MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Chancton S. Floyd,
Appellant-Petitioner,

v.

Brianna M. Murphy,
Appellee-Respondent

Denise Murphy,
Appellee-Intervenor

October 2, 2023

Court of Appeals Case No. 23A-JP-870

Appeal from the Wabash Circuit Court

The Honorable Robert R. McCallen III, Judge

Trial Court Cause No. 85C01-2101-JP-13

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

[1] Chancton S. Floyd ("Father") appeals the trial court's award of custody of his daughter to a third party, the maternal grandmother. Because the grandmother failed to rebut the presumption that a natural parent should have custody of his child, we reverse.

Facts and Procedural History

[2] P.F. ("Child") was born in July 2016. Father is Child's father, Brianna M. Murphy ("Mother") is Child's mother, and Denise Murphy ("Grandmother") is Child's maternal grandmother.

[3] Father was sixteen years old when Child was born. For a short time after Child's birth, Father, Mother, and Child lived together. Father eventually moved in with his grandparents, while Mother and Child lived at Grandmother's house. Father didn't have much contact with Child for the first two years of her life, and Grandmother was Child's primary caregiver. Around 2018, Father and Mother moved in together while Child remained with Grandmother. Father and Mother had Child on the weekends. Father and Mother lived together for "8 months to a year" but then separated. Tr. Vol. II p. 147. Father, who moved back in with his grandparents, continued to see Child on the weekends, but he didn't keep her overnight like he did when he and Mother lived together.

[4] Things really started to change in 2019. In the fall of 2019, Father, then twenty, started dating his current significant other and moved in with her. In late 2019, when Father had a stable living arrangement, he and Grandmother agreed that he could have Child on the weekends. Father exercised parenting time with Child every other weekend from Friday evening to Sunday evening. That schedule continued until Thanksgiving 2020, when Father felt he was stable enough to have Child full time. Grandmother, however, said no and didn't let Father see Child, including that Christmas.

[5] In January 2021, Grandmother filed a petition to be appointed guardian of Child (Mother consented to the guardianship). Appellee's App. Vol. II p. 2. Two weeks later, Father filed a petition to establish paternity, custody, parenting time, and child support under a different cause number. Appellant's App. Vol. II p. 22. Father, who noted no orders had ever been issued regarding Child, sought custody of Child. By agreement of the parties, the guardianship case was closed, paternity was established in Father, and Grandmother was allowed to intervene in the paternity case for purposes of seeking third-party custody. *Id.* at 27. The court also ordered the parties to "cooperate" regarding parenting time. *Id.* Child remained in Grandmother's care, with Father having parenting time with Child every other weekend as he had before.

[6] A contested hearing on the remaining issues was set for August 2021, but the hearing was continued several times—over Father's objections—to January 2023 (the hearing was then continued to a second day in March). In addition, the trial court appointed a guardian ad litem (GAL). At the time of the

hearings, Father was twenty-three and Child was six. Father testified that he lived in Miami County with his significant other and their two children (who were born in 2020 and 2021). Father also testified that he had recently adopted his significant other's son (who was born in 2017), which required a home study. Finally, Father testified that he had lived in the same house for three years, had a steady job as a foreman for a company installing fiber-optic wires, and did not have a criminal history. Father admitted that he could have done a better job over the years keeping updated on Child's medical history and schooling but said he was ready to take over as Child's parent. Grandmother testified that she lived in Wabash County, where Child attended school, and that she had cared for Child essentially since birth. Mother testified that Grandmother, not her, should have custody of Child. Finally, the GAL testified that Father's home was appropriate, she had no concerns about his ability to parent Child, and Father was not unfit "in any way." Tr. Vol. II p. 29.[1] However, the GAL believed that Grandmother should have legal and physical custody of Child and Father should have parenting time. She added that she didn't think this arrangement should be indefinite, as she's "a firm believer that fit parents should raise their children." *Id.* at 32.

[1] At the hearing, the parties discussed an incident that allegedly occurred in March 2022 at Father's home regarding a touching of Child by one of her siblings. The Department of Child Services investigated the allegation and ultimately closed the case as "unsubstantiated." Ex. 1. The GAL testified that she had no concerns about Child being around her siblings. Tr. Vol. II p. 30.

