MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Amber Richardson,
Appellant-Petitioner,

v.

Ivan C. Stetter,
Appellee-Respondent.

March 17, 2022

Court of Appeals Case No. 21A-DC-1730

Appeal from the Hendricks Superior Court

The Honorable Robert Freese, Judge

Trial Court Cause No. 32D01-1807-DC-000403

May, Judge.

[1] Amber Richardson ("Mother") appeals the trial court's decision modifying custody of her child, L.S. ("Child"), to Child's father, Ivan C. Stetter ("Father"). Mother argues the trial court's findings do not support its conclusion that there was a substantial change in circumstances warranting a change in custody and that such a change was in Child's bests interests. We affirm.

Facts and Procedural History

[2] Child was born on June 28, 2012, to Mother and Father, who were married. At some point, Mother and Father moved to Tennessee with Child. They later divorced and entered into an agreed order regarding custody and child support on April 15, 2016. Mother was awarded primary physical custody and Father was given parenting time, though it was sporadic due to Father's military service. The parties shared legal custody and Father paid child support. Sometime after the divorce, Mother and Child moved to Indiana. Father remained in Tennessee and married Lexi Stetter ("Stepmother"). Father is in the United States Army, which has in the past required deployment outside of the United States. Very recently, Father and Stepmother relocated to Fort Bragg in North Carolina.

[3] On July 17, 2018, Mother filed a motion to modify legal custody of Child and child support, as well as Father's parenting time.[1] Mother asserted the trial court should modify legal custody because Father "resides in another state and has not availed himself to be involved in decisions pertaining to [Child]." (App. Vol. II at 41-2.) Mother argued the prior child support order did not properly reflect the parties' "current incomes and other relevant factors." (*Id*. at 41.) Finally, Mother contended Father's parenting time should be modified because Child had "repeatedly" returned from Father's care with lice, Stepmother reportedly "speaks negatively about [Mother] in the presence of [Child,] and [Stepmother] uses corporal punishment on [Child]." (*Id*. at 42.)

[4] On August 2, 2018, the parties entered an agreed order regarding child support. On September 28, 2018, Mother filed a request for the appointment of a Guardian ad litem, and the trial court granted that request on October 12, 2018. On March 8, 2019, Mother filed a petition for emergency modification of parenting time, alleging Child "has stated some very disturbing statements regarding [Stepmother] sexually abusing her" and Mother had "grave concerns about [Child's] safety during [Father's] parenting time." (*Id*. at 58.) Mother's petition indicated the Department of Child Services ("DCS") had an open investigation on the matter.

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[1] Mother also filed a motion to accept jurisdiction and a petition for registration of foreign order, as the original order was entered in Tennessee. Father consented to jurisdiction in Indiana.

[5] On March 12, 2019, Father filed a response to Mother's petition for emergency modification of parenting time, a motion to strike/seal Mother's petition for emergency modification of parenting time, a rule to show cause, and a motion to appear telephonically. Father stated the DCS case worker had "completed her interview and investigation and has determined that [Child] was not sexually abused in any way." (*Id*. at 61.) Father asked the trial court to order Mother to complete a mental evaluation, find Mother in contempt for "failing to make [Child] available for phone calls while [Father] was deployed" and for withholding Child from Father during spring break, and order Mother to "[p]ay for all attorney fees associated with this contempt and unwarranted frivolous filing as another means to deter and alienate [Child] from [Father]." (*Id*.) The trial court held a hearing on the pending motions on March 20, 2019. On April 25, 2019, the trial court denied Mother's petition for emergency modification of parenting time and denied Father's motion to strike/seal. The trial court further ordered:

> 3. [Child] is to continue counseling through Hamilton Center and parties are to comply with recommendation of counselor.
>
> 4. Parties to schedule video time/telephone time with Father and [Child] at least 72 hours in advance or 3 times per week when Father is not able to exercise Parenting time.
>
> 5. Pending further Order, [Child] shall not be left alone with Step Mother [sic].

(*Id*. at 64.) The trial court set a review hearing for July 1, 2019. After two continuances, the trial court held the review hearing on September 4, 2019. That same day, the Guardian ad litem filed her status report and interim recommendations. The parties filed a stipulated preliminary agreement at the hearing, though the terms thereof are unknown because the parties did not include it in the record before us.

