

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.

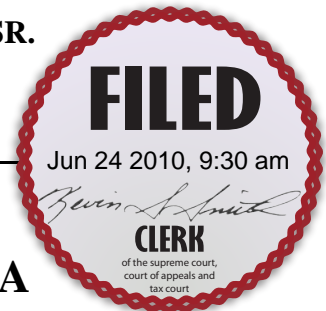
ATTORNEYS FOR APPELLANT:

ANDREW Z. SOSHICK
JAIMIE L. ZIBROWSKI
Baker & Daniels LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

MICHAEL C. KEATING
YVETTE M. LAPLANTE
Keating & LaPlante, LLP
Evansville, Indiana

ROBERT E. ZOSS, SR.
Bob Zoss Law Office
Evansville, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

K.K.B.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 26A05-0910-CV-595
)	
R.K.B.,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable Jeffrey F. Meade, Judge
Cause No. 26C01-0605-DR-64

June 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

K.K.B. (“Mother”) appeals from the dissolution court’s Amended Order Entry awarding physical custody of her three minor children to R.K.B. (“Father”) in the parties’ dissolution action. Mother presents two issues for review:

1. Whether the trial court’s sua sponte findings are supported by the evidence and whether the conclusions thereon are supported by the findings.
2. Whether the trial court erred by failing to consider each of the factors enumerated in Indiana Code Section 31-17-2-8 when it awarded custody of the children to Father.

We conclude that the evidence supports all but one of the findings and that Mother has not shown that the dissolution court failed to consider the factors listed in Section 31-17-2-8. But we also conclude that the evidence does not support the court’s finding regarding Mother’s investigation of one child’s allegation of sexual abuse by a cousin. As a result, we affirm in part, reverse in part, and remand.

FACTS AND PROCEDURAL HISTORY

Mother and Father were married on October 29, 1995. Three children were born to the marriage: L.B., born in 2001; S.B., born in 2002; and H.B., born in 2004 (collectively “the children”). After L.B.’s birth in 2001, the parties bought a house in Newburgh. Mother, a nurse, began working at Deaconess Hospital in 2001 or 2002. Before H.B. was born, Father stayed home with L.B. and S.B. while Mother worked. In 2002, Father started working at Toyota, though he took time off in 2004 during Mother’s pregnancy with H.B. After S.B.’s birth, Mother began working part-time, on weekends only, to stay home and care for the children weekdays while Father worked.

The parties began to struggle financially after losing the tenant of a rental house they owned. Father asked Mother to increase her work hours, but Mother did not want to do so unless she lived closer to her family, who lived in Danville. As a result, both parties began to look for work near Danville. In August 2005, Mother left her job at Deaconess Hospital and began working at Clarian near Danville.¹ She worked weekends at Clarian but lived at home with Father and the children during the week. Although Father applied for automotive plant jobs in and near the Danville area, he was not able to obtain employment similar to his job at Toyota. As a result, he decided not to move to the Danville area. By the time Father had decided not to relocate, Deaconess did not have any job openings for which Mother could apply so that she could live again in Newburgh.

Mother's extended family in the Danville area included her father, a twin sister D.L, and another sister S.M. D.L. has three sons, and S.M. has a son and a daughter. Allegations had surfaced regarding sexual abuse perpetrated by two of D.L.'s sons. One allegation involved one of D.L.'s sons ("Son 1") either putting his mouth on the private parts of S.M.'s daughter or asking S.M.'s daughter to touch his private parts. In another allegation, Son 1 and S.M.'s son were watching a movie while sitting under a blanket. When D.L. checked on the boys, she lifted the blanket and saw that each had his hands on the other boy's clothed private areas. D.L. was babysitting in both of these instances. In a third allegation, Mother's mother once observed Son 1 on his knees in front of S.M.'s son, who had his pants down. And another of D.L.'s sons ("Son 2") was alleged to have

¹ The parties do not direct us to evidence in the record showing which Clarian facility employed Mother.

once been in a closet with another boy, M.H., and told him that he wanted to “sex [him] up.” Appellee’s Brief at 3. Father testified that Son 2 had been the victim of molestation at the home of his great aunt, R.H., when one of three boys humped him and said “I’m going to make you a girl.” Transcript at 137. Mother and Father were aware of these sexual molestation allegations and, therefore, agreed not to let D.L. babysit for their children.