[7] After the hearing, the trial court issued an order awarding legal and physical custody of Child to Grandmother and parenting time to Father:

> This case is essentially between [Grandmother] and [Father], as [Mother] appears aligned with [Grandmother].
>
> All parties agree that [Grandmother] is a De facto custodian as that term is defined in I.C. 31-9[-2]-35.5.[2] Had they not agreed, the Court finds the evidence was clear and convincing that [Grandmother] is a De facto custodian.
>
> For the vast majority of [Child's] life, she has been in the care and custody of [Grandmother], who has provided for her every need. They have a strong bond. Both [Mother] and [Father] were very young when [Child] was born and neither was ready to be a parent. The Court believes [Father] has matured significantly and wants very much to be an active father to [Child]. However, it would not be in [Child's] best interests to remove her from [Grandmother's] care and custody. In fact, awarding custody to [Grandmother] is in [Child's] best interests.

Appellant's App. Vol. II p. 17. The court ordered Father and Mother to pay child support to Grandmother but made "no provision for [Mother's] parenting time as she and [Grandmother] appear aligned and they can work her parenting time out." *Id.* at 18 n.1.

[8] Father now appeals.

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[2] "De facto custodian" means "a person who has been the primary caregiver for, and financial support of, a child who has resided with the person for at least: (1) six (6) months if the child is less than three (3) years of age; or (2) one (1) year if the child is at least three (3) years of age." Ind. Code § 31-9-2-35.5.

Discussion and Decision

[9] Father contends the trial court erred "when it awarded a third party, maternal grandmother, custody of the minor child without requiring maternal grandmother to overcome the presumption that the natural parent should have custody of his child by clear and convincing evidence." Appellant's Br. p. 12. Child-custody determinations fall squarely within the discretion of the trial court, and we reverse only for an abuse of that discretion. *Hurst v. Smith*, 192 N.E.3d 233, 243 (Ind. Ct. App. 2022). In a custody dispute between a natural parent and a third party (including a de facto custodian), there is a presumption that the natural parent should have custody of his child. *Id.*; *In re L.L.*, 745 N.E.2d 222, 230 (Ind. Ct. App. 2001) (holding "de facto custodian" status does not remove the presumption in favor of natural parents obtaining or retaining custody of their children), *trans. denied.* This presumption, which is "rooted in the United States Constitution," provides a measure of protection for the rights of the natural parent but, more importantly, "embodies innumerable social, psychological, cultural, and biological considerations that significantly benefit the child and serve the child's best interests." *L.L.*, 745 N.E.2d at 229; *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002), *reh'g denied*. The third party bears the burden of overcoming this presumption by clear and convincing evidence. *L.L.*, 745 N.E.2d at 230; *B.H.*, 770 N.E.2d at 287.

[10] Evidence sufficient to overcome the natural-parent presumption includes a parent's (1) present unfitness, (2) long acquiescence in the third party's custody, and (3) past abandonment of the child "such that the affections of the child and

third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child." *L.L.*, 745 N.E.2d at 230-31; *see also B.H.*, 770 N.E.2d at 287 (stating that trial courts are not limited to these three factors). A general finding that it would be in the child's "best interests" to be placed in the third party's custody is **not** sufficient to rebut the presumption. *L.L.*, 745 N.E.2d at 231. More is required:

> If a decision to leave or place custody of a child in a third party, rather than a parent, is to be based solely upon the child's "best interests," as opposed to a finding of parental unfitness, abandonment, or other wrongdoing, such interests should be specifically delineated, as well as be compelling and in the "**real and permanent**" interests of the child.

Id.; *see also B.H.*, 770 N.E.2d at 287 ("A generalized finding that a placement other than with the natural parent is in a child's best interests, however, will not be adequate to support such determination, and detailed and specific findings are required."); *In re Guardianship of A.R.S.*, 816 N.E.2d 1160, 1162 (Ind. Ct. App. 2004) ("[O]ur supreme court has explicitly mandated trial courts to issue detailed and specific findings when a child is placed in the care and custody of a person other than a natural parent."). Only if the presumption is rebutted does the trial court engage in a general "best interests" analysis. *L.L.*, 745 N.E.2d at 231. In a paternity case involving a de facto custodian, the best-interests analysis would involve the factors in Indiana Code sections 31-14-13-2 (custody following paternity determination) and 31-14-13-2.5 (custody following paternity determination involving a de facto custodian). *Id.*