[6] On November 4, 2019, the parties entered into a preliminary agreement regarding parenting time. The agreement provided for a make-up of Father's parenting time, including that Father will exercise that parenting time in Indiana and without Stepmother present; communication between the parties must occur via "Our Family Wizard App[;]" Child's counseling sessions would be open to all parties; both parties and Child must release mental health treatment records to the Guardian ad litem; and Mother must facilitate video phone calls between Father and Child on a specific schedule. (*Id*. at 65-6.) On February 24, 2020, the Guardian ad litem submitted her report and recommendations to the trial court.

[7] On March 2, 2020, Mother filed a motion to vacate hearing, indicating the parties had reached an agreement. On March 10, 2020, the parties entered into another preliminary agreement, allowing Father to "resume parenting time at his home in Tennessee and [Stepmother] should be permitted to be present[,]" however, "Father shall ensure that he is always present, and that [Child] is not left alone with Stepmother." (*Id*. at 73-4.) The agreement also scheduled additional dates for Father's parenting time and indicated transportation

responsibilities for Father's parenting time. Additionally, the parties agreed to a custody evaluation, to the use of the "Our Family Wizard" app "for communication and exchange of information[,]" and to refraining from speaking negatively "about the other parent and/or his/her significant other to [Child] and should not permit others to do so." (*Id.* at 74.) The parties agreed Child would not be left alone with Stepmother based on Child's unsubstantiated allegation of abuse. Finally, the parties agreed to the following regarding Child's interaction with Mother's boyfriend, Jesse Bunnell:

> Until the Monroe County DCS completes their investigation, issues their 311 report, and provides a copy of the 311 report to the Guardian Ad Litem and both parties, Mother shall not allow [Child] to be alone unsupervised with [Mother's] boyfriend, Jesse Bunnell. Jesse shall never be permitted to use any form of physical discipline with [Child] for any reason (regardless of the outcome of the 311 report).

(*Id.*)

[8] The trial court held a hearing on June 29, 2020, and scheduled the completion of that hearing for August 20, 2020. The trial court granted Mother's motions for continuance and rescheduled the hearing for December 15, 2020. The trial court did not hold the hearing on December 15, 2020, and instead scheduled an attorney conference call for January 4, 2021. On December 31, 2020, Father filed an emergency motion to enforce parenting time. The trial court heard argument regarding Father's emergency motion on January 4, 2021, and

ordered: "Parties are to comply with Court Order. Father is to have parenting time immediately until deployed. Father is to pick up [Child]." (*Id*. at 11.)

[9] Sometime between April and June 2021, the parties engaged in mediation. On June 28, 2021, the parties filed a mediated partial agreed entry and order, setting forth terms for joint legal custody of Child and parenting time "regardless of whom the Court determines should be designated as primary physical custodian of [Child.]" (*Id*. at 79.) The trial court held a hearing on June 29, 2021, during which Father filed a petition to modify custody of Child. The trial court heard testimony and accepted evidence on parties' competing motions to modify custody on June 29 and June 30, 2021. On July 14, 2021, the trial court issued its order granting Father's motion to modify physical custody of Child from Mother to Father, maintaining joint legal custody, and terminating Father's child support obligation.

Discussion and Decision

[10] As an initial matter, we note Father did not file an appellee's brief. When an appellee does not submit a brief, we do not undertake the burden of developing arguments for that party. *Thurman v. Thurman*, 777 N.E.2d 41, 42 (Ind. Ct. App. 2002). Instead, we apply a less stringent standard of review and may reverse if the appellant establishes prima facie error. *Id*. Prima facie error is "error at first sight, on first appearance, or on the face of it." *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006).

[11] Our review of a trial court's decision on a modification of custody is well-settled:

> We review custody modifications for abuse of discretion, with a preference for granting latitude and deference to our trial judges in family law matters. In the initial custody determination, both parents are presumed equally entitled to custody, but a petitioner seeking subsequent modification bears the burden of demonstrating that the existing custody should be altered. When reviewing a trial court's decision modifying custody, we may not reweigh the evidence or judge the credibility of the witnesses. Instead, we consider only the evidence most favorable to the judgment and any reasonable inferences therefrom.

Julie C. v. Andrew C., 924 N.E.2d 1249, 1256 (Ind. Ct. App. 2010) (citations omitted).

