

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

Mark J. Crandley
Barnes & Thornburg LLP
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Gillian DePrez Keiffner
Keiffner Law LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Elizabeth Isonhood,
Appellant-Respondent,

v.

Hector Clavijo,
Appellee-Petitioner

February 22, 2022

Court of Appeals Case No.
21A-DR-2084

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-0810-DR-1248

Crone, Judge.

Case Summary

- [1] Elizabeth Isonhood (Mother) appeals the trial court’s granting of the petition to modify custody of her two minor children filed by Hector Clavijo (Father). We affirm.

Facts and Procedural History

- [2] Mother and Father were married in 1997 and had three children: K.C., born in February 2002, Ma.C., born in June 2004, and Mi.C., born in September 2005. In 2008, Father petitioned to dissolve the marriage. In 2009, an agreed decree was entered that gave the parties joint legal custody, Mother primary physical custody, and Father parenting time pursuant to the Indiana Parenting Time Guidelines.
- [3] Despite the agreed custody arrangement, things did not go smoothly. Beginning in 2016, upon recommendation by the guardian ad litem and pursuant to an agreed entry, the parties and the children participated in reunification therapy with Dr. Lois Pilipis. In a March 2017 letter to the trial court, Dr. Pilipis opined that the children were being “manipulated” by Mother and her current husband Chet Turben “to fear and despise” Father, and she warned that “[i]f these family dynamics do not change, the children will continue to suffer the

consequences of long-term family conflict and alienation from [Father], to whom they were once very close.” Ex. Vol. at 20.¹

[4] Dr. Pilipis retired in 2017, and in 2019 clinical psychologist Dr. Jonni Gonso was appointed to replace her by agreement of the parties. In a treatment summary submitted to the trial court in October 2020, Dr. Gonso noted the “long history of chronic post-divorce conflict” between Mother and Father and that Mother and Turben had continued to engage in “alienating behaviors.” *Id.* at 8.² According to Dr. Gonso, Father learned that K.C., upon turning eighteen, “chose to change her last name from Clavijo to Turben, Chet’s last name. This was a devastating emotional blow for him and served to heighten his fears about losing the relationship with [Ma.C. and Mi.C.]” *Id.* at 13. Dr. Gonso opined, “Unless there is an intervention, [Ma.C. and Mi.C.] are at risk of

¹ More specifically, Dr. Pilipis observed that Mother “seems to be derailing the reunification process through continuing to make scheduling difficult, involving the children in the scheduling process, and through her consistent fixation on disparaging Hector as a father.” Ex. Vol. at 19. Dr. Pilipis further observed that Turben “was condescending and insulting in his attitude towards [Father] as well and seemed to want to take over the father role and push him out.” *Id.*

² Dr. Gonso opined,

These high conflict parents have an inability to communicate, cooperate and resolve disputes regarding the care of their children. They have demonstrated chronic anger and distrust of one another placing [Ma.C.] and [Mi.C.] at risk emotionally. These children have been privy to legal and financial matters, given choices about whether and when they should see their father, been exposed to denigration of their father and [his current wife], used as messengers to pass on information and encouraged to be protective of their mother. Although having joint legal custody, [Mother] hasn’t provided [Father] with pertinent information, sought his input and typically made unilateral decisions which he found out about after the fact and from the children. The intensity of the conflict, its continued burdensome presence for years, the polarization of the families and the failure of parents to address the children’s needs has caused [Ma.C.] and [Mi.C.] confusion, anguish, tension, and anger.

Ex. Vol. at 15.

becoming alienated from their father, like [K.C.] who rejected the ‘bad parent’ and ceased contact.” *Id.* at 15.³

[5] In January 2021, Father filed a petition for contempt and to modify custody and child support, alleging that Mother failed to maintain health insurance for the children, as required by court order, continuously undermined his relationship with the children, and repeatedly denied or otherwise interfered with his parenting time. Two days later, Mother filed a response and a motion to modify parenting time and child support. In August 2021, Father filed another petition for contempt, alleging that Mother failed to tell him, as required by court order, that she had withdrawn Mi.C. from school and enrolled her in only two online classes, and that Mother continued to deny or otherwise interfere with his parenting time.

