

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In Re: The Matter of the  
Paternity of:

E.G.E., By Next Friend,  
Kayla Ellenwood,  
*Appellant-Respondent,*

v.

Aidan J. Leon,  
*Appellee-Petitioner.*

January 31, 2023

Court of Appeals Case No.  
22A-JP-1561

Appeal from the Allen Superior  
Court

The Honorable Andrea R. Trevino,  
Judge

The Honorable Daniel G. Pappas,  
Magistrate

Trial Court Cause No.  
02D07-2103-JP-132

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Respondent, Kayla Ellenwood (Mother), appeals the trial court's Order establishing paternity, custody, child support, parenting time, and other issues related to the minor child, E.G.E. (Child).
- [2] We affirm.

## ISSUES

- [3] Mother presents three issues on appeal, which we restate as the following:
- (1) Whether the trial court erred by failing to order ongoing supervised parenting time;
  - (2) Whether the trial court erred by failing to order Father to submit to a hair follicle drug screen; and
  - (3) Whether the trial court's usage of a certain term was improper and erroneous.

## FACTS AND PROCEDURAL HISTORY

- [4] Mother and Appellee-Petitioner, Aidan Leon (Father), began dating in 2018, and they both lived in Allen County, Indiana. Mother owned and managed her dance studio during this time, while Father worked as a tattoo artist at Truth Ink. In January 2019, the parties moved in together, and Mother became pregnant with the parties' Child. After the parties ended their relationship in May 2019, Father moved out and began living with his friend and owner of

Truth Ink, Brandon Winston (Winston). Father was Winston's roommate from mid-2019 to mid-2020.

[5] During the rest of Mother's pregnancy, Father maintained contact with Mother. On November 1, 2019, Mother went into labor without informing Father. Father learned of the birth of Child through a third party. Following the birth of Child, and even though paternity had not been established, Father began paying \$500 in child support per month. Mother also formulated a parenting time schedule, allowing Father to see Child two or three times per week for two hours. In February 2020, when Child was just a few months old, Mother began dating Andrew Rumsey (Rumsey). Mother later married Rumsey and Child calls him "Daddy or Da-da." (Transcript Vol. II, p. 203).

[6] When the Covid-19 pandemic emerged in March 2020, Mother paused Father's parenting time with Child. After Father requested that his parenting time be restored in May 2020, Mother declined, explaining that Father had taken part in a Black Lives Matter rally and had recently traveled to "Florida, a hot spot in the middle of Covid." (Tr. Vol. II, p. 227). Mother then informed Father that they would revisit talks about visitation in June 2020 when "things open back up []." (Tr. Vol. II, p. 227).

[7] While Mother had temporarily closed her dance studio at the start of the pandemic, she reopened it in June 2020. Based on Mother's promise, Father asked Mother if he could resume his parenting time with Child in June 2020. Mother refused to restore Father's parenting time claiming that it was due to

Covid-19, yet, she had reopened her dance studio, was interacting with people each day, and would return home to Child. When Father again asked Mother about resuming his visits with Child in August 2020, Mother stated, “Covid is not over. It’s actually getting worse[,] so no I’m not risking her health at this time.” (Tr. Vol. II, p. 31). By September 2020, Mother would not respond to Father’s texts, and Father believed that Mother had blocked his number in December 2020.

[8] On March 2, 2021, Father filed a petition to establish paternity, custody, parenting time, and child support. DNA testing proved Father to be Child’s biological parent. At the time of the filing, Father was still employed at Truth Ink. A disagreement with Winston forced Father to leave his job at Truth Ink in August 2021. In December 2021, the parties participated in mediation where Father agreed to take weekly urine drug screen, but Mother insisted on hair follicle drug testing. Mother afterward filed a motion requesting hair follicle drug testing and a petition to restrict parenting time on January 21, 2022. Father responded to the motion claiming that hair follicle drug testing was unnecessary because he had provided a negative urine drug screen on January 12, 2022, and Mother’s motion to restrict parenting time was frivolous.

[9] Ahead of the evidentiary hearing, and even though Mother had kept Child away from Father for almost two years, Mother requested Father’s consent to Rumsey’s adoption of Child, explaining that if Father approved the adoption, his visitation would be reinstated. Father declined the offer.

