

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

John Andrew Goodridge
Evansville, Indiana

ATTORNEY FOR APPELLEE

Jeff Shoulders
Bob Zoss Law Office, LLC
Evansville, Indiana

IN THE COURT OF APPEALS OF INDIANA

Amanda Katherine Gore,
Appellant-Respondent,

v.

Jesse Ray Gore,
Appellee-Petitioner.

June 30, 2022

Court of Appeals Case No.
21A-DC-1759

Appeal from the Vanderburgh
Superior Court

The Honorable Thomas A.
Massey, Judge

Trial Court Cause No.
82D07-2007-DC-667

Najam, Judge.

Statement of the Case

[1] Amanda Gore (“Mother”) appeals the trial court’s final decree dissolving her marriage to Jesse Gore (“Father”). Mother presents two issues for our review:

1. Whether the trial court erred when it found that Father is a de facto custodian of Mother's daughters from prior relationships, S.L. and L.B.
2. Whether the trial court erred when it awarded Father sole legal custody of the parties' only child, G.G.

[2] We affirm in part and reverse in part.

Facts and Procedural History

[3] Father and Mother were married in December 2015. At that time, Mother's daughters from prior relationships, S.L. and L.B., were six years old and four years old, respectively, and they did not have contact with their biological fathers. Father is disabled due to injuries he sustained while he served in the military, and he does not work. Accordingly, during their marriage, Father cared for S.L. and L.B. while Mother worked outside the home. In December 2016, Mother gave birth to G.G., and Father continued to provide care for S.L., L.B., and G.G. (collectively, "Children") while Mother worked. The Children called Father "Dad." Appellant's App. Vol. 2 at 72.

[4] In January 2020, Mother met a man named Jason Lindo on TikTok. Lindo lives in Michigan, and Father and Mother were living with the Children in Evansville at that time. In March, Mother visited Lindo in Michigan, and in June, Mother took the Children with her to spend a week with Lindo in Michigan. In July, Lindo and Mother spent a weekend in Louisville together. At that point, Father discovered Mother's affair with Lindo, and he filed a petition for dissolution of the marriage on July 13. In his petition, Father

alleged in relevant part that he was a de facto custodian of S.L. and L.B., and he sought custody of the Children.

[5] On July 30, Mother filed a Relocation Notice seeking permission to move with the Children to Lindo’s residence in Michigan, which she amended later that same day to allege that she was moving to Michigan for a job. Father filed an emergency objection to the Relocation Notice, and, on July 31, the trial court issued a temporary restraining order prohibiting Mother from moving to Michigan with the Children. While Mother did not move to Michigan, she also denied Father any parenting time with the Children for approximately one month. It was not until the trial court issued a provisional order on August 13 mandating parenting time for Father that Mother allowed Father to see the Children.¹

[6] During the final hearing on Father’s dissolution petition, Father and Mother each testified. And Father’s mother (“Grandmother”) testified regarding her close contact with Father, Mother, and the Children over the years and her observations regarding Father’s and Mother’s parenting of the Children. Grandmother testified that Father is “loving, attentive[,] and interactive” with the Children, and she described herself as a “safety net” for the Children. *Id.* at 74. Grandmother testified that both Father and Mother have used marijuana, but Father testified that “he no longer uses marijuana nor consumes alcohol.”

¹ Mother and the Children were living next door to Father’s residence during that time.

Id. at 73. Grandmother described Mother as less affectionate with the Children than Father.

[7] Following the hearing, the trial court issued detailed findings and conclusions. The trial court was particularly concerned about Mother's relationship with Lindo, who did not testify at the hearing and about whom Mother did not provide much information. The court noted that in June 2020, while Mother and Father were still married and living together, Mother had engaged in "public displays of affection" with Lindo in front of the Children. *Id.* at 81. The court described that as "just one example of the Mother's poor decision making where she places her self-interests above the best interests of the [C]hildren." *Id.* at 77. And the court found that Mother had given "inconsistent" testimony regarding Father's parenting of Children, in that she had both praised and denigrated Father's parenting. *Id.* at 82. The court also expressed "concern" about Mother's arrest for shoplifting "39 items" from Walmart in 2019. *Id.*

[8] The trial court found that, "[w]hile the Father is not without flaws and issues[,] the Father has exhibited consistent and good decision making for not only [G.G.], but also [S.L. and L.B.]" *Id.* at 83. The trial court found that, given that Father was primary caregiver for the Children for several years, Father was a de facto custodian of S.L. and L.B. The trial court also found, however, that "even if Father had not been a de facto custodian under [Indiana statute], the Father has standing as a Stepparent to seek visitation rights, given his role as the primary caregiver" of S.L. and L.B. *Id.* at 80.

