



## **Case Summary**

Brandi Scobee (Mother) and Brian Scobee (Father) were married in 2002 and had one daughter, J.L.S., born in 2004. Mother and Father separated after Mother accused one of Father's sons from a previous marriage of making sexual comments to J.L.S. Father then filed a petition for dissolution. Before the dissolution hearing, additional allegations of improper sexual conduct were made against Father and his son. All of the allegations were found unsubstantiated by the investigating agencies. Recognizing that Mother and Father were both good parents, but disturbed by Mother's history of making unsubstantiated claims of sexual abuse and her refusal to accept the investigating agencies' conclusions about them, the trial court granted physical custody of J.L.S. to Father. Mother now argues that this decision was an abuse of discretion. Concluding that part of Mother's argument is an impermissible request that we reweigh the evidence and that Mother has otherwise failed to demonstrate that the court abused its discretion, we affirm the order of the trial court.

## **Facts and Procedural History**

Father and Mother were married on May 18, 2002, and resided in Putnam County. Together they had one child, a daughter: J.L.S., born July 27, 2004. Mother and Father had each been married previously. Father had two sons with his ex-wife. In 2007, nine-year-old Ja. lived with Father's ex-wife. Twelve-year-old Ju. lived with Father. When Father had parenting time with Ja., the three children would be together in Mother and Father's home.

Mother and Father's relationship was turbulent at times. In 2005, Mother made a report to Putnam County DCS alleging sexual contact between Ja. and Ju. The DCS determined that the alleged events occurred but that the contact was merely experimental. No further action was taken in the matter.

Mother and Father separated on September 3, 2007, after Mother told Father that three-year-old J.L.S. had said to her, "will you have sex with me." Petitioner's Ex. 3. As recounted by Mother, when Mother questioned J.L.S. about this, J.L.S. indicated that Ja. had previously told her he wanted to have sex with her on a swing but that she did not want Ja. to be in trouble. Mother and Father interrogated Ja., who denied making such a statement. After Mother began screaming at Ja., Father took the children with him to the nearby home of his parents.

On September 3, 2007, Putnam County Deputy Sheriff Greg Slover was contacted by Mother, who told police dispatch that Father had destroyed the residence. When Deputy Slover arrived, he discovered that the residence was intact. Mother reported the exchange she had with J.L.S. regarding Ja.'s alleged statements. Deputy Slover called Father and advised him to return J.L.S. to Mother, which Father did. After this date, Father did not know J.L.S.'s location for one month and tried to contact Mother by calling at her place of employment, the only contact number he had. As recounted by Father, Mother told him that if she had her way he would never see the child again. Father then filed a petition for dissolution and a motion for an immediate provisional hearing.

Meanwhile, Mother contacted Investigator Charles Bollinger with the Putnam County Prosecutor's office. Investigator Bollinger questioned Mother, J.L.S., and Ja. As a result of these interviews and J.L.S.'s failure to confirm Mother's account or otherwise repeat the allegations, Investigator Bollinger concluded that the case was unfounded and forwarded the matter to the Putnam County DCS. DCS Supervisor Heather Williams concluded that the allegations were unsubstantiated. Mother then contacted the DCS and accused her attorney, Christopher Redmaster, whose office was in Crawfordsville and who had previously advised Mother to seek counsel in Putnam County because it would be more economical, of having a conflict of interest because of a relationship with DCS. Both DCS Supervisor Williams and Attorney Redmaster, who shared a mutual friend, denied any conflict of interest. Attorney Redmaster then filed a motion to withdraw as her counsel, which was granted. Mother obtained new counsel.

The trial court held a provisional hearing on October 2, 2007, and granted Mother temporary physical custody, with Father having parenting time pursuant to the Indiana Parenting Time Guidelines, subject to the condition that his parenting time be exercised in the presence of his mother. But a month later, Mother made another report to DCS, this time alleging that Ja. had molested J.L.S. with a pencil. DCS directed Mother to take J.L.S. to the Center of Hope, a rape crisis center, for an examination. After the examination there, which included a pelvic examination, and an examination at the Children's Advocacy Center was performed, these allegations were also deemed unsubstantiated.