- [10] On May 9, 2022, the trial court conducted a hearing. Father testified that Mother had restricted him from seeing Child for two years. Father admitted that he had no criminal record and had only gotten into two physical altercations in his lifetime. While Father admitted to using illegal drugs in his past, he stated that the last time he used drugs was in August 2021. Two of Father’s witnesses, including his current roommate, testified that they had never seen him use any illegal drugs.
- [11] Mother stated that Covid-19 was the primary reason she isolated Child from Father. Also, she claimed that she kept Child away from Father because Father had anger issues and had a history of physical and sexual abuse. She also asserted that Father used illegal drugs, and a video showing Father with other people using drugs and Father “sitting on the couch” in front of the drugs was admitted into evidence. (Tr. Vol. III, p. 37). At the close of the evidence, the trial court took the matter under advisement.
- [12] On June 3, 2022, the trial court granted Mother sole legal and physical custody and ordered Father to pay \$156 in weekly child support. In relation to parenting time, the trial court ordered temporary supervised parenting time by Family Connections one time per week for one hour to facilitate a bond between Father and Child. The trial court then set a parenting time review hearing for August 22, 2022.
- [13] Mother now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### A. *Standard of Review*

[14] Whenever a trial court enters findings of fact and conclusions, we first determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. *Lechien v. Wren*, 950 N.E.2d 838, 841 (Ind. Ct. App. 2011). A judgment is clearly erroneous when a review of the record leaves us with a conviction that a mistake has been made. *Id.* The findings control only as to the issues they cover, and a general judgment standard applies to issues on which the trial court made no findings. *Id.*

### I. *Parenting Time*

[15] In all parenting time controversies, courts must give foremost consideration to the best interests of the child. *In re Paternity of C.H.*, 936 N.E.2d 1270, 1273 (Ind. Ct. App. 2010), *trans. denied*. We review and will reverse a trial court's determination of a parenting time issue only for an abuse of discretion. *Shady v. Shady*, 858 N.E.2d 128, 143 (Ind. Ct. App. 2006), *trans. denied*. On appeal, we will not reweigh the evidence or judge witness credibility. *Id.* An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts before the court or if the court misinterpreted the law. *Id.* "If there is a rational basis for the trial court's determination, then no abuse of discretion will be found." *In re Paternity of C.H.*, 936 N.E.2d at 1273.

[16] "A parent not granted custody of the child is entitled to reasonable parenting time rights 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.” Ind. Code § 31-17-4-1(a). “Even though the statute uses the word ‘might,’ this [c]ourt has previously interpreted the language to mean that a court may not restrict parenting time unless that parenting time ‘would’ endanger the child’s physical health or emotional development, . . . [and] an order for supervision constitutes such a restriction.” *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013) (citations omitted). “By its plain language, Indiana Code section 31-14-14-1 requires a court to make a specific finding of physical endangerment or emotional impairment prior to placing a restriction on the noncustodial parent’s visitation.” *Farrell v. Littell*, 790 N.E.2d 612, 616 (Ind. Ct. App. 2003) (citation and quotation marks omitted). “A party who seeks to restrict a parent’s visitation rights bears the burden of presenting evidence justifying such a restriction.” *Id.*

[17] The trial court found that

1. Mother has deliberately and unreasonably denied Father parenting time with [] [C]hild [] since approximately mid-March, 2020, using the Covid-19 pandemic and Father’s alleged controlled substance abuse as reasons for the denial of parenting time with [] [C]hild.
2. Mother expected Father to pay her child support despite her denials of his repeated requests to have contact with [Child], and despite the fact that paternity had not yet been established and child support ordered.

\* \* \* \*

5. [Father] should forthwith be introduced to [Child] as her father in the presence of a therapist and/or as directed by a therapist, due to a lack of bond between Father and [Child] caused by Mother's denial of meaningful contact between Father and [Child], unless the parties agree otherwise.

[] The [c]ourt orders as follows:

\* \* \* \*

5. Father shall have parenting time with [Child] one time per week for one hour at Family Connections, or as directed by the therapist, or as otherwise agreed by the parties. This is a temporary parenting time order to facilitate bonding between Father and [Child]; the Court expects that Father's parenting time will be expanded to age-appropriate unsupervised parenting time in accordance with the Indiana Parenting Time Guidelines within a reasonable amount of time.

6. Neither parent shall use or be under the influence of controlled substances while [Child] is in their physical custody.

7. The [c]ourt schedules a parenting time review hearing for August 22, 2022 at 8:30 a.m. to determine the parents' willingness and ability to comply with this parenting time Order.

(Appellant's App. Vol. II, pp. 9-10).

[18] Mother argues that the trial court's Order providing for Father's parenting time, which is to be unsupervised at the end of the supervision period, is erroneous. Mother claims that there are a host of issues, such as Father's history of



substance abuse, and his unaddressed anger issues, including a pattern of physical and sexual violence, which would endanger Child's physical health or well-being.

