MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy Garringer,
Appellant,

v.

Chrisje M. Garringer,
Appellee.

May 16, 2022

Court of Appeals Case No. 21A-DR-2652

Appeal from the Randolph Circuit Court

The Honorable Jay L. Toney, Judge

Trial Court Cause No. 68C01-1209-DR-902

Bailey, Judge.

Case Summary

[1] J.G. ("Father") appeals a custody modification order granting the primary physical custody of C.G. and L.G. ("Children") to Ch. G. ("Mother"). Father presents the sole restated issue of whether the order is clearly erroneous. We affirm.

Facts and Procedural History

[2] The parties were married in 2008. C.G. was born in 2009 and L.G. was born in 2010. In 2012, Father petitioned to dissolve the marriage. He was awarded primary physical custody of Children and Mother exercised parenting time.

[3] On May 17, 2020, the Indiana Department of Child Services removed Children from Father's home and commenced an investigation of an allegation that Father had struck C.G. in the head and shoulders with a wine bottle. Children were placed with Mother from May until November of 2020, at which time the juvenile court declined to find Children to be children in need of services, and Children were returned to Father.

[4] On November 17, 2020, Mother filed her petition to modify the physical custody of Children. A Guardian ad Litem ("GAL") was appointed for Children. The trial court conducted a hearing on April 1, July 20, and August 9, 2021, at which Children's therapist, a visitation supervisor, both parents, Children's stepmother, and the GAL testified. Children's therapist testified that Children reported to her multiple incidents of physical abuse from Father; she further testified that each child revealed having had suicidal ideations in the past. The GAL recommended

modification of physical custody of Children from Father to Mother. On November 1, 2021, the trial court issued its findings of fact, conclusions thereon, and order modifying custody. Father now appeals.

Discussion and Decision

[5] We review custody modifications for an abuse of discretion, with a preference for "granting latitude and deference to our trial judges in family law matters." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). As our Supreme Court has explained:

> Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence. On appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal. Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

Id. (quotation marks and citations omitted).

[6] Mother timely filed a written request for findings and conclusions pursuant to Indiana Trial Rule 52(A). In such cases, our standard of review is well settled:

> First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no evidence supporting the

> findings or the findings fail to support the judgment. We do not reweigh the evidence but consider only the evidence favorable to the trial court's judgment. Challengers must establish that the trial court's findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate questions of law de novo and owe no deference to a trial court's determination of such questions.

[7] *Trabucco v. Trabucco*, 944 N.E.2d 544, 548-49 (Ind. Ct. App. 2011) (quoting *Balicki v. Balicki*, 837 N.E.2d 532, 535-36 (Ind. Ct. App. 2005), trans. denied (2006)), trans. denied. In addition, when findings of fact are unchallenged, this Court accepts them as true. *Moriarty v. Moriarty*, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020), *trans. denied*. As such, if the unchallenged findings are sufficient to support the judgment, we will affirm. *Id.*

[8] Indiana Code Section 31-17-2-21 governs child custody modification, providing in pertinent part:

> (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 8 and, if applicable, section 8.5 of this chapter.

> (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

[9] In turn, the factors of Indiana Code Section 31-17-2-8 are as follows:

> (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:
>
> > (A) home;
> >
> > (B) school; and
> >
> > (C) community.
>
> (6) The mental and physical health of all individuals involved.

> (7) Evidence of a pattern of domestic or family violence by either parent.
>
> (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.
>
> (9) A designation in a power of attorney of:
>
> (A) the child's parent; or
>
> (B) a person found to be a de facto custodian of the child.

[10] Father contends that the trial court "entered a modification of child custody without finding a substantial change in one or more of the factors enumerated in I.C. 31-17-2-8." Appellant's Brief at 4. According to Father, he and Mother have historically had difficulty communicating with each other, but each parent provides similar daily routines for Children, with suitable housing, homework assistance, extracurricular activities, and transportation. He denies that there was substantiated physical abuse in his home. As such, Father argues that there was simply no evidence presented to justify a finding of a substantial change in circumstances.

