ATTORNEY FOR APPELLANT:

**SHANNON L. ROBINSON**
Kelley, Belcher & Brown
Bloomington, Indiana

ATTORNEY FOR APPELLEE:

**FREMONT O. PICKETT**
Shoals, Indiana



# IN THE COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| K.W., | ) | |
| | ) | |
| Appellant-Petitioner, | ) | |
| | ) | |
| vs. | ) | No. 14A01-0911-CV-542 |
| | ) | |
| L.C., | ) | |
| | ) | |
| Appellee-Respondent. | ) | |

APPEAL FROM THE DAVIESS CIRCUIT COURT
The Honorable Jim R. Osborne, Special Judge
Cause No. 14C01-0204-GU-12

**July 16, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

K.W. ("Father") appeals the trial court's denial of his petition to terminate guardianship following a hearing. Father presents three issues for our review:

1. Whether the trial court placed the burden of proof on L.C. ("Guardian") to overcome the presumption in favor of granting custody of Father's son D.W. to Father by clear and convincing evidence.

2. Whether the evidence supports the trial court's determination that Guardian shall retain custody of D.W.

3. Whether the trial court abused its discretion in awarding parenting time to Father.

We affirm.

## FACTS AND PROCEDURAL HISTORY

D.W. was born September 12, 1999, to Father and E.C. ("Mother"), who were not married. Father and Mother were abusing drugs,[1] in and out of jail, and unable to care for D.W. Accordingly, D.W. went to live with his maternal grandmother, Guardian, in August 2002. After Guardian and D.W.'s paternal grandmother, N.W., both sought legal guardianship of D.W., the trial court appointed a guardian ad litem ("GAL") and ordered a custody study. The family case manager and child protective services supervisor who completed that study concluded that Guardian should have custody of D.W.

Guardian, N.W., and the GAL submitted an agreed entry to the trial court, whereby Guardian was appointed as guardian of D.W. and N.W. was awarded visitation with D.W. The agreed entry also provided the following with respect to Father:

[1] Father admits to previously being addicted to methamphetamine, but reports no drug use since his release from prison in December 2005.

a. He shall have no visitation with [D.W.] except in therapeutic settings until a counselor provides a written recommendation to the contrary.

b. He shall have no telephone contact with [D.W.] until such time as a counselor recommends same in writing. He shall have no telephone contact with [D.W.] while [D.W.] is at the home of [J.P.[2]].

c. Upon his release from the Martin County Jail, he shall secure residential placement at a residence other than [N.W.]'s residence.

d. He shall obtain employment.

e. He shall attend parenting classes, which shall include, at a minimum, the Parents Forever class, or Children Cope with Divorce class; and he shall pay the costs of attendance for same before he has any supervised contact with [D.W.] He shall provide written proof to the Court and the Guardian herein of his completion of same.

f. He shall attend all substance abuse counseling sessions as ordered by the Court pursuant to the terms and conditions of his probation.

g. He shall submit to random drug screens at the request of the Guardian and at the request of any Probation Officer.

h. He shall be given a name of a children's family counselor from both [N.W.] and [Guardian] and he shall have the right to choose from those two in selecting a counselor to meet with him and [D.W.] He shall have weekly counseling sessions, or at such times recommended by said counselor, at his expense. He shall be transported to said counseling sessions outside the presence of [N.W.] and [D.W.] until such time as the counselor recommends otherwise in writing. These terms and conditions shall all apply until alternate recommendations are made in writing by said counselor and filed with the Court and the Guardian.

Appellant's App. at 37. The trial court approved the agreed entry on March 15, 2004.

In the meantime, in February 2004, Father was released from jail, and he began living in a residence next door to N.W. Father began attending parenting classes and underwent counseling in compliance with the trial court's order. And on March 31,

[2] The parties do not explain J.P.'s relationship with D.W., but J.P. was awarded visitation with D.W.

2004, the GAL filed a notice of compliance with the trial court. Father visited with D.W. whenever N.W. had visitation with D.W., which was three weekends of each month during the school year and every third full week during the summer. Father wrote a letter to the trial court seeking visitation with D.W., but the court did not respond to that request. At some point, Father attempted suicide by cutting his wrists while at N.W.'s house, and D.W. came upon the scene and "saw the blood[.]" Transcript at 37.

In 2005, Father was convicted of driving with a suspended driver's license and possession of paraphernalia, and he was