On Saturday, April 22, 2006, Father heard S.B. crying in her room. When Father asked S.B. what was wrong, she replied, “I’m frustrated. My cousins hurted [sic] me and make me bled [sic].” *Id.* at 148. S.B. showed Father how her cousins “humped” her. Father relayed the report over the phone to Mother, who was working at Clarian at the time. When Mother returned home on Monday following her weekend shift at Clarian, Father made an appointment for S.B. to see a counselor, Lindy Duesner. Mother took S.B. to the counselor on April 27, the first available appointment. Ms. Duesner recommended a pediatric examination, so Mother took S.B. for an examination by Dr. Robin Voyles within a few days of the appointment with Ms. Duesner. Dr. Voyles found no evidence of trauma. A CPS investigation conducted in Hendricks County concluded that the allegation was unsubstantiated.²

On May 6, while Father was home with the children and Mother was working at Clarian in central Indiana, S.B. fell off her bunk bed and hurt her leg. Father iced the leg and encouraged S.B. to stay off of it. Mother returned home after her weekend working, and, on May 8, she took S.B. to the emergency room. The doctor there found no broken

² Neither Dr. Voyles’ medical records regarding this examination nor the CPS report is included in the record on appeal.

bones. On May 12, Mother took S.B. to see Dr. Michael L. Kramer at Ortho Indy in Danville. At that time, S.B. refused to put weight on her leg, but no fractures were evident on her x-rays. On May 19, S.B. saw Dr. Kramer for a follow-up appointment. Dr. Kramer noted that S.B. had a “minimal limp” and opined, “I would guess she has an occult fracture of her tibia.” Appellant’s App. at 36. He recommended no treatment, indicating his expectation that the limp should disappear completely in a couple of weeks.

Meanwhile, while Father was at work on May 8, Mother had moved with the children to a women’s shelter in Danville. Mother, her father, and one of her sisters had driven to Newburgh and packed items to take to the shelter. Mother had left no note for Father, but shelter personnel had stated that they would call him. On May 9, someone from the shelter had called Father, had identified herself as a friend of Mother, and had told Father that the children were safe. While at the shelter, Mother filed a petition for a protective order, which was granted. Due to Mother’s move to the shelter, Father had no contact with the children for nineteen days.

On May 12, Father filed a petition for dissolution and a petition seeking maintenance, support, and custody of the children. On May 19, Mother filed a cross petition for dissolution and requested maintenance, support, custody of the children, and possession of the marital residence. On May 22, the parties appeared with counsel and submitted an agreement regarding Memorial Day parenting time. Father also filed his notice of his intention to seek custody of the children. On November 29, the parties appeared with counsel and entered into an agreement regarding a temporary parenting time schedule. On March 27, 2007, Mother requested a final hearing and the

appointment of a guardian ad litem (“GAL”). The court appointed Kathleen Johnson as guardian ad litem.

On August 1, the court entered a final decree of dissolution of marriage (“Decree”). The Decree dissolved the parties’ marriage and resolved their property issues. On January 16, 2008, the guardian ad litem filed her report. On various dates between July 14, 2008, and September 9, 2009, the court held a hearing on child issues. Following the hearing, the parties filed their respective proposed entries as requested by the court. On October 9, the court entered an Order Entry on child issues, awarding primary physical custody of the children to Father, setting out a parenting time schedule for Mother, and setting the child support amount to be paid by Mother.³ The Order Entry includes the following sua sponte findings by the court:

FACTUAL CONSIDERATIONS: It is noted that neither party requested the Court find the facts specifically and state its conclusions thereon. However, the Court feels compelled to highlight a few of the many factors considered:

First, the Mother’s removal and taking of the Children to a shelter comes to mind. This was done after one of the Children had made allegations of sexual abuse by one or more of her cousins on the Mother’s side. The Mother, without notice to the Father, and no notice of where she and the Children were, took the Children while he was at work, and moved to a shelter near her home town at or near Danville, Indiana. For approximately twenty (20) days the Father did not get to see the Children, and more importantly, the Children did not get to see their Father. The Mother admitted the Father did not physically abuse her or their Children.