[9] The trial court awarded primary physical and sole legal custody of G.G. to Father and parenting time to Mother. The court awarded primary physical custody of S.L. and L.B. to Mother and parenting time to Father. And the court ordered that Father and Mother would have joint legal custody of S.L. and L.B. This appeal ensued.²

Discussion and Decision

Standard of Review

[10] In our review of the trial court’s dissolution decree, which includes extensive findings and conclusions, our Supreme Court has explained that we

will “not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” *D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012) (internal quotation and citations omitted). Where a trial court enters findings sua sponte, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (citation omitted). Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence. *Id.*

Additionally, there is a well-established preference in Indiana “for granting latitude and deference to our trial judges in family law matters.” *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind.

² The division of the parties’ marital estate is not at issue in this appeal.

1993). 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.” *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)). “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.” *Id.* “Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (citations omitted).

Steele-Giri v. Steele, 51 N.E.3d 119, 123-24 (Ind. 2016).

Issue One: De Facto Custodian

[11] Mother first contends that the trial court erred when it found that Father is a de facto custodian of S.L. and L.B. Indiana Code Section 31-9-2-35.5 defines de facto custodian in relevant part as “a person who has been the *primary* caregiver for, *and financial support of*, a child who has resided with the person for at least . . . one (1) year if the child is at least three (3) years of age.” (Emphases added).

Here, there is no dispute that Mother provided most of the financial support for the Children. And, thus, Father did not meet the statutory requirements to be a de facto custodian. We hold that the trial court erred when it found that Father is de facto custodian of S.L. and L.B.

[12] As our Supreme Court has stated, de facto custodian “status bears only on the question of custody.” *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 461 (Ind. 2009).

The apparent intent of the de facto custodian statute is to clarify that a third party may have standing in certain custody proceedings, and that it may be in a child's best interests to be placed in that party's custody. *Id.* at 462. Here, the trial court awarded custody of S.L. and L.B. to Mother, and, thus, the trial court's determination that Father qualifies as a de facto custodian had no immediate consequences.

[13] However, the trial court also made Mother's custody of S.L. and L.B. contingent on her continuing to reside in "Southwest Indiana." Appellant's App. Vol. 2 at 85. In particular, the trial court stated that, "[i]n the event Mother elects to move to Michigan or elsewhere to live with Mr. Lindo, Father shall immediately become the primary custodial parent for both [S.L. and L.B.]" *Id.* In that event, the trial court's erroneous finding that Father is de facto custodian of S.L. and L.B. would be implicated. Accordingly, we reverse that contingent provision of the decree.³

[14] Notably, Mother does not challenge the trial court's award of parenting time with S.L. and L.B. to Father, which the court found was supported "even if Father [were not] a de facto custodian[.]" Appellant's App. Vol. 2 at 80. Indeed, as our case law makes clear, "[a] stepparent relationship is a strong indicator that a custodial and parental relationship exists," and "by recognizing a right to visitation in nonparent third parties such as stepparents, we have

³ Reversal of this provision has no bearing on the trial court's denial of Mother's relocation notice, which Mother does not appeal.

acknowledged that a child’s interest in maintaining relationships with those who have acted in a parental capacity will sometimes trump a natural parent’s right to direct the child’s upbringing.” *A.C. v. N.J.*, 1 N.E.3d 685, 697 (Ind. Ct. App. 2013). Neither does Mother challenge the trial court’s order that Father and Mother share joint legal custody of S.L. and L.B.

Issue Two: Legal Custody of G.G.

[15] Wife next contends that the trial court erred when it granted Father sole legal custody of G.G. Determinations regarding child custody fall within the trial court’s sound discretion. *Swadner v. Swadner*, 897 N.E.2d 966, 973 (Ind. Ct. App. 2008). We will affirm unless we determine that the trial court abused this discretion. *Id.*

[16] Indiana Code Section 31-17-2-15 (2021) provides as follows:

In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons awarded joint custody;
- (2) whether the persons awarded joint 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 custody;

(5) whether the persons awarded joint custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so; and

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

[17] In her brief on appeal, Mother asserts that the trial court abused its discretion when it awarded sole legal custody of G.G. to Father because there was no “evidence presented regarding the parents’ inability to communicate regarding the areas covered under the statutory language of joint legal custody.”

Appellant’s Br. at 14. However, as Father points out, Mother “does not even challenge the trial court’s findings of her refusal to even allow [Father] to see the [C]hildren after the parties separated, her poor decision-making, and her attempts to replace [Father] with her boyfriend in the [C]hildren’s lives.”

Appellee’s Br. at 13. And those findings bear on Mother’s willingness to communicate and cooperate in advancing G.G.’s welfare. *See* I.C. § 31-17-2-15(2).

[18] Mother’s contention is merely a request that we reweigh the evidence, which we cannot do. The trial court carefully and thoroughly analyzed the evidence relevant to the statutory factors and found that joint legal custody was not in G.G.’s best interests. We hold that the trial court did not abuse its discretion

when it found that joint legal custody was not in G.G.'s best interests and awarded Father sole legal custody of G.G.

[19] Affirmed in part and reversed in part.

Bradford, C.J., and Bailey, J., concur.