[11] Father does not challenge any particular finding of fact as lacking evidentiary support. The findings of fact entered by the trial court include the following findings regarding the adjustment and mental health of Children as well as parent-child interactions:

When the children were placed with Mother, they were enrolled in school at Pendleton School District and acclimated well to the new environment.

While the children were involved with DCS, each of the children underwent psychological testing [that] demonstrated that each of the children have mental health diagnoses.

Therapist Jenni Connor worked with both children from September 2, 2020, until November 18, 2020.

The therapist met with the children on a weekly basis while they attended school at Maple Ridge Elementary.

Mother would often email the therapist to discuss issues or find ways to deal with the children's mental health issues.

Father did not have any contact with the therapist.

[C.G.] disclosed to his therapist physical and emotional abuse by Father or in Father's home.

While the child was in Father's care, he had suicidal ideations.

Father has not had [C.G.] enrolled in therapy since he has been returned to Father's care in November of 2020; Father did not have the child enrolled in therapy prior to DCS involvement.

The therapist indicated that [C.G.] would still require on-going therapy to address his mental health needs.

[C.G.] had to repeat the 5th grade while in Father's care.

Despite becoming aware of [C.G.]'s mental health diagnosis, Father has not sought any education on how to deal with a person with [C.G.]'s diagnosis or provided him the therapy he requires.

Father does little by way of education for [C.G.], but rather leaves that responsibility to step-mother; [C.G.] has continued to struggle in school under Father's care and custody.

[L.G.] struggles with mood swings, expressing emotions, sleep disturbances and anxiety; in addition, she expressed suicidal ideation in the past.

[L.G.] did report that she struggles at times feeling angry and overwhelmed. As a result, she will engage in self-harming behaviors.

Father has not re-enrolled [L.G.] in therapy since she returned to Father's care.

[L.G.] disclosed to the therapist multiple incidents of physical abuse and/or neglect while in Father's care. Much of her therapy sessions deal with her anxiety to return to Father's care.

Both children indicated to multiple parties that they felt safe with Mother.

Mother ensured that the children participated in therapy to address their mental health diagnoses, as well as enrolled them in extra-curricular activities. [C.G.] played football and [L.G.] participated in gymnastics.

The children have a strong bond with the maternal side of the family.

> The children prefer to live with Mother rather than Father.
>
> In November of 2020, as a result of the CHINS rulings, the Court ordered that the children had to be returned to Father. [C.G.] reached out to his therapist very upset and crying, as he did not want to be returned to his Father's care.

(Appealed Order at 2-4.)

[12] The trial court also observed that the GAL recommended that primary physical custody be modified from Father to Mother. The trial court's corresponding conclusion provides:

> Considering the factors listed in Indiana Code 31-17-2-8, including the wishes of the child's parent; the wishes of the children; the interaction and interrelationship of the child with the child's parent, and any other person who may significantly affect the child's best interest; the child's adjustment to the child's home, school and community; and the mental and physical health of all individuals involved, the Court finds that it is in the best interest of the children for Mother to be granted custody of the children.

(*Id.* at 5.)

[13] The unchallenged findings of fact support the conclusion reached by the trial court. To the extent Father suggests that the trial court was required to address each statutory factor specifically, Father is incorrect. *See Anselm v. Anselm*, 146 N.E.3d 1042, 1047 (Ind. Ct. App. 2020) (recognizing that while a court, in making a custody determination, must consider each statutory factor, the court need not explicitly mention or explain its consideration of each factor). To the extent that

Father contends that he and Mother provide similar environments for Children and interact with Children similarly, such that modification of custody is unwarranted, he requests that we reweigh the evidence. We decline to do so. *See Steele-Giri*, 51 N.E.3d at 124.

Conclusion

[14] The custody modification order is not clearly erroneous.

[15] Affirmed.

Najam, J., and Bradford, C.J., concur.