Coupled with this was what Father’s counsel described as a “bogus” Ex Parte Protection Order the Mother procured against the Father. The Court notes that while the Order itself was legitimate since signed by a

³ The court subsequently issued an Amended Order Entry on October 19, 2009, which corrected the child support amount. Because the amendment did not materially alter the order with respect to the issues raised on appeal, for simplicity our references to the “Order Entry” include the Amended Order Entry.

judge, that much of the information used in obtaining the Order was in fact, bogus. Specifically, the Mother in her petition for the protection order alleged the Father had left “threatening cell phone calls[.]” The Court would submit that any parent, upon returning home from work to find that their [sic] spouse had packed up and left with their three little girls, might perchance have several questions for that spouse. Perhaps, “where are you?”; “what in the world is going on.”; “where are the girls?”; “are they okay?”, just to name a few. What the Mother put the Children through by taking them away from their Father in this manner and getting an order preventing him from contacting them is inexplicable and disturbing.

The Mother’s obvious disbelief of her daughter’s allegations is another point that comes to mind. It is clear to this Court that the Mother did not want to believe what her daughter had alleged as it concerns inappropriate sexual activity of children in her Mother’s family—activity that has not been sufficiently recognized or addressed, and a family that the Mother was wanting to, and did, move closer to.

With regard to the daughter’s allegations is the fact that the Mother obviously never really investigated the statements to see if they could be true. The Mother, a nurse no less, simply stated that a physician had inspected the child and had observed no signs of sexual abuse and that was good enough for her. However, questioning by the Court of a witness revealed that the child had not alleged vaginal penetration (that might have left evidence), but anal penetration (that would not have left evidence), something the Court believes a nurse would have known, should have known, or could have known with a little effort.

Also curious was the Mother’s response to this testimony—absolutely no observable reaction. The Father’s response—he immediately broke down crying and struggled to regain composure as the hearing continued.

The Court could go on and on addressing a considerable number of factors that favor the Father in this case, but will suffice to list one more, that is, the number and types of extracurricular activities the Mother has the Children involved in. No consideration whatsoever was given for Father’s parenting time. One example would be the Mother signing all three little girls up for cheerleading through a youth football league, which by the way, was not through the schools. What the Mother obviously does not, or chooses not, to understand is that she was setting the Father up to fail. In short, young Children should never be forced to choose between an activity and time with a parent. Parent[s] should beware [sic] of sacrificing their children’s interests on the alter [sic] of their vindictiveness.

In sum, the Mother, with no notice or explanation, stole the Children away, then used a “bogus” protection order to keep the Father away. Next, she sought to press the advantage of having the Children with her by getting them entrenched in her hometown area and immersed in activities that filled their time and encroached on their time with their Father. The Father testified that if he were the primary residential parent he would not enroll the children in any extracurricular activities that in any way compromised the Children’s time with their Mother. This Court believes him.

Appellant’s App. at 18-20. Mother filed a notice of appeal and a motion to stay pending appeal. The court denied Mother’s motion to stay.

DISCUSSION AND DECISION

Mother contends that the dissolution court abused its discretion when it awarded primary physical custody of the children to Father. Child custody determinations lie within the sound discretion of the trial court. Klotz v. Klotz, 747 N.E.2d 1187, 1189 (Ind. Ct. App. 2001). We will reverse the trial court’s decision only if it manifestly abused its discretion. Id. An abuse of discretion occurred if the trial court’s decision was clearly against the logic and effect of the facts and circumstances, or reasonable inferences therefrom, that were before the court. Id.