Dr. Richard Lawlor performed a custody evaluation and interviewed Mother, Father, J.L.S., Ja., and Ju. Dr. Lawlor concluded that there was no evidence that anything inappropriate had happened with J.L.S., that J.L.S. had a good relationship with both Mother and Father and her grandparents, and that the aspect of the situation most distressing and potentially harmful to J.L.S. was Mother's and Father's hostility toward each other. Dr. Lawlor also concluded that Mother had questioned J.L.S. inappropriately and that it was now impossible to ascertain J.L.S.'s original memories in regard to any events with Ja. Also in his evaluation, Dr. Lawlor mentioned the existence of a cassette tape that Mother believes demonstrates that Father drugged and raped her. Father denied that such an event occurred.

In December 2007, Mother made a report to DCS alleging that J.L.S.'s visits with Father were not being supervised by his mother pursuant to the court order. DCS screened out the report because the DCS is not responsible for enforcing custody orders. No further action was taken.

In January 2008, Mother and Father began a series of tumultuous child exchanges. On either January 15 or 16, Mother called the police to report that Father had pushed her and spit in her face at a parenting time exchange. Danville Police Officer Mark Brown met Mother at the parking lot of the Danville Kroger parking lot. According to his report, the spitting incident occurred right at that location just before he arrived. According to Mother, the incident occurred at an intersection in New Winchester, the usual exchange location, but she then drove to the Kroger lot to wait for the police because it was safer. Class D felony battery charges were filed against Father and a no-contact order was

entered to prevent him from contacting J.L.S. On January 24, 2007, Mother, who later stated that she did not know about the no-contact order at this point, told Father that he needed to come to the Danville police department, several miles away from the usual exchange location in New Winchester, to pick up J.L.S. Father refused to do so and instead filed an Affidavit for Contempt against Mother. On January 28, 2007, Mother told Father again that he needed to come to the Danville police station for the exchange, and when Father did so, he was arrested there for battery. The State filed a motion to dismiss the battery case against Father on February 22, and the case was dismissed on February 26, 2008.

That day, February 26, Mother's sister and her husband contacted Jennifer Slavens, a counselor who had been seeing J.L.S. for play therapy, and alleged that Father himself had molested J.L.S. with a pencil. Pursuant to her statutory duty as a mandatory reporter, Slavens reported the incident and a CHINS action was instigated. As part of the investigation, Investigator Bollinger conducted a polygraph test of Father. Jill Cart, an investigator in Marion County, interviewed J.L.S. and recorded their conversation about the alleged molestation. That recording was reviewed by a Putnam County DCS employee. Investigator Bollinger ultimately concluded that Father did not molest J.L.S., and the CHINS action was dropped.

On June 24 and July 2, 2008, the court held a final hearing on Father's petition for dissolution of marriage, and both parties submitted evidence. In its Order on Final Hearing, the trial court decided that Mother and Father would have joint legal custody

and that Father would have physical custody. Regarding the determination of custody, the trial court's dissolution decree provides, in part, as follows:

Here the child is young (3 years old). Father has reasonable daycare near his home and Mother has daycare near her place of employment. Mother has a suitable home for child, as does Father. Mother's family members are in the Crawfordsville area mainly (her mother/father live in Roachdale). Father's family members are near Father.

The interaction between the parents and the child appear appropriate. The interaction between the siblings have [sic] not produced any facts for this court to find that anything inappropriate is happening to the child during stays with Father. Mother has a job. Father has a job. The child is adjusted to whatever home she would reside.

The deciding factor in this case rests on the mental health and actions of the parents. It is apparent that there were times that neither party has acted in a manner that, in reflection, they would be proud of.

Screaming at the children, cursing at each other, not being understanding about the other's medical conditions are just a few of the many high conflict issues these parents have.