[19] As noted, a party who seeks to restrict a parent's visitation rights bears the burden of presenting evidence justifying such a restriction. *Farrell*, 790 N.E.2d at 616. While Winston affirmed Father's use of illegal drugs during a trip to Las Vegas in the summer of 2020, Winston testified that was the last time he saw Father use drugs. Also, while Father admitted to using illegal drugs in the past, he stated that the last time he used drugs was in August 2021. Father submitted two negative drug screens taken in January 2022 and May 2022. In addition, two of Father's witnesses, including his current roommate, testified that they had never seen him use any illegal drugs. Finally, with regards to Mother's claim that Father has the propensity to engage in violence, Father testified that in his lifetime, he has only engaged in two fist fights, one outside a strip club and another outside Truth Ink with a patron who had previously threatened to kill him.

[20] While the trial court ordered Father's parenting time to be temporarily supervised at first, nowhere in the Order's language does it suggest that the reason for supervision was that parenting time would affect the Child's well-being or health. Instead, the primary reason for temporary supervised parenting time was not because Father had a history of substance abuse, unchecked anger issues, or a propensity to engage in physical violence, but because Mother had alienated Child from Father since February 2020, and supervised parenting

time was limited to allow a gradual reunification between Father and Child. By doing so, the trial court rejected Mother's testimony that Father posed a risk to Child and parenting time should be supervised. Here, we find Mother's arguments are a request that we reweigh the evidence, and under these circumstances, we do not disturb the court's Order.

## II. *Hair Follicle Testing*

[21] Mother argues that the trial court erred for not ordering Father to undergo hair follicle drug testing while exercising his parenting time with Child.

[22] Indiana Code section 31-17-2-21.8 provides, in part, that

A court may require that a parent submit to drug testing as a condition of exercising the parent's parenting time if the court finds that:

(1) the parent has a history of unlawful drug use within the previous five (5) years; or

(2) there is a reasonable likelihood that the parent is currently using unlawful drugs.

[23] Mother's petition to have Father undergo hair follicle drug testing was based on her claim that Father was using illegal substances. In support of her petition, Mother presented a video showing Father sitting on a couch with drugs in front of him. In his defense, Father claimed that, while he had used drugs in the past, the last time he used drugs was in August 2021. Father also submitted two negative urine drug screens taken in January and May 2022.

[24] Although Father had used drugs in the past five years, Father refuted any claims of ongoing drug use. The trial court decided to believe Father's abstinence from drugs, and Mother's arguments are a request that we reweigh the evidence, which we will not do. Therefore, we hold that the trial court did not err in refusing to order Father to undergo hair follicle drug testing as a condition of exercising his parenting time.

### III. *Challenged Finding*

[25] Mother challenges the following finding

Mother is now married and has sought Father's consent to an "open adoption" of [Child] by her husband, promising that she will let Father visit with [Child] if he consents to the adoption, a promise which is unenforceable and reprehensible as Mother's actions amount to extortion.

(Appellant's App. Vol. II, p. 9). Mother contends that this "finding that [she] engaged in extortion must be deleted from the Order of the [trial] [c]ourt as nothing in evidence supports a finding that [she] engaged in extortion."

(Appellant's Br. p. 18) (internal quotation marks omitted).

[26] Black's Law Dictionary defines 'extortion' as "[t]he act or practice of obtaining something or compelling some action by illegal means, as by force or coercion." BLACK'S LAW DICTIONARY 623 (8th ed. 2004). Merriam-Webster Dictionary defines "extort" as "to gain especially by ingenuity." Merriam-Webster, <https://www.merriam-webster.com/dictionary/extort> (last visited December 14, 2022).

[27] Mother did not permit Father to see Child for more than two years, and Mother had cut off any communication with Father by August 2020. Yet in 2022, and prior to the evidentiary hearing, she contacted Father and asked him to consent to the adoption of Child by Rumsey. If he agreed, Mother would have enabled Father to see Child, but Father rejected Mother's offer.

[28] In the context of this case, and given the record before us, we find that the trial court used the term "extortion" to mean that Mother was trying to extract Father's consent to the adoption using disingenuous promises. Because Mother had not kept her previous promise to allow Father to visit Child, and Father was now suddenly being offered visitation as compensation for agreeing to the adoption, it seemed likely the promise would not be enforceable. We therefore do not find the trial court's use of this word to be erroneous.

## **CONCLUSION**

[29] Based on the foregoing, the trial court did not err in ordering supervised parenting time or denying the request that Father undergo a hair follicle drug test. Further, we do not find the trial court's use of the word "extortion" to be erroneous. Accordingly, we affirm the trial court's Order in all respects.

[30] Affirmed.

[31] Bailey, J. and Vaidik, J. concur