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IN THE COURT OF APPEALS OF INDIANA

M.H.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 06A01-0805-CV-234
	)	
L.H.,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE BOONE SUPERIOR COURT
The Honorable Rebecca S. McClure, Judge
Cause No. 06D02-0703-DR-76

April 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

M.H. ("Father") appeals[1] from the trial court's Final Decree of Dissolution of Marriage, which dissolved his marriage to L.H. ("Mother"), awarded primary physical custody of the parties' two minor children to Mother, and ordered Father to pay child support. Father raises three issues for our review,[2] which we restate as follows:

1. Whether the trial court properly considered Indiana Code Section 31-17-2-8 when it awarded custody of the parties' two minor children to Mother.

2. Whether the court denied Father due process in awarding custody of the children to Mother.

3. Whether the trial court abused its discretion when it determined Father's child support obligations.

We affirm.[3]

FACTS AND PROCEDURAL HISTORY

Father and Mother were married on August 5, 2000. The couple had two children: A.J.H., born in January of 2002, and A.J.H., born in September 2004. On March 13, 2007, Mother took the children to Erie, Pennsylvania, to live with Mother's extended

[1] Father's initial brief on appeal was filed pro se. However, Father's reply brief was submitted through counsel. We note that pro se litigants are held to the same standard as licensed attorneys. See, e.g., In re Estate of Carnes, 866 N.E.2d 260, 267 (Ind. Ct. App. 2007).

[2] In her Appellee's Brief, Mother provides additional argument in support of the trial court's distribution of the marital property. However, we were unable to discern any cogent argument by Father challenging the court's property distribution. Insofar as Father may have attempted to make such an argument, it is waived. See Ind. Appellate Rule 46(A)(8)(a).

[3] We initially note that Father has not substantially complied with our appellate rules in his initial brief, and we have stricken the Statement of the Case and the Statement of Facts sections of his brief from our consideration. Insofar as Father's failure to comply with the appellate rules affects either the substance of his appeal or our review thereof, we address those failures as necessary in the text of this decision.

family. Mother did not discuss with Father taking the children to Pennsylvania. On March 27, Mother filed her petition for dissolution of marriage.

On April 13, the trial court held a provisional hearing. At that hearing, Mother testified that she moved the children to Erie for the following reasons:

> Over the past couple of years my husband has become very angry and hateful and has shown serious racist behavior. And[] he would download, he would be on the computer continuously with downloading the programs from Al Turner Show dot com, David Duke dot com, National Vanguard, Stormfront. This became his life. And I had to listen to it until I wouldn't listen to it. . . . And it was very offensive . . . because it was literally talking about killing n[-----]s and Jews and his statement is that . . . all the blacks should go back to Africa. We would go out for walks with the kids and he would, if we would pass one of the few black people in Lebanon he would bark at them under his breath. . . . [I]f we were watching P.B.S. or Jeopardy and they showed somebody who was not a white person he would swear at the T.V. in front of the children, and I know that he was listening to the programs when I was at work, in front of the kids. . . . I tried to get help a year ago with him. He would not go to counseling, there was nothing wrong with his truth. I tried everything . . . and I don't believe what he believes and I do not want my children raised with those beliefs. He would not let [the children] go to preschool. He . . . wanted me to home school because he doesn't believe in the history of America, because blacks don't belong in it, only whites do. . . . And I thought[,] you know, I'm not doing this. I mean, my kids are gonna grow up to believe people are equal.

Appellee's App. at 7-9. Mother also testified that she had a job offer in Erie and that she had made provisions for the medical care of the children there. At the conclusion of the provisional hearing, the trial court ordered Father and Mother to have joint legal custody of the children and to equally divide their parenting time.

On August 1, the court held another provisional hearing regarding the appropriate distribution of parenting time for the upcoming school year. Guardian Ad Litem Kandi Killin testified at that hearing. Specifically, she stated as follows:

> [The older A.J.H.] told me he wanted to live with his daddy. . . . [W]hen I questioned him . . . , you know, did someone tell him to tell me that and he said that his . . . father had. . . . But then he went on to say that . . . he wanted to live with his dad because his mom puts him in time-out when he does something wrong, and I said well[,] yes, and I said what does daddy do and he said well he just tells me not to do it again. And I said okay. I said[,] well you know, is that . . . the only reason, is that a good reason and he just kind of nodded and smiled . . . . But the thing that concerned me most was when we were talking about the fact that . . . he knew that mommy and daddy weren't going to be living together and he said . . . that daddy had been on a computer too much when mommy is there and she was afraid that they would get hurt. And, I said okay, and I said and what did daddy say and that's when he told me that he, daddy told him that mommy was sick in the head, in the brain.

Id. at 49-51. GAL Killin then recommended that temporary physical custody of the children be awarded to Mother. Following that hearing, the court ordered the parties to continue joint legal custody but awarded Mother temporary primary physical custody of the children, pending a final hearing.

