify a child custody order in a paternity case unless the modification is in the child's best interests and there has been a substantial change in one or more of the factors set forth in Indiana Code section 31-14-13-2. These factors include the child's age, the parents' wishes, and the child's adjustment to their home, school, and community. Ind. Code § 31-14-13-2. When determining a change in a child's legal custody, the trial court considers the factors set forth in Indiana Code section 31-14-13-2.3(c). These factors include the physical proximity of the parties, their ability to communicate effectively, and the fitness and suitability of each party to have legal custody of a child. Ind. Code § 31-14-3-2.3(c).

3.1 Child's Best Interests

[40] Mother contends it is not in Child's best interests to award Father primary physical and sole legal custody of Child because "[n]othing in the record . . . shows that the welfare of [Child] was diminished in any way by staying with the previous joint physical and legal custody order as originally decreed." (Mother's Br. at 27.) However, the trial court concluded Father "has a more stable living situation, which would benefit [Child]." (App. Vol. II at 44.) The trial court found Mother had not held employment for longer than a year since

the 2017 order; Mother allowed Child to live in a house with no plumbing for an extended period of time during which Child was defecating in plastic bags; child came from Mother's house with lice and smelling of smoke; and Mother had multiple romantic partners since 2017. The trial court made few findings regarding Father's living situation, though testimony indicated the home was clean and Child was well cared for at Father's home. Father's wife, to whom he has been married for many years, is employed as a nurse and can sufficiently support the family. Based thereon, we conclude the trial court did not err when it determined a change in physical custody was in Child's best interests. *See, e.g., Madden v. Phelps*, 152 N.E.3d 602, 614 (Ind. Ct. App. 2020) (modification of physical custody in child's best interests based on father's stability and consistent employment).

[41] Additionally, regarding legal custody, the trial court made several findings regarding the parties' inability to communicate. It noted Mother did not inform Father of events at Child's preschool and, initially, the plumbing problem at Mother's house. The trial court also noted Father's unwillingness to communicate to Mother via any other means of communication besides text, and the evidence indicated Father had no desire to meet Mother's fiancé. Based on the parties' difficulties communicating, the trial court did not err when it determined it was in Child's best interests to modify the joint legal custody order to sole custody. *See, e.g., Higginbotham v. Higginbotham*, 822 N.E.2d 609, 612 (Ind. Ct. App. 2004) (modification from joint legal custody to

sole legal custody was in child's best interests based on parents' inability to communicate).

3.2 Substantial Change in Circumstances

[42] Regarding a substantial change in circumstances, as noted *supra*, Mother contends the parties' inability to communicate is not a change – instead they have always been unable to communicate. As held *supra*, the evidence and findings do not support Mother's argument because the parties agreed to joint physical and legal custody in 2017. Presumably, the parties would not have done this if they felt unable to communicate with each other. Instead, the evidence suggests the communication issues did not become a problem until Child entered preschool and Mother began to withhold information regarding Child's education from Father. The inability to communicate is a factor the trial court must consider when deciding whether to modify Child's legal custody. Ind. Code § 31-14-13-2.3(c). We hold, based on the trial court's findings, that there has been a substantial change in Mother and Father's ability to communicate. Thus, the trial court did not err when it awarded sole legal custody to Father. *See, e.g., Higginbotham*, 822 N.E.2d at 612 (a substantial change in parents' ability to communicate regarding child's medical decisions supported modification from joint legal custody to sole legal custody).

[43] Additionally, as is relevant to a modification of physical custody, the trial court found Child is considerably older than she was when the original custody order was entered in 2017. Further, Mother's employment situation has fluctuated since the 2017 order. The trial court expressed its concern over Mother's living

situation. As the trial court is required to find a substantial change in circumstances as to only one factor under Indiana Code section 31-14-13-2, the trial court has done so based on the change in the Child's age and the change in Child's adjustment to the less stable environment at Mother's home. Therefore, the trial court did not err when it awarded primary physical custody to Father. *See, e.g., Madden*, 152 N.E.3d at 614 (trial court found substantial change in circumstances regarding mother's unstable living situation, mother's dishonesty, and father's stable living and employment status).

Conclusion

[44] We hold the trial court's findings were adequate in form. Further, any error in the trial court's findings was surplusage and did not affect the validity of the trial court's decision. The trial court's conclusions conformed to the requirements for findings and conclusions pursuant to a party's request for specific findings and conclusions under Indiana Trial Rule 52(A), and the conclusions were supported by the findings. Finally, the trial court sufficiently found and concluded that the grant of primary physical and sole legal custody of Child to Father was in Child's best interests and there had been a substantial change in at least one factor under Indiana Code sections 31-14-13-2 and 31-14-13-2.3. Accordingly, we affirm the trial court's decision.

[45] Affirmed.

Riley, J., and Tavitas, J. concur.