[6] Later that month, the trial court held a hearing on these and other pending motions. Father offered into evidence Dr. Pilipis’s letter and Dr. Gonso’s treatment summary. Dr. Gonso, who retired in 2020, testified that Mother and Turben placed the children in a loyalty bind, which she described as

a situation when there’s been chronic hostility between the parents and one or the other parent is not facilitating the relationship with the less favored parent. That children then feel like they have to make a choice, you know, that they can’t love both parents, that they’ve got to choose one parent over the

³ Dr. Gonso reported that K.C. “held onto fixed and judgmental views” of Father and “displayed rigid, one-sided ‘all good or all bad’ opinions of each parent, idealizing her mother and [Turben] and devaluing her father and [his current wife]. She denied having any positive memories about her father.” Ex. Vol. at 14.

other. They then tend to idealize one parent as all good and to devalue the other parent as all bad.

Tr. Vol. 2 at 68-69. She stated that “things were going along better” as a result of reunification therapy in March 2020, but then Mother unilaterally cancelled therapy and parenting time “until further notice.” *Id.* at 70, 73. Dr. Gonso further stated that Mother and Turben would “plan things” during Father’s parenting time and “very rarely offered” makeup time. *Id.* at 76. She described the children’s alienation from Father as “severe” due to Mother’s “chronic hostility” and “lack of communication” and opined, “It may be that there has to be a serious intervention to go along with severe alienation.” *Id.* at 77, 78.

[7] Father testified that after Dr. Gonso retired, the children started missing a lot of parenting time, and he had seen Mi.C. only once since January 2021. He was having more frequent contact with Ma.C., who has his own transportation. Father also testified that Mother repeatedly interfered with his parenting time, especially on major holidays, and put the children “in the middle” by placing the onus on them to tell him that they had to arrive late or leave early due to various commitments involving Mother’s home-based business or family. Tr. Vol. 3 at 36. Father stated, “[E]very single weekend, you know, we cannot parent, we cannot make any plans because we don’t have any idea where they’re going or what they have to do.” *Id.* at 37. He noted that Mother “[a]lways” becomes more cooperative about parenting time shortly before scheduled court dates and had done so this time around. *Id.* at 53-54. Father testified that his relationship with K.C. “started going down” after 2016 because

of Mother's alienation, and that if he was ever going to reestablish his relationship with the other children "and get [Mother] to stop purposefully alienating [him] from them that the time is now or it will be never[.]" *Id.* at 42, 44. He agreed with Dr. Gonso's assessment that Mother's and Turben's "behavior is clearly causing emotional and psychological harm to [the] children, alienating [him] from them, and that a change of custody is required in order to protect their best interests[.]" *Id.* at 43.

[8] For her part, Mother freely admitted to violating court orders requiring her to maintain health insurance for the children⁴ and communicate with Father about education and health care decisions regarding the children. She also admitted that she has "no problem" in "making sure that [she creates] a record when [she] wants money out of [Father], but when it comes to [her] following the Court's orders that are otherwise in the best interest of [the] children," she is either "not going to do it" or "leave it up to the [children.]" Tr. Vol. 2 at 186. Mother stated that she did not "foresee being punished when [she] disregarded the Court's orders" because she "really [hadn't] been to date[.]" Tr. Vol. 3 at 99.

[9] Mother also called Ma.C. and Mi.C. as witnesses despite the objections of Father and the disapproval of Dr. Gonso, who testified that "calling [one's] children as witnesses in this kind of a case with this kind of a history is the

⁴ Mother testified that she was "able to financially afford" the health insurance plan but "just decided that it wasn't really something that [she] thought [she] should be paying[.]" Tr. Vol. 2 at 132.

ultimate test of loyalty” and “has a distinct possibility of causing additional emotional or mental damage to them[.]” Tr. Vol. 2 at 80. The trial court also opined that “it’s not good for the children” and stated that although it would not prohibit Mother from calling them as witnesses, it would “take into consideration the judgment of [Mother] to [do so] given the circumstances in this case.” *Id.* at 187, 188. At the conclusion of the proceeding, the trial court remarked that what it “heard during this hearing was disturbing in many respects” and took matters under advisement. Tr. Vol. 3 at 122.