Non-related agencies have all come up with the same analysis, that [J.L.S.] has not had anything "done" to her that can be proven. [Mother] would not have any of the conclusions. She continued with the blame. When the local DCS was not doing their job, she wrote the state DCS director. When the No-Contact Order was lifted and the criminal case dropped, a new allegation of the father being a perpetrator surfaced. Her own attorney (previous one) being a liar. Granted some of these incidents testified to will never be 100% known because only [Mother] and [Father] were there. However, these incidents, in summary, reflect that [Mother] will not stop at anything in her attempts to "win". Is she a good mother? Yes. But [Father] is also a good father. Neither is perfect, nor is anyone.

Conduct of the parties may be a factor for the Court to consider. [Mother's] conduct tips the scale to [Father] for custody of the child. The Court finds that [Father] shall be the physical custodian of the child. Contrary to Dr. Lawlor's report, this Court believes that joint legal custody would be beneficial for the child and so orders.

Appellant's App. p. 17-18. The court also ordered that Mother would have unsupervised parenting time, would pay child support, and would cover the child on her health insurance.

Both Mother and Father filed separate motions to correct error. The court denied Father's motion to correct error. The court granted Mother's motion to correct error only as to an issue regarding insurance coverage for J.L.S. but denied the remainder of the motion. Mother now appeals.

### **Discussion and Decision**

On appeal, Mother contends that the trial court abused its discretion by granting physical custody of J.L.S. to Father. Specifically, Mother argues that the trial court "improperly weighed the statutory factors" in determining that granting Father physical custody was in the best interests of J.L.S. Appellant's Br. p. 20.

Child custody determinations "fall squarely within the discretion of the trial court and will not be disturbed except for an abuse of discretion." *Liddy v. Liddy*, 881 N.E.2d 62, 68 (Ind. Ct. App. 2008), *trans. denied*. On appeal, we will reverse only if we conclude that the trial court's decision is against the logic and effect of the facts and circumstances before the court or the reasonable inferences drawn therefrom. *Id.*

However, the trial court here entered special findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). When a trial court issues such findings, we apply a two-tiered standard of review. *Fields v. Fields*, 749 N.E.2d 100, 108 (Ind. Ct. App. 2001), *trans. denied*. First, we determine whether the record supports the findings and, second, whether the findings support the judgment. *Id.* We will not set aside the trial court's judgment unless it is clearly erroneous, that is, when the judgment is unsupported by the findings of fact and the conclusions entered upon the findings. *Id.* Findings of fact are clearly erroneous when the record lacks any evidence or reasonable

inferences based on the evidence to support them. *Id.* To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility. *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 944 (Ind. Ct. App. 2006). Our review of the evidence must leave us with the firm conviction that a mistake has been made. *Id.* The rationale for our deference to trial courts in family law matters is that it is the trial court, not the appellate court, that sees the parties, observes their conduct, and hears their testimony. *See Stratton v. Stratton*, 834 N.E.2d 1146, 1151 (Ind. Ct. App. 2005). We will neither reverse a trial court on the basis of conflicting evidence nor substitute our judgment for that of the trial court. *Hunsberger v. Hunsberger*, 653 N.E.2d 118, 121-22 (Ind. Ct. App. 1995), *reh'g denied, trans. denied.*

We turn now to the law governing an initial determination of custody. Both parents are presumed equally entitled to custody in an initial custody determination. *Kondamuri*, 852 N.E.2d at 945. In general, an initial custody order is determined in accordance with the best interests of the child. *Baxendale v. Raich*, 878 N.E.2d 1252, 1254 (Ind. 2008). In making this determination, the trial court is to consider all relevant factors in determining the child's best interests, including a nonexclusive list of factors provided in Indiana Code § 31-17-2-8:

- (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. . .

