

Ellen Firn f/k/a Ellen Bragg (“Mother”) appeals the trial court’s order awarding physical custody of the parties’ minor son, L.B., to Todd Bragg (“Father”) and argues that the trial court abused its discretion by awarding custody to Father.

We affirm.

Facts and Procedural History

Mother and Father were married in 2004. Mother and Father had one child, L.B., who was born on April 21, 2006. L.B. was born with dystonia in his right leg, a shortening of the muscle which causes him to walk with a limp and requires extensive treatment. Specifically, L.B. undergoes physical therapy and Botox injections, and he wears leg braces and, periodically, casts.

When L.B. was born, the family lived in Detroit. When L.B. was approximately one year old, the family moved to Ohio, where they lived for two years before moving to Wabash, Indiana. Father is employed full time as a health and wellness director at the Wabash YMCA and his family lives in the area.

In April 2009, Mother left Wabash and moved to Michigan to be near her family, taking L.B. with her without Father’s knowledge or consent. After moving to Michigan, Mother made an internet posting describing Father as abusive.

Father filed a petition for dissolution of marriage on April 6, 2009. On November 10, 2009, a final hearing on custody and support was held and the marriage was dissolved. On November 12, 2009, the trial court entered its order awarding physical custody to Father and made the following findings:

- The Petitioner has stable employment and an appropriate home. The Respondent left town on a whim and removed the child from that stability.
- The Respondent has lived primarily with her mother in Ann Arbor Michigan since leaving the marital residence. They reside in a one bedroom apartment and the child sleeps on the floor on a mattress. Reportedly the Respondent will move in with her father to a larger home where the child will have his own bedroom, however, the Respondent's father has been remodeling the home for a couple of years and the remodeling is still not complete.
- The child has special needs and the Respondent has not kept the Petitioner informed as to the medical treatment provided to the child in Michigan.
- The Petitioner has a very definite and appropriate plan for [L.B.]'s education and daycare needs.
- While the Respondent has likely provided more caregiving responsibilities to [L.B.] in his young life, the Petitioner has been an active and capable provider as well.
- The Court does not believe that the Petitioner engaged in any abuse (physical or verbal) or intimidated the Respondent, in any way, shape, or form. The Respondent's claims to the contrary are not believable. Of significance is the Respondent's appearance and demeanor during the hearing. She made very specific eye contact with the Petitioner during his testimony reflecting no fear whatsoever of him.
- Both parties have extended family and friends in close proximity who are ready, willing and able to assist each in caring for [L.B.]
- [L.B.] has lived in a variety of locales and has not had the opportunity to adjust to any particular community (be it in Michigan, Ohio or Indiana) although he apparently is bright, outgoing and capable of doing so.
- For the most part, the Court adopts paragraphs 1, 2, 3, 4 and 8 of the Guardian Ad Litem's Home Study Evaluation.
- The Petitioner will be more accommodating with respect to Parenting Time and will better facilitate contact between the minor child, the Respondent and her family.
- The Respondent failed to complete Children's First or a similar program in Michigan.

Appellant's App. pp. 6-7. Mother now appeals.

Discussion and Decision

Mother argues that the trial court abused its discretion by awarding custody to Father. Child custody determinations fall within the sound discretion of the trial court and will not be disturbed except for an abuse of discretion. Nunn v. Nunn, 791 N.E.2d 779, 782 (Ind. Ct. App. 2003). We will reverse only where the trial court's decision is against the logic and effect of the facts and circumstances before it or the reasonable inferences drawn therefrom. Id.

Where, as here, the trial court enters findings sua sponte, we review those findings under the same standard we would use if the parties had requested them. Klotz v. Klotz, 747 N.E.2d 1187, 1190 (Ind. Ct. App. 2001). We must first determine whether the record supports the factual findings, and then whether the findings support the judgment. Id. We will affirm the judgment based on any legal theory supported by the findings, and the judgment will be reversed only when clearly erroneous. Id. Findings of fact are clearly erroneous when the record contains no evidence to support them and no reasonable inferences can be drawn from the evidence of record to support them. Id. In determining whether findings are clearly erroneous, we consider only the evidence favorable to the judgment and the reasonable inferences flowing therefrom, and we will not reweigh the evidence or assess witness credibility. Id.

Mother first argues that the trial court's finding that she left Wabash "on a whim" is unsupported by the record and, therefore, clearly erroneous. Specifically, Mother argues that that the marriage had been in trouble for some time and that she left only after

the situation became intolerable. Also, she left Indiana because she knew very few people in Wabash and she wanted to be near her family in Michigan. Because she “was making plans to leave before she actually left,” Mother contends that “[t]here was no spur of the moment whim to leave.” Reply Br. at 4-5. However, Mother testified at the custody hearing that she made her plans to leave “in a span of . . . a week maybe” and that she “hadn’t decided to leave before then.” Tr. p. 138. Additionally, Mother’s unexpected departure caused L.B. to miss a previously scheduled in-home medical evaluation. Tr. p. 58. Under these facts and circumstances, we cannot conclude that the trial court’s finding that Mother “left town on a whim” is clearly erroneous.