[10] On September 7, 2021, the court issued an eleven-page order with sua sponte findings of fact. The court found that Mother “repeatedly, purposefully, and willfully violated” the abovementioned orders by “refusing to communicate with Father as it relates to the health, schooling, or general welfare of the children” and found “her in contempt of the same.” Appealed Order at 2, 3. The court further found that

b. [Mother has] severely alienated the children from [Father] as evidenced by [Mother’s] own testimony and the report and testimony of [Dr. Gonso];

c. Has willfully, inexcusably, and admittedly violated this Court’s Order regarding health insurance for the children to her own financial benefit, and [Father] and children’s detriment;

d. Has unjustifiably and unnecessarily caused [Father] to incur significant therapeutic and legal fees;

e. Has willfully failed to enroll [Mi.C.] in full-time school, and instead opted to enroll [Mi.C.] in only two (2) online classes as of

the date of hearing. In fact, Mother perpetrated a fraud upon the HSE [Hamilton Southeastern] schools [by] taking the child to a doctor and having a medication prescribed for anxiety for the sole purpose of qualifying the child for on-line schooling. Mother testified that the masking and the COVID related issues were the cause of the child's anxiety, which was completely inconsistent with the child's own testimony. Further, it appeared that Mother intended to medicate child unnecessarily;

f. Insisted on calling [Ma.C. and Mi.C.] as witnesses at the hearing ..., despite [Father's] repeated objections, and the prior testimony of Dr. Gonso that the same would be psychologically damaging to the children and be the ultimate act of alienation;^[5]

g. Has repeatedly and consistently acted in a manner that harmed the mental and emotional health of the children; and

h. [Has] confirmed by her own lengthy testimony that she expects no repercussion(s) for her direct and repeated contempt.

12. The Court finds that a change of legal custody and physical custody is overwhelmingly in the best interests of [Mi.C. and Ma.C.] – and notes the admonishment(s) given to [Mother] at prior hearing(s) and in this Court's prior Order(s).^[6]

13. The Court makes the following additional findings:

a. The Court finds that the parental alienation the minor children

⁵ Mother observes that “[t]he parents agreed to not be in the courtroom when the children testified.” Appellant’s Br. at 24 n.1. We are unpersuaded by Mother’s attempt to minimize her decision to defy the advice of a clinical psychologist and the trial court.

⁶ The trial court noted that following an April 2019 hearing, in response to Father’s assertion that Mother had “not communicated with him regarding the children for several years[,]” the court admonished the parties “that if they cannot communicate regarding the children, the Court will, if needed for the best interests of the children, modify legal custody to sole legal custody in one party.” Appealed Order at 2.

and [Father] have endured is shocking, abhorrent, and as “severe” as described by Dr. Gonso in her report and testimony before this Court – a clinical psychologist the parties asked this Court to appoint by way of *agreement*.

b. [Mother’s] blatant disregard and disrespect for this Court’s prior Order(s) and for [Father’s] role in the lives of his children, has been repeated, flagrant, and unapologetic.

c. Despite the children testifying that they wished to continue living at their Mother’s residence as their primary residence, it was evident to the Court that their punishment from Mother for testifying to the contrary would be that she would attempt to cut them off financially and otherwise engage in psychological abuse. It was clearly evident to the Court that the children are in a psychologically abusive environment at Mother’s residence.

Id. at 3-4.

[11] Accordingly, “after considering all relevant factors under” Indiana Code Sections 31-17-2-21 and 31-17-2-8, the trial court granted Father’s petition to modify custody, finding that it was in Ma.C.’s and Mi.C.’s best interests that Father have sole legal custody and primary physical custody, effective immediately, with Mother’s parenting time to be limited pursuant to a therapist’s recommendation and only as approved by the court. *Id.* at 4. The court also appointed a reunification therapist for Father and the children at Mother’s expense, imposed financial sanctions for Mother’s contempt, and ruled on the other outstanding motions. The court warned that Mother’s “behavior has been such as to necessitate that any additional contempt and/or interference with [Father’s] relationship(s) with his minor children may result in

[Mother] being sentenced to executed time in the Hamilton County Jail, and additional financial sanctions.” *Id.* at 6. Mother now appeals only the trial court’s custody ruling.

Discussion and Decision

- [12] Mother asserts that the trial court erred in granting Father’s petition to modify custody. “We review custody modifications only for an abuse of discretion.” *McDaniel v. McDaniel*, 150 N.E.3d 282, 288 (Ind. Ct. App. 2020), *trans. denied*.