In this case, most of the factors in Indiana Code § 31-17-2-8 do not weigh strongly in favor of either Mother or Father. J.L.S. is a female born in 2004. Both parents expressed a desire to have physical custody of her. The trial court found that the interaction between the parents and the child was appropriate and that there was no evidence that anything inappropriate was being done to J.L.S. during her stays at Father's home. The trial court also found that both parents were employed, that J.L.S. was adjusted to both parents' homes, and that both homes would make a suitable residence for J.L.S. For example, Mother testified that she and J.L.S. would play dress up, have tea parties, and make cookies together. Tr. p. 426. She described their relationship as "close knit" and said she always supervised J.L.S. when she was in her care. *Id.* at 426-27. Father introduced evidence that he would take J.L.S. and her brothers to enjoy fishing and playing sports together. *Id.* at 191.

Although the trial court recognized that both Mother and Father were good parents, Mother and Father each presented extensive evidence of lamentable conduct committed by the other. In the end, although recognizing that Mother is a good mother, the trial court was particularly disturbed by the history of allegations of sexual abuse, all

of which ended up unsubstantiated, and Mother's refusal to accept the conclusions of the various entities that could not substantiate the allegations.

On appeal, Mother, in an effort to dispute the trial court's conclusion that she "would not stop at anything in her attempts to 'win'," Appellant's App. p. 18, claims that the trial court's order contains several errors and that the trial court improperly ignored some of the evidence presented. First, we turn to the alleged errors in the judgment. Mother quibbles with the trial court's findings regarding the alleged battery incident because she says that the spitting incident happened on January 16, not January 15, and it happened at an intersection in New Winchester, not the Danville Kroger's parking lot. Even if we assume that Mother is correct in this regard, these errors would be inconsequential to the judgment.

Mother also disagrees with the portion of the trial court's order indicating that she made five different reports of sexual abuse to the Putnam County DCS. First, we note that the order does not state that Mother made all five reports, but only indicates that five reports were made. The first report, which is acknowledged by Mother in her brief, is a report that she made in 2005 regarding sexual contact between Ja. and Ju. DCS Caseworker Heather Williams concluded that the contact was merely experimental and the case was set aside. Petitioner's Ex. 3. The second report, which is also acknowledged by Mother, is the one she made in September 2007 alleging that J.L.S. made the "will you have sex with me" comment and that nine-year-old Ja. had made sexually explicit comments to J.L.S. Investigator Bollinger conducted an investigation and concluded that the allegation was unsubstantiated, as both J.L.S. and Ja. denied that

Ja. made the alleged sexually explicit comments. DCS Caseworker Williams agreed that the allegations were unsubstantiated. *Id.* Mother made the third report, which involved allegations that Ja. had molested J.L.S. with a pencil, to the DCS in November 2007. Tr. p. 27, 454; Petitioner's Ex. 7 (Stipulation to Detention Pending Completion of Investigation). After J.L.S. was examined at the Children's Advocacy Center and Wishard Hospital's Center of Hope in Indianapolis, the DCS deemed the report unsubstantiated. Tr. p. 27-28. Mother made the fourth report in December 2007 when she called DCS to inform them that she believed that Father's parenting time with the children was not being supervised in accordance with court order. This report was "screened out" because "enforcing custody orders is not DCS responsibility." Petitioner's Ex. 16. The fifth report was made in February 2008 and involved allegations that Father himself had sexually abused J.L.S. with a pencil. According to the Verified Petition Alleging Child in Need of Services filed March 3, 2008, by the Putnam County DCS, "On 2/26/08 it was reported to Marion County DCS that 3 year old [J.L.S.] had disclosed to an adult that she was lying in bed with her dad . . . . She stated she was naked at the time and described the pencil going inside of her vagina." Petitioner's Ex. 7. The investigation was transferred to Putnam County because Father resides there. *Id.* It appears that this report was made by Therapist Slavens, who was examining J.L.S. through the use of play therapy, wherein J.L.S. was provided with toys to choose from and allowed to direct the form of the playtime. Mother's brother-in-law made the allegations to Slavens, who reported them pursuant to her statutory duty as a mandatory reporter. Tr. p. 139-40.