Issue One: Special Findings

Mother first contends that the evidence does not support the findings of fact made by the dissolution court in the Order Entry. We observe that the findings are found at the end of the Order Entry, in which the court determined physical and legal custody, parenting time, child support, as well as providing for access between each parent and the children, a process for conflict resolution, counseling for the children, health insurance, mortgage payments, and attorney’s fees. The Order Entry does not specify to which of these items the special findings apply, and arguably the findings could apply to more than

just the physical custody determination. But Mother's arguments on appeal challenge the dissolution court's findings solely with respect to the award of physical custody to Father. And the subject matter of the findings relate directly to child issues. Thus, we will limit our review of the findings and the record to the custody determination.

In determining custody, the court was required to consider the factors listed in Indiana Code Section 31-17-2-8. That statute provides:

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) [IC 31-17-2-8.5(b)] of this chapter.

Ind. Code § 31-17-2-8. Here, the dissolution court made findings of fact and conclusions sua sponte. Findings of fact entered by the trial court sua sponte

control only as to the issues they cover, while a general judgment standard applies to any issue upon which the trial court has made no findings. In reviewing the judgment, this court must determine whether the evidence supports the findings and whether the findings, in turn, support the conclusion and judgment. We will reverse a judgment only when it is shown to be clearly erroneous, i.e., when the judgment is unsupported by the findings of fact and conclusions entered on the findings. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. In determining the validity of the findings or judgment, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom, and we will not reweigh the evidence or assess the credibility of witnesses. In the case of a general judgment, a general judgment may be affirmed on any theory supported by the evidence presented at trial.

Borovilos Rest. Corp. II v. Lutheran Univ. Ass'n, 920 N.E.2d 759, 763 (Ind. Ct. App. 2010) (quoting Coffman v. Olson & Co., 906 N.E.2d 201, 206 (Ind. Ct. App. 2009) (citation omitted), trans. denied).

Mother contends that the evidence does not support the trial court's findings and that the findings do not support the award of primary physical custody to Father. She takes issue with each of the factual findings made by the dissolution court. We address in turn each of Mother's contentions regarding the dissolution court's factual findings.

Shelter

First, Mother challenges the dissolution court's finding regarding her relocation with the children to a women's shelter. The court found that Mother took the children to a women's shelter without prior notice to Father and that she admitted that Father had not physically abused her or the children. Mother does not deny either of these findings. Instead, she argues that whether Father had physically abused her or the children is "not

the gravamen of a custody analysis.” Appellant’s Brief at 33. While we agree that the lack of physical abuse is not the gravamen of a custody determination, that is not to say that the lack of physical abuse by Father is irrelevant to the court’s custody determination.

By referencing Mother’s admission that Father had not physically abused the family, the court in essence found her reason for going to the shelter, fear of Father, not credible. Still, Mother contends that there is no evidence that the dissolution court “appropriately weighed” the factor of domestic violence in determining custody. See Ind. Code § 31-17-2-8(7). She argues further that the definition of “domestic violence” in Indiana Code Section 31-9-2-42 is not limited to actual physical abuse. But Mother has not shown that the evidence in the record supports a finding of domestic or family violence under any of the definitions under that statute.⁴ Thus, Mother is merely requesting that we reweigh the evidence with regard to the dissolution court’s disbelief of her reason for moving herself and the children to the shelter. This we cannot do. See Borovilos Rest. Corp. II, 920 N.E.2d at 763.

Mother also points to the court’s finding that she gave no prior or subsequent notice to Father of her move to the shelter. Specifically, she argues that she was following the shelter’s advice on this point, moving to the shelter after she had “sought professional help in leaving what she thought was an abusive relationship.” Appellant’s

⁴ Indiana Code Section 31-9-2-42 defines “domestic or family violence” to mean any one of the following: attempting to cause, threatening to cause, or causing physical harm to another family or household member without legal justification; placing a family or household member in fear of physical harm without legal justification; causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress; or beating, torturing, mutilating, or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member. Mother does not point to any evidence in the record that would support any of these definitions.

Brief at 34-35. She also notes that the shelter contacted Father to inform him that the children were safe. Again, these points go to whether the court believed Mother's reason for moving herself and the children to the shelter, and we cannot reweigh that evidence. See Borovilos Rest. Corp. II, 920 N.E.2d at 763.