There is a well-established preference in Indiana for granting significant latitude and deference to our trial judges in family law matters. 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. Therefore, on appeal we will not reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment. We will reverse the trial court’s custody determination only if the decision is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom. 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.

Id. (citations, quotation marks, and alterations omitted).

- [13] Indiana Code Section 31-17-2-21 provides that a court may not modify a child custody order unless the modification is in the best interests of the child and there is a substantial change in one or more of the factors listed under Indiana Code Section 31-17-2-8, which the court must consider in making its

determination. That list of factors, which is nonexhaustive, includes the age and sex of the child; the wishes of the child's parents; the child's wishes, with more consideration given to those wishes if the child is at least fourteen years of age; the interaction and interrelationship of the child with the child's parents, siblings, and any other person who may significantly affect the child's best interests; the child's adjustment to the child's home, school, and community; and the mental and physical health of all individuals involved. Ind. Code § 31-17-2-8. "The party seeking a modification of custody bears the burden of demonstrating that the existing custody order should be altered." *Maddux v. Maddux*, 40 N.E.3d 971, 975 (Ind. Ct. App. 2015).

- [14] In interpreting Section 31-17-2-21, we have "held that 'all that is required to support modification of custody ... is a finding that a change would be in the child's best interests, a consideration of the factors listed in [Section 31-17-2-8], and a finding that there has been a substantial change in one of those factors.'" *McDaniel*, 150 N.E.3d at 289 (quoting *Nienaber v. Nienaber*, 787 N.E.2d 450, 456 (Ind. Ct. App. 2003)). Here, neither party requested special findings under Indiana Trial Rule 52(A), and the trial court entered its findings sua sponte. "As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment." *Id.* (quoting *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014)). "We review any remaining issues under the general judgment standard, where the judgment will be affirmed if it can be sustained on any legal theory consistent with the evidence." *Id.* "[W]e may look both to other findings and beyond the

findings to the evidence of record to determine if the result is against the facts and circumstances before the court.” *Id.* (alteration in *McDaniel*) (quoting *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013)). Clear error occurs when our “review of the evidence most favorable to the trial court’s judgment leaves us firmly convinced that a mistake has been made.” *Id.* (quoting *Quinn v. Quinn*, 62 N.E.3d 1212, 1220 (Ind. Ct. App. 2016)).

[15] The trial court did not specifically find a substantial change in circumstances in its order, and Mother claims that Father’s “case for custody modification rested on his disputes with [Mother], her violation of orders, and alienation from the children. But these circumstances were not a substantial change in circumstances.” Appellant’s Br. at 23. We decline Mother’s invitation to leverage the trial court’s prior forbearance of her contemptuous and alienating behavior in her favor. If anything, the evidence indicates that Mother became even more defiant of the court’s orders and more manipulative of the children, as demonstrated by her fraudulent enrollment of Mi.C. in online classes, dropping her health insurance coverage on the children without informing Father, calling Ma.C. and Mi.C. as witnesses at the hearing, and supporting K.C.’s petition to change her surname without Father’s knowledge.⁷ All of these actions are substantial changes of prior circumstances and clearly contrary to the children’s best interests.

⁷ K.C.’s name-change petition was not filed in her county of residence as required by law, which the trial court found to be indicative of Mother’s “refusal to be forthcoming” with Father. Appealed Order at 7-8.

[16] But even assuming that Mother's continuation of her bad behavior does not constitute a substantial change of circumstances for purposes of Indiana Code Section 31-17-2-1, we note that "this court has held that a parent's egregious violation of a custody order or behavior towards another parent, which places a child's welfare at stake, can support a trial court's modification of its custody order." *Hanson v. Spolnik*, 685 N.E.2d 71, 78 (Ind. Ct. App. 1997), *trans. denied*. Here, we have both: Mother's repeated violations of the custody order were egregious, and her severely alienating behavior toward Father placed the children's mental and emotional welfare at stake, as established by the evidence mentioned above. Mother's arguments to the contrary are merely invitations to reweigh evidence and reassess witness credibility, which we may not do. Based on the foregoing, we conclude that the trial court did not clearly err in finding that a change of custody is in the children's best interests and did not abuse its discretion in granting Father's petition to modify custody. Therefore, we affirm.

[17] Affirmed.

Bradford, C.J., and Tavitas, J., concur.