Mother contends that these events do not constitute five separate reports and that the trial court's statement that she herself accused Father of molesting J.L.S. in February 2008 was incorrect. First, Mother argues that the September and November 2007 reports merged and that Mother did not intend to initiate a report with the December phone call, so the trial court is incorrect that there have been five reports. But it is not consequential to the custody determination whether these events constituted three, four, or five reports. And even though the 2005 report does not involve J.L.S., Mother states in her brief that she made this report alleging sexual contact between Ja. and Ju., and the DCS later deemed the conduct merely experimental.

Second, as for the trial court's statement in its order that Mother made the accusations against Father, although Therapist Slavens testified that she made the report pursuant to her statutory duty as a mandatory reporter, she received that information from a member of Mother's family. Although there was no evidence before the trial court that Mother herself actually made the report, and the statement that she did is therefore technically erroneous, the trial court could have reasonably inferred based on all the evidence before it that Mother was responsible for these unsubstantiated allegations.

Although these reports were all unsubstantiated, Mother was not satisfied with the work and conclusions of a number of the various individuals and entities she encountered along the way. Mother now asserts that the trial court erred by holding that dissatisfaction against her because she was validly dissatisfied.

As for Mother's disappointment with the Hendricks County Prosecutor's handling of the battery case against Father arising out of the spitting incident, Mother asserts that

she was justified in being unhappy because the prosecutor did not allow her to tell her story in court and dropped the case without consulting her. However, whether she was justified in being upset by this treatment is not relevant; indeed, what the trial court found relevant was that the dropped battery case was immediately followed by yet more allegations of sexual abuse, this time against Father. Appellant's App. p. 18.

As for Mother's disappointment with Attorney Redmaster, who had previously represented her but withdrew from her case, Mother claims that Attorney Redmaster was a liar for sending her a letter advising her to get an attorney in Putnam County so that she could receive more cost-effective representation, Respondent's Ex. J, when in reality he was hiding a conflict of interest. That is, Mother believed that Attorney Redmaster had a conflict of interest because of his relationship with the Putnam County DCS, and she called the DCS to make that accusation. When questioned about this accusation, Putnam County DCS Supervisor Williams testified that she and Attorney Redmaster had both attended the wedding reception of a mutual acquaintance, but that her acquaintance with Attorney Redmaster had no bearing on her work. After this accusation, Attorney Redmaster filed a motion to withdraw as counsel, stating that Mother had contacted the DCS and made the accusation and denying that there was any conflict of interest. Petitioner's Ex. 5. There was evidence from which the trial court could find that Attorney Redmaster was not a "liar" in regard to the reason for withdrawal. Nor is it consequential whether it was Mother or Attorney Redmaster who terminated the attorney-client relationship.

We now consider Mother's claims that Deputy Slover's testimony and report regarding an incident where Mother called dispatch to report that Father had "tore up" the residence were erroneous. When Deputy Slover arrived, the residence had not been torn up as he stated that Mother had claimed. Mother's argument is a request that we believe her version of events over Deputy Slover's version. As stated previously, we may not reassess witness credibility or reweigh the evidence on appeal. *Stratton*, 834 N.E.2d at 1151.

As for Mother's dissatisfaction with Putnam County DCS's investigation, namely, its failure to obtain a taped interview between J.L.S. and Investigator Cart, we note that although Mother claims that no one from Putnam County DCS ever listened to the tape, Caseworker South, of the Putnam County DCS, testified that she listened to the taped interview shortly after it was made:

COURT: Okay. And on the tape, we're talking about this tape with this Jill Cart, is that right C.A.R.T.?

[South:] Yes.

COURT: When was that tape made? Do you know?

[South:] February 26<sup>th</sup> at five twenty two p.m.

COURT: Okay, and then when did you hear the tape?

[South:] It would have been the following Tuesday I believe.

COURT: So March 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>? Somewhere around there?

[South:] Right.

Tr. p. 61.<sup>1</sup> Thus, we are puzzled by Mother's statement in her brief that no one from Putnam County DCS ever listened to the interview with Investigator Cart wherein J.L.S.