We emphasize that Mother should not be penalized or disparaged for having taken herself and her children to a women's shelter. Fear, real or imagined; confusion; apprehension; and uncertainty often accompany the break-up of a home and the dissolution of marriage. Mother may have sought refuge in the women's shelter for any number of legitimate reasons that do not implicate the statutory definition of "domestic violence." Indeed, not every abusive relationship may amount to domestic violence. Nevertheless, the record does not disclose the grounds Mother asserted to qualify her and the children for admission to the shelter. Thus, there was a failure of proof to the extent that Mother relied on her retreat to a shelter as evidence to bolster her custody claim. Whatever Mother's reasons, the evidence proffered was insufficient to convince the dissolution court that Mother moved herself and the children to the shelter because of actual or feared abuse by Father in any form. On appeal, we cannot reweigh that evidence.

Ex Parte Protective Order

Mother next challenges the trial court's findings regarding the protective order entered by the Hendricks Superior Court against Father. Specifically, she contends that the evidence does not support the court's finding that the bases alleged for the protective order were "bogus." Appellant's App. at 19. She also notes that the petition for a protective order and the protective order itself were not admitted into evidence in the

dissolution proceedings. But Father directs us to his testimony in which he disputed the allegations in the petition for a protective order that he had called threatening Mother. Thus, the record does contain some evidence regarding the allegations in the petition. To the extent the trial court found Father's testimony more credible than Mother's on this point, we will not reweigh that evidence. See Borovilos Rest. Corp. II, 920 N.E.2d at 763.

Mother also argues that the dissolution court "neglected to illustrate the falsity of Mother's allegations" in the petition for a protective order. Appellant's Brief at 37. Mother is correct that the Order Entry does not specify the exact nature of the falsities found by the court. But again, there is indeed some evidence in the record, through Father's testimony, regarding the allegations in Mother's petition. The dissolution court was in the best position to weigh that evidence. See id.

Finally, Mother argues that this finding is in error because the court did not state "how the finding is related to the best interests of the children." Appellant's Brief at 38. She also maintains that, given the lack of any relevance of the protective order to the custody determination, the court was "punishing Mother for filing a protective order." Id. Mother is correct that the court did not specify that its finding regarding the protective order weighed in favor of an award of physical custody to Father as being in the best interests of the children. However, earlier in the Order Entry the court had already made a general finding that awarding physical custody to Father was in the children's best interests. See Appellant's App. at 15. Mother has not cited to any law in support of her contention that the court was required to specify how each particular factual finding related to the best interest of the children. Thus, Mother's argument in this regard must fail.

Extracurricular Activities

Mother further contends that the factual finding regarding the children's extracurricular activities is also in error. On this point, the dissolution court made a finding regarding

the number and type of extracurricular activities the Mother has the Children involved in. No consideration whatsoever was given for Father's parenting time. One example would be the Mother signing all three little girls up for cheerleading through a youth football league, which by the way, was not through the schools. What the Mother obviously does not, or chooses not, to understand is that she was setting the Father up to fail. In short, young Children should never be forced to choose between an activity and time with a parent. Parents should beware [sic] of sacrificing their children's interests on the alter [sic] of their vindictiveness.

Appellant's App. at 20.

Mother argues that she never used the children's extracurricular activities to prevent Father's parenting time. That argument misses the point made by the dissolution court, namely, that having the children involved in many extracurricular activities would make them conflicted about visitation with Father if it would cause them to miss those activities. Moreover, the import of the finding is that the dissolution court found that Mother's enrollment of the children in many extracurricular activities would indeed interfere with Father's parenting time, either by upsetting the children or making Father change his plans to accommodate the children's activities. Even if Mother's conduct in this regard was unintentional, the court found such a mindset to be contrary to the interest of having the children spend time with Father. While we may not have made the same finding based on our review of the evidence, again, we are not in a position to reweigh that evidence. See Borovilos Rest. Corp. II, 920 N.E.2d at 763.