Mother next argues that the trial court’s finding that Father had “a very definite and appropriate plan” for L.B.’s education and care is clearly erroneous. In support of this contention, Mother directs our attention to the following relevant portion of Father’s testimony at the custody hearing:

Q: Have you explored [] preschools . . . here in Wabash?

A: Yeah. Saint Bernard’s, looked at the Presbyterian one as well, [] I know there’s a few others that people have actually come to me almost like they’re recruiting him for their preschool. So it’s a very positive environment—people approaching me and asking me, you know, hey, he’s about—you know good lord—he’s big enough—but you know maybe we can get him started. So it’s been very positive. Some of the people that work at the YMCA actually work at some of those preschools that they’ve offered that hey once preschool gets out, we’ll bring him down for you, you’ll be over . . . you’ll be done with your shift in an hour or a half hour [] depending on what day it is. So [] they’ve all been very positive about that.

Q: And [] if he were with you would you choose one of those local preschools then?

A: I think if he was [] full time with me I’d look at Saint Bernard’s pretty seriously.

Q: And [] had you considered elementary school for him there also?

A: I'm not sure about elementary school. [D]epending on the amount of—of physical therapy that he's gonna have. It would depend on the preschool—not just the preschool, but the elementary school . . . he would go to Southwood I would think [] for the PT program.

Tr. p. 56. Mother argues that Father's testimony demonstrates that he had no definite plans for L.B.'s education, contrary to the trial court's finding.

While Father's plans were not entirely settled, his testimony demonstrated that he had narrowed down the available options for L.B.'s education and childcare to a relatively short list. Specifically, he identified two possible preschools and stated that he was considering one more seriously than the other. Although Father's plans regarding L.B.'s elementary school were less concrete, it should be noted that L.B. was only three years old at the time of the custody hearing. For these reasons, we cannot conclude that the trial court's finding that Father had a "very definite and appropriate plan" for L.B.'s education and daycare is clearly erroneous.

It appears that Mother's next argument is that the trial court's finding that Father will be more accommodating and better facilitate parenting time than Mother is clearly erroneous. Specifically, Mother argues that because Father testified that he regretted entering into to a provisional agreement giving temporary custody of L.B. to Mother, "there is no reason to believe that he would be any more willing to honor out his commitment to be flexible on parenting time with the mother." Reply Br. p. 5. However, Father testified that if awarded custody, he would be liberal with parenting time, even suggesting week-long visits at least until L.B. starts school. Tr. p. 79. On these facts, and keeping in mind that it is the exclusive province of the trial court to weigh the

evidence and judge the credibility of witnesses, we cannot conclude that the trial court's finding is clearly erroneous.

Mother next argues that because the guardian ad litem ("GAL") recommended that Mother be awarded physical custody of L.B., the trial court's adoption in its findings of certain parts of the GAL's report undermines its decision to award custody to Father. However, the trial court did not adopt the GAL's report in its entirety; rather, the trial court adopted, "[f]or the most part," five paragraphs of the GAL's report. Appellant's App. p. 7. A trial court's acceptance of certain parts of a GAL's report in no way obligates it to accept a GAL's ultimate recommendation.

Finally, Mother suggests that the trial court's findings that Mother left Wabash on a whim and that Mother's abuse accusations were not credible "gives credence to the belief that custody was awarded to the father to punish the mother." Appellant's Br. at 14. Mother correctly asserts that it is improper for a trial court to award custody to one parent in order to punish another. See Ohman v. Ohman, 557 N.E.2d 694, 696 (Ind. Ct. App. 1990) (holding that "custody of children may not be used as a means of punishing the actions of the parents."). However, we find no evidence in the record to support Mother's contention that custody was awarded to Father in order to punish Mother, and we will not disturb the trial court's judgment based solely on Mother's speculation and unsupported suspicions.

In custody disputes, trial courts must often make "Solomon-like decisions in complex and sensitive matters." Speaker v. Speaker, 759 N.E.2d 1174, 1179 (Ind. Ct.

App. 2001). Because the trial court is in the best position to hear the parties' testimony and to observe their conduct and demeanor, we accord its decision considerable deference. Id. On appeal, it is not enough that another trial court may have reached a different result or that the evidence could support a different decision; rather, we reverse only for an abuse of discretion. See Nunn, 791 N.E.2d at 782.

Here, the trial court's findings were supported by the record, and the findings supported the custody decision. Given our standard of review, and respecting the exclusive role of the trial court as the finder of fact, we cannot conclude that the trial court abused its discretion by awarding custody to Father.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.