On March 25, 2008, the court held the final hearing. GAL Killin's report, which substantially reiterated her prior testimony and again recommended custody be awarded to Mother, was admitted into evidence by the court. And Mother likewise substantiated her prior testimony. On April 10, the court entered its final decree of dissolution of marriage ("Final Decree"). In that order, the court generally "awarded legal and physical custody of the parties' children [to Mother], subject to [Father's] right to parenting time as set forth . . . ." Appellant's Brief at 36. The court then detailed the parenting time arrangement to be followed by Father and Mother. The court also distributed the marital property and ordered Father to pay child support. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Indiana Code Section 31-17-2-8

Father first argues that the trial court's Final Decree should be reversed because the court failed to properly consider the statutory factors listed in Indiana Code Section 31-17-2-8. That statute provides as follows:

> The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:
>
> (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.

A trial court must make custody determinations in accordance with the best interests of the children. Ind. Code § 31-17-2-8. As our Supreme Court has held:

> The court must consider factors that are relevant, including but not limited to those explicitly listed in the statute. Although a court is required to consider all relevant factors in making its determination, it is not required to make specific findings. A trial court's custody determination is reviewable only for an abuse of discretion. An abuse of discretion occurs where the decision is clearly against the logic and effect of the evidence before the court.

Russell v. Russell, 682 N.E.2d 513, 515 (Ind. 1997) (footnote and citations omitted). Further, when we review for an abuse of discretion, we do not reweigh the evidence or judge the credibility of the witnesses. See, e.g., Marks v. Tolliver, 839 N.E.2d 703, 707 (Ind. Ct. App. 2005).

Here, Father's various complaints about the trial court's custody determination each fall into one of two types of argument. First, Father asserts that the trial court must not have considered the statutory factors because it did not specifically state that it had. But, as our Supreme Court has said, a trial court is "not required to make specific findings." Russell, 682 N.E.2d at 515. Father's bald assertions of trial court error in that regard are thus without merit.

Second, Father attacks Mother's evidence and GAL Killin's report. And Father asserts that the evidence most favorable to him should be credited. But Father is asking this court to reweigh the evidence, which we will not do. See Marks, 839 N.E.2d at 707. Insofar as Father attempted to make an argument on grounds other than the two

categories described above, that argument is without cogent reasoning and is therefore waived. See Ind. Appellate Rule 46(A)(8)(a). Accordingly, Father cannot demonstrate that the trial court abused its discretion when it awarded custody of the children to Mother.

Issue Two: Due Process

Father next argues that "he was denied due process of law . . . by the failure of the GAL to provide an impartial report to the court." Appellant's Brief at 22. Specifically, Father states that GAL Killin "ignored factors favorable to [Father] or unfavorable to [Mother,] construed positives for [Father] into negatives and dismissed negatives about [Mother.]" Id. at 23. But Father's argument on this issue is, again, simply a request for this court to reweigh the evidence. We decline Father's invitation to do so. See Marks, 839 N.E.2d at 707.

Father does not contend that he was denied the opportunity to present his own evidence or to cross-examine GAL Killin at the final hearing. Nor does Father assert that he was denied proper notice of the GAL's report at the final hearing.[4] And Father does not identify the portion of the transcript that would indicate to this court his objection to the GAL's report for bias. Finally, in the event this court were to reweigh the GAL's report and find its admission unconstitutionally erroneous, Father does not discuss whether such error might have been harmless. Father's argument that he was somehow denied a constitutional right on this issue is without merit.

[4] Father does assert that he was denied adequate notice of the GAL's report for the August 1 provisional hearing. But Father does not indicate how that purported lack of notice could possibly have carried over to the final hearing nine months later.

Issue Three: Child Support

The last discernible argument made by Father on appeal is that "the trial court did not consider the distance that he would have to travel to see his children in determining an amount that he was to pay to [Mother] for child support." Appellant's Brief at 28. On this issue, the trial court stated as follows in the Final Decree: "Each parent shall be responsible for the transportation of the children to a point determined to be the half-way point between [Mother's] and [Father's] residence[s] to facilitate [Father's] right to parenting time with this children . . . ." Id. at 38. That is, the court ordered Mother and Father to evenly split the travel costs associated with Father's parenting time.

Father's argument on this issue appears to be that the trial court erred by not offsetting his child support obligations with travel expenses incurred for exercising parenting time. In other words, Father argues that his distance from the children is due to Mother's move to Erie, and therefore Mother should bear the full cost of travel associated with Father's parenting time. See id. at 28-29. Father's argument fails to demonstrate how the trial court might have abused its discretion, is without cogent reasoning, and is without citation to relevant legal authority. We therefore do not consider it. See App. R. 46(A)(8)(a).

Conclusion

In sum, each of Father's three issues raised on appeal are without merit. Father cannot demonstrate that the trial court failed to consider Indiana Code Section 31-17-2-8, that he was denied due process, or that the court erred in its determination of Father's child support obligations. Thus, the trial court's Final Decree is affirmed in all respects.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.