Mother also argues that the children's involvement in extracurricular activities should weigh in her favor because it shows the children's adjustment to the community. That factor is one that the court was required to consider in determining custody. See Ind. Code § 31-17-2-8(5)(C). But, again, this argument amounts to a request that we reweigh the evidence, as is Mother's argument that L.B.'s teacher's praise of L.B.'s involvement in other activities should weigh in favor of awarding custody to Mother. This we will not do. See Borovilos Rest. Corp. II, 920 N.E.2d at 763.

Lastly, Mother maintains that the parties' "ability to communicate and discuss the events is irrelevant to the physical custody of the children and ignores the fact that neither party requested sole custody." Appellant's Brief at 39-40. We cannot agree. Section 31-17-2-8 provides that the "court shall consider all relevant factors, including" the eight factors listed in that statute. By its plain language the statute does not provide an exhaustive list of the factors the court must consider in determining custody. Moreover, the parties' ability to communicate and work together is indeed relevant to the court's determination of custody. See, e.g., Swadner v. Swadner, 897 N.E.2d 966, 974 (Ind. Ct. App. 2008) (holding that whether the parties can work and communicate together to raise the children is relevant in determining whether to award joint legal custody).

Similarly, an award of physical custody for one parent, with parenting time for the other, would require the court to consider how the parents work and communicate regarding the children if there were evidence of problems in those respects. Evidence regarding the parties' ability to work and communicate together is relevant to the award of physical custody insofar as it relates to each parent's decision to involve the children in extracurricular activities. Mother's argument to the contrary must fail.

Sexual Abuse Allegation

Finally, Mother disputes the dissolution court's findings regarding S.B.'s allegation of sexual abuse by her male cousin(s).⁵ In particular, Mother points to the findings that she did not want to believe S.B.'s allegation, that she did not adequately investigate the allegation, and that the inappropriate sexual activity in Mother's family "has not been sufficiently recognized or addressed." Appellant's App. at 19. Mother argues that the evidence does not support these findings.

We first consider the court's finding that Mother "did not want to believe what her daughter had alleged as it concerned inappropriate sexual activity of children in her Mother's family" Id. Given the court's further finding that Mother did not adequately investigate S.B.'s claim, we construe the finding about Mother's disbelief to mean that Mother ignored the possibility that S.B.'s accusation could be true. By challenging this finding and the finding that Mother's family has not sufficiently recognized or addressed the sexual abuse allegations against Mother's nephews, Mother again asks us to reweigh the evidence. We will not. See Borovilos Rest. Corp. II, 920 N.E.2d at 763.

In considering the court's finding that Mother did not adequately investigate S.B.'s allegation, we look to the language used by the dissolution court:

The Mother, a nurse no less, simply stated that a physician had inspected the child and had observed no signs of sexual abuse and that was good enough for her. However, questioning by the Court of a witness revealed that the child had not alleged vaginal penetration (that might have left evidence), but anal penetration (that would not have left evidence),

⁵ The record is not clear whether S.B. alleged that one or more than one of her cousins sexually abused her.

something the Court believes a nurse would have known, should have known, or could have known with a little effort.

Appellant's App. at 19. Mother points out that, following S.B.'s allegation, Father scheduled the first available appointment for S.B. to see a counselor, and Mother took S.B. to that appointment. There the counselor recommended a physical exam of S.B. Mother then scheduled the first available appointment with S.B.'s pediatrician. According to testimony by both Mother and Father, the pediatrician found no trauma or other indication of sexual abuse in that exam.⁶ The dissolution court makes much of the exact type of penetration that S.B. alleged and the nature of injuries that would have been sustained by such abuse, but neither party points us to any evidence in the record to support the dissolution court's determination on this issue. On the evidence before us, we cannot say that Mother "failed to investigate" when she relied on the pediatrician's finding.