[11] Here, the trial court's order does not acknowledge the natural-parent presumption, much less find that Grandmother rebutted that presumption by clear and convincing evidence. The court's order also does not find that Father is "unfit" (by all accounts he is a fit parent) or that he "abandoned" Child or "long acquiesced" in Grandmother having custody of her.[3] The closest the court got was its finding that Grandmother had cared for Child for most of her life. But that is different from abandonment or long acquiescence. It is true that Father didn't have much contact with Child for the first two years of her life, but Father was a teenager and not yet ready to be a parent. As the trial court found, Father has "matured significantly" since Child was born. In 2018, Father started seeing Child on the weekends. Then, in 2019, when Father's housing and employment situation improved, he started having parenting time with Child every other weekend from Friday evening to Sunday evening. Finally, around Thanksgiving 2020, Father tried to get Child full time. Grandmother said no, which led to this litigation in January 2021.

[12] Although paternity was settled early, the issues of custody, parenting time, and child support were set for a contested hearing in August 2021. However, that hearing was continued several times—over Father's objections—to January 2023. During that time, the status quo remained, with Father having Child every other weekend. Because Father relied on Grandmother to take care of

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[3] Grandmother says this case is like *Hurst*. But in *Hurst*, the trial court issued a fourteen-page order, which included a citation to a case that sets forth the natural-parent presumption and a finding that the parents had "acquiesced" to their child living with the maternal grandparents. There is no such citation or finding here.

Child for the first few years of her life doesn't mean that he abandoned Child or long acquiesced to Grandmother having custody of her, especially given his efforts to see Child since at least 2019. *See id.* at 232 (finding no abandonment where mother sought to terminate guardianship four times in five years and "continued to visit [her son] regularly during the course of the guardianship and has thus made an effort to remain an important part of his life, even though she did not have custody of him"). As we have explained:

> For the sake of children, society should encourage parents who are experiencing difficulties raising them to take advantage of an available "safety net," such as a grandparent who is willing to accept temporary custody of a child. It would discourage such action by parents in difficult straits and discourage efforts to "reform" or better their life situation if their chances of later reuniting with their children were reduced.

Id. at 233.

[13] What we are left with, then, is the trial court's finding that it is in Child's best interests for Grandmother to have custody because she and Child have a strong bond. But this finding appears to be based on Child's short-term interests rather than the existence of any compelling, real, and permanent interests of Child that would be best served by Grandmother having custody of her. Even the GAL testified that Father could still get custody of Child, as she's "a firm believer that fit parents should raise their children." *See id.* ("Thus, this evaluator's custody recommendation was based on concern over a possible short-term negative impact on L.L. that could be alleviated by counseling, not

on L.L.'s permanent best interests. In fact, the evaluator testified that she believed, due to [grandmother's] age, that custody of L.L. would eventually be transferred to [mother] at some unspecified point in the future.").

[14] Grandmother failed to rebut the presumption that Father should have custody of Child. *See id.*; 14 Graham Polando, Indiana Practice, *Family Law* § 2:30 (Dec. 2022 update) ("It is relatively common for the third party to fail to sustain his or her burden against a now-fit natural parent, despite having cared for the child for some time."). Thus, the trial court erred in granting Grandmother's request for third-party custody and in denying Father's request for custody.[4] We therefore remand this case with instructions to award Father legal and physical custody of Child and determine child support and parenting time.[5] On remand, we encourage the parties to work out an amicable visitation schedule involving Grandmother. As Father himself acknowledged below, Grandmother should be a part of Child's life "as the grandmother." Tr. Vol. II p. 140.

[15] Reversed and remanded.

Mathias, J., and Pyle, J., concur.

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[4] We recognize the upheaval that awarding Father custody of Child will undoubtedly cause. "Such upheavals, however, are an unfortunate consequence of every situation in which a court must enter an order that changes a child's custody. Such an upheaval, where it can only be said to have potential short-term effects, is insufficient to deny a natural parent custody of his or her child." *L.L.*, 745 N.E.2d at 233.

[5] Given our holding, we need not address Father's alternate argument that his due-process rights were violated when the contested hearing was held more than two years after he requested custody of Child.