[12] Appellate courts give considerable deference to the findings of the trial court in family law matters. *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940-41 (Ind. 2005). We recognize the trial judge "is in the best position to judge the facts, to get a feel for the family dynamics, to get a sense of the parents and their relationship with their children - the kind of qualities that appellate courts would be in a difficult position to assess." *Id*. Appellate decisions that modify the trial court's decision are especially disruptive in the family law setting. *Id*.

[13] To modify a child custody order, the court must find modification is in the best interest of the child and there is "a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section

8.5 of this chapter." Ind. Code § 31-17-2-21. The factors to be considered by the trial court are, in relevant part:

> (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.

Ind. Code § 31-17-2-8.

[14] The trial court entered findings of fact and conclusions of law sua sponte.

> We apply a two-tier standard of review to sua sponte findings and conclusions: whether the evidence supports the findings, and whether the findings support the judgment. Findings and conclusions will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we will neither reweigh the evidence nor assess witness credibility.

Trust No. 6011, Lake Cnty. Trust Co. v. Heil's Haven Condominiums Homeowners Ass'n, 967 N.E.2d 6, 14 (Ind. Ct. App. 2012). The trial court made 109 findings, none of which Mother challenges. Thus, we accept the trial court's findings as true. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) ("Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.").

1. Substantial Change in Circumstances

[15] Mother argues "the trial court made no findings as to which of the statutory factors the trial court found to have experienced a substantial change." (Br. of Appellant at 13.) She further asserts the bulk of the trial court's order focuses on Child's "prior behavior and/or emotional issues" that "have been known by the parties for quite some time" and thus cannot be considered a "substantial

change in circumstances." (*Id*. at 14.) However, the trial court made multiple findings regarding Child's mental health and the mental health of the parties during the pendency of the proceedings:

> 10. Mother testified [Child] exhibited rages, was out of control, and heard things that were not there while in her care. Such behavior did not occur while in Father's care.
>
> 11. During the pendency of these proceedings, [Child] struggled with suicidal ideations and attempted suicide on multiple occasions, including swallowing beads, wrapping fabric around her neck to strangle herself, and taking an overdose of her prescribed medications while in Mother's care.
>
> 12. [Child] has had to be admitted to Meadows on at least four (4) occasions because of her suicidal ideations and attempts at suicide during the pendency of these proceedings.
>
> * * * * *
>
> 37. During the pendency of these proceedings, [Child] was engaged in counseling, but her counseling was sporadic and inconsistent.
>
> 38. [Child's] counselor was switched on multiple occasions.
>
> 39. Mother canceled and/or no showed numerous counseling appointments for the [Child].
>
> 40. [Child's] counselors also canceled appointments.
>
> * * * * *

44. The joint counseling between Father and Stepmother and [Child] has not commenced. The Guardian Ad Litem advised the blame is not placed on Father, but instead placed equally on Mother and [Child's] counselor at the time, the Hamilton Center.

* * * * *

46. On June 29, 2020 during the first day of the final hearing, [Child's] nurse practitioner, Brenda Fahr, testified that she recommended that [Child] have a new psychological evaluation.

47. [Child's] new psychological evaluation is yet to occur.

48. On June 29, 2021, during the second day of the final hearing, Mother scheduled a new psychological evaluation for [Child] for September 2021.

* * * * *

64. Mother is currently in individual counseling.

* * * * *

88. The Guardian Ad Litem testified that she has concerns with Mother's history of exaggerating issues with the [Child].

89. The Guardian Ad Litem testified that based on Mother's own reports that there are concerns that Mother either committed extreme neglect of [Child] or exaggerated what transpired.

90. The Guardian Ad Litem testified that the Hamilton Center shared her concern and filed a complaint with the Department of Child Services for Mother's medical neglect of [Child].

91. The Guardian Ad Litem testified as to her concerns with Mother failing to meet the mental health needs of [Child] during the pendency of these proceedings due to no showing appointments, canceling appointments, and changing counselors.

92. The Guardian Ad Litem testified that if [Child's] belief is that she was victimized by Stepmother, then it is potentially an issue for [Child] to be left alone with Stepmother.

93. The Guardian Ad Litem testified that should it become an actual issue such that the [Child] has a meltdown, then Father would need to intervene with mental health services, just as Mother has done when [Child] has had meltdowns while in her care.

* * * * *

95. The Guardian Ad Litem testified that she is concerned that there is a narrow window to get [Child] on track with her psychological, emotional, and behavioral issues before it is too late to make a difference.