The evidence shows that Mother immediately obtained therapeutic treatment for S.B. and a physical exam of the child. The evidence also shows that Mother continued S.B.'s therapy appointments with Ms. Duesner. And when Mother later sought family therapy with the children, she informed that therapist of S.B.'s allegation as well. We cannot say that Mother's reliance on the pediatrician's finding of no trauma constitutes a failure to investigate. Nor can we say that the evidence, showing that Mother immediately took S.B. to a therapist and continued to address the allegation in therapy, supports the dissolution court's finding that Mother "never really investigated" the

⁶ The parties do not indicate whether the pediatrician's records were admitted into evidence at the dissolution court, and those records are not included in the record on appeal.

allegation. Appellant's App. at 19. Thus, we conclude that the evidence does not support the trial court's findings on these points.

Having concluded that the evidence does not support the finding that Mother failed to adequately investigate S.B.'s allegation of sexual abuse, we are left to determine whether the remaining findings and other evidence in the record supports the trial court's conclusion that awarding custody of the children to Father is in their best interests. But to do so would require that we assign weight in the first instance to each of the findings, which we cannot do. See Borovilos Rest. Corp. II, 920 N.E.2d at 763. Thus, we reverse the court's finding that Mother did not adequately investigate S.B.'s allegation of sexual abuse. We further remand for the dissolution court to reconsider the remaining findings and the other evidence from the hearing on final custody in order to determine what physical custody order is in the children's best interests.

Issue Two: Statutory Factors

Mother also contends that the dissolution court did not consider all of the factors listed in Indiana Code Section 31-17-2-8 in deciding custody of the children.⁷ "The court shall determine custody and enter a custody order in accordance with the best interests of the child." Ind. Code § 31-17-2-8. This statute further requires that the court consider all relevant factors including eight factors enumerated. Id.

The statute does not require the trial court to make specific findings unless specific findings are requested pursuant to Trial Rule 52(A). Hegerfeld v. Hegerfeld, 555 N.E.2d

⁷ Mother asserts several times that the dissolution court did not consider all of the factors in Indiana Code Section 31-17-2-8 in the context of her argument regarding the court's special findings. Mother did not elaborate on her assertion in those instances, and we have already considered her argument that the evidence does not support the findings and the findings do not support the judgment.

853, 856 (Ind. Ct. App. 1990). If specific findings are not requested, we reverse the award of custody only if that determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences to be drawn therefrom. Id. Neither Mother nor Father requested specific findings; therefore, it was unnecessary for the dissolution court to make specific findings. But, again, those special findings control only as to the issues they cover, while a general judgment standard applies to any issue upon which the trial court has made no findings. Borovilos Rest. Corp. II, 920 N.E.2d at 763.

Following her argument regarding the special findings, Mother next argues that “[a]ll other best interest factors required to be considered by the trial court either weigh in favor of Mother having primary physical custody of the children or are neutral.” Appellant’s Brief at 40. Specifically, Mother points to the following evidence: that the only recommendation from a neutral third party, the court-appointed guardian ad litem, was for Mother to have primary physical custody; that the “unsubstantiated [sic] evidence” established that the children were well adjusted to their community, school, and home with Mother, id. at 41; that the only evidence about the children’s wishes was that they wanted to live with Mother; and that the children had good relationships and interacted well with Mother. None of these points show a deficiency in the court’s consideration of the statutory factors. Instead, Mother argues that the court improperly weighed the evidence. Again, we will not reweigh the evidence on appeal. See Borovilos Rest. Corp. II, 920 N.E.2d at 763. Mother has not shown that the court failed to consider the statutory factors in Section 31-17-2-8.

Conclusion

Mother has not demonstrated that the trial court did not comply with the statute. Mother merely contends that the trial court should have weighed the evidence in her favor, a request we cannot oblige. We have also found that all but one of the dissolution court's special findings are supported by the evidence. However, we conclude that the finding that Mother did not adequately investigate S.B.'s allegation of sexual abuse is not supported by the evidence. We cannot say with confidence that the trial court would have awarded primary physical custody of the children to Father absent that finding. As such, we reverse that finding and remand for the dissolution court to reconsider the remaining findings and the other evidence from the hearing on final custody in order to determine what physical custody order is in the children's best interests, or, if no change to the custody award is indicated, to so state.

Affirmed in part, reversed in part, and remanded with instructions.

VAIDIK, J., and BROWN, J., concur.