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<sup>1</sup> We note that this page of the Transcript is out of sequential order and appears at the end of Volume I immediately after page 250. Following page 61 are pages 52 and 59.

described the details of the alleged molestation committed by her father with a pencil.<sup>2</sup> As a result, Mother's accusation that the Putnam County DCS conducted a "shoddy" investigation for failing to listen to the tape is not borne out by the evidence.

Finally, Mother disputes the trial court's conclusion that she disagreed with Dr. Lawlor's report. Mother attempts to characterize the trial court's conclusion as a blanket statement that Mother disagreed with the entire report, but that since Mother only disagreed with Dr. Lawlor's conclusion that she had questioned J.L.S. inappropriately, the trial court's statement is erroneous. We do not read the trial court's statement as Mother does, and Mother admits that she did not agree with part of Dr. Lawlor's report. Therefore, the trial court did not err by stating that Mother disagreed with Dr. Lawlor's report. In sum, we cannot conclude that the trial court's finding that Mother's refusal to accept the work and conclusions of the individuals and entities connected with the case was unreasonable was clearly erroneous. This behavior has already led to negative consequences for J.L.S., including multiple interrogations, a pelvic examination, and fear among her paternal relatives that more allegations are yet to come. The trial court was entitled to consider this evidence when determining the best interests of the child. *See Albright v. Bogue*, 736 N.E.2d 782, 789 (Ind. Ct. App. 2000) (concluding that trial court's decision to modify custody after mother made several unsubstantiated reports of child molestation against father and his relative was not based on punishing mother but rather

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<sup>2</sup> It appears that the confusion might stem from a misreading of the Transcript. Immediately before the discussion regarding the tape, the trial court questioned South regarding the DCS's failure to send a "310 report" or "311 report" before the closing of the case. The court then switched topics and began asking questions about the tape. It appears that Mother's counsel failed to notice that the previous questions were not about the tape.

based on protecting the child from harm). Nor can we say that the trial court's determination that it was in the best interests of the child to award custody to Father because of Mother's conduct was clearly erroneous.

The remainder of Mother's argument constitutes a request that we reweigh the evidence.<sup>3</sup> Mother has not shown that the trial court improperly applied Indiana Code § 31-17-2-8. Instead, Mother merely argues that the trial court should have assessed the credibility of witnesses and differently weighed the evidence in her favor. For example, Mother argues that "[o]ther than the Husband and his parents' negative testimony about the Wife, absolutely all of the other evidence points to the Wife being the parent who has and would continue to serve the best interest of the child." Appellant's Br. p. 49. This argument acknowledges that there is conflicting evidence on this point, and it is not the role of the appellate court to reweigh conflicting evidence. *Stratton*, 834 N.E.2d at 1151. As discussed above, there is evidence to support the trial court's determinative findings, and Mother does not argue that the findings do not support the judgment. The trial court in this case, as is often the case for child custody matters, was called upon to make a Solomon-like decision in a complex and sensitive matter. *See Sebastian v. Sebastian*, 524 N.E.2d 29, 32 (Ind. Ct. App. 1988). We are not firmly convinced that a mistake has been made, and we cannot conclude that the trial court abused its discretion under our

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<sup>3</sup> Mother raises a host of arguments related to the trial court's alleged failure to properly assess witness credibility and weigh the evidence. For example, Mother argues that the trial court should have given more weight to evidence that Father obstinately refused to drive to Danville to meet Mother for a parenting time exchange because they had mutually agreed to New Winchester as the exchange location, evidence that Father was abusive and controlling, evidence that Mother was the primary caregiver, and evidence that Mother offered to let Father see J.L.S. during the one-month period wherein he had no contact with the child. Essentially, Mother asks us to give more weight to evidence of Father's poor behavior and evidence of her good behavior. It was the trial court's duty to sort through this and the other testimony presented to the court in order to weigh the evidence and make credibility determinations. *See Stratton*, 834 N.E.2d at 1151. We may not substitute our own judgment on these matters on appeal. *Id.*

deferential standard of review. Therefore, we must affirm the trial court's decision to grant physical custody to Father.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.