* * * * *

106. [Custody Evaluator] Dr. Szerlong testified that [Child] is complex from a mental health perspective.

107. Dr. Szerlong testified that [Child's] mental health must be the focus, yet her counseling has been interrupted more than most.

(App. Vol. II at 17, 19-21, 23, 25-27.)

[16] The trial court also made additional findings regarding domestic violence involving Mother and Bunnell:

> 51. [Child] witnessed domestic violence between Mother and her former significant other, Jesse Bunnell, on at least two (2) occasions.
>
> 52. After the first incident of domestic violence, Mother, [Child], and Mother's daughter she has with Mr. Bunnell went to a domestic violence shelter.
>
> 53. Mother communicated with Father, who was deployed to Syria at the time, after the incident, but would not tell Father the actual address of where they were located.
>
> * * * * *
>
> 59. After the first incident of domestic violence, Mother and Mr. Bunnell engaged in counseling, reconciled, and resumed cohabitating.
>
> 60. As a result of the most recent incident of domestic violence between Mother and Mr. Bunnell in February 2021, Mother pursued criminal charges against Mr. Bunnell.

(*Id.* at 21.)

[17] Finally, the trial court made findings about pending criminal charges against Mother and Bunnell:

> 55. While attempting to execute the welfare check [requested by Stepmother at Father's request following the first domestic

violence incident], the police observed an exterior security camera with wires going into the home and the smell of raw marijuana emitting from Mr. Bunnell's home, which Mother shared with him.

56. The police then obtained and executed a search warrant which led to the discovery of a glass smoking device and green plant like material on the kitchen countertop, sheets of black plastic hanging from the ceiling down to the floor in the basement, lights, hoses, amps, and seven marijuana plants, chemicals used to grow plants and other plant growing material, twenty-two (22) large bags of marijuana, nine (9) mason glass jars and one large glass jar full of marijuana, bags of plant seeds, smoking devices with burnt marijuana inside them throughout the home, marijuana on children's clothes, a breast pump with a burnt marijuana cigarette lying inside part of the machine, 12 gauge pump shotgun, and a set of digital scales with marijuana.

57. Mother testified that she moved out of the searched home approximately three (3) months prior, although Mother's personal items, including her purse with three (3) USAA debit cards in her name, and the minor children's clothes and personal effects were still inside the searched home.

58. As a result, Mother has the following criminal charges pending against her . . . of which Mr. Bunnell is a co-defendant . . .:

> A. Count 1: Indiana Code Section 35-48-4-10(A)(1)/F6: Dealing in marijuana;
>
> B. Count 2: Indiana Code Section 35-45-1-5(c)/F6: Maintaining a common nuisance;

C. Count 3: Indiana Code Section 35-48-4-11(a)(1)/MB: Possession of marijuana;

D. Count 4: Indiana Code Section 35-48-4-8.3(b)(1)/MC: Possession of paraphernalia.

* * * * *

61. Mr. Bunnell has the following criminal charges pending against him [as a result of the most recent domestic violence incident involving Mother] . . .:

A. Count 1: Indiana Code Section 35-42-2-9(c)/F6: Strangulation;

B. Count 2: Indiana Code Section 35-42-2-1.3(a)(1)/F6: Domestic battery committed in the presence of a child less than 16 years old.

62. Mother has a no contact order against Mr. Bunnell . . .

(*Id*. at 21-3.)

[18] In summary, the trial court found Child's struggles with mental health have increased in severity during the two-year pendency of these proceedings; Mother had also entered individual counseling; Mother had been the victim of domestic violence at least twice; and charges are pending against Mother and Bunnell. These findings support the trial court's conclusion that there had been a substantial change in circumstances as to warrant modification of Child's custody. *See Julie C.*, 924 N.E.2d at 1259 (substantial changes in circumstances

as set forth in factors in Indiana Code section 31-17-2-8 supported trial court's decision to modify custody); *see also McDaniel v. McDaniel*, 150 N.E.3d 282, 290 (Ind. Ct. App. 2020) (noting Mother's relationship with a person who has had "significant involvement with the legal system" was a substantial change in circumstances to warrant custody modification).

2. Child's Best Interests

[19] Regarding Child's best interests, Mother directs us to findings the trial court made that support her contention that it is in Child's best interests to remain in Mother's custody, such as:

> 15. [Child] does well academically.
>
> * * * * *
>
> 35. [Child's] allegations against Stepmother were believed to be untrue by the parties and professionals, however, [Child] believes her allegations are true.
>
> * * * * *
>
> 45. There is a concern as to whether [Child] and Stepmother should be left alone with one another for any extended period of time until the joint counseling begins and/or is successful.
>
> * * * * *
>
> 67. [Child] has family on Mother's side and Father's side in Indiana.

* * * * *

76. [Child] has no other family in North Carolina.

(App. Vol. II at 17, 19-20, 23-4.) While these findings seem to suggest placement with Mother is in Child's best interests, the trial court made other findings that support its conclusion that modification of custody is in Child's best interests:

13. [Child] attended Marlin Elementary for the 2019-2020 academic year.

* * * * *

19. [Child] has a history of going to school without weather appropriate clothing, in dirty clothing, and with an unwashed odor such that Marlin Elementary filed a complaint with the Department of Child Services.

20. [Child] had twenty-nine (29) unexcused absences, fifteen (15) additional absences, two (2) partial day absences, and four (4) out of school suspensions during the 2020-2021 academic year.

21. [Child] had more than four (4) out of school suspensions during the 2019-2020 academic year.

22. Mother allowed [Child] to be absent for an entire day of school on her counseling days, despite her counseling appointments being one (1) hour in length and often in the mid-afternoon.

23. During the pendency of these proceedings, Marlin Elementary catered to [Child's] psychological, behavioral, and emotional issues and was a stabilizing force for her.

24. During the pendency of these proceedings, the parties and the Guardian Ad Litem believed that it would be detrimental to [Child] for her to be disenrolled from Marlin Elementary.

* * * * *

27. [Child's] attendance during the 2020-2021 academic year rose to the level of truancy and [Child] risked losing her transfer to Marlin Elementary in April 2021, at which time Mother unilaterally disenrolled [Child].

* * * * *

30. Mother unilaterally decided to homeschool [Child] for the remainder of the 2020-2021 academic year.

31. Mother unilaterally decided [Child's] homeschool coursework for the remainder of the 2020-2021 academic year.

* * * * *

50. Mother is self-employed as a body piercer in Bloomington, Indiana.

* * * * *

66. Mother may relocate to be near [Child] should Father be awarded primary physical custody.

* * * * *

75. Father is relocating to Ft. Bragg in North Carolina to serve in his new position as an instructor for the United States' [sic] Army.

* * * * *

77. Father is leaving Ft. Campbell on July 7, 2021 and his first day as an instructor is July 10, 2021.

78. As an instructor, Father will be in a non-deployable position for three (3) years, which may be able to be extended for one (1) additional year.

79. Father will maintain a traditional work schedule of Monday through Friday from 9:00 a.m. to 5:00 p.m., although his workday can and may end in the early afternoon depending on the needs of [Child].

80. It would be an exception that Father would have to work on weekends.

81. It would be an exception that Father would have to be away from Ft. Bragg for training, as he does not require additional training for his position and much of the Army's training occurs at Ft. Bragg.

82. Father testified what school and daycare [Child] would attend as well as the mental health resources available to [Child] should he be awarded primary physical custody.

* * * * *

> 96. The Guardian Ad Litem recommends that should Father have a traditional work schedule such that he is able to tend to [Child's] daily needs (i.e., homework, meals, bedtime), that Father should be awarded primary physical custody.

(*Id*. at 17-9, 21, 23-6.)

[20] Mother requests that we give more credence to the trial court's findings suggesting that it would be in Child's best interests to be in Mother's custody. However, the trial court's findings regarding Mother's unilateral decisions about Child's education and Father's work schedule, which allows for him to create a more stable environment, along with the trial court's other findings about the substantial changes in circumstances such as Child's mental health and Mother's criminal charges, support the trial court's conclusion that it was in the Child's best interests for Child's custody to be modified to Father. *See Bettencourt v. Ford*, 822 N.E.2d 989, 999-1000 (Ind. Ct. App. 2005) (holding modification of custody was in child's best interests based on a substantial change in circumstances, including Mother's repeated arrests, and Father's willingness to rearrange his schedule to accommodate child's needs).

Conclusion

[21] The trial court's findings support its conclusions that there existed a substantial change in the circumstances as set forth in Indiana Code section 31-17-2-8 and that modification of custody was in Child's best interests. Accordingly, we affirm the trial court's decision.

[22] Affirmed.

Brown, J., and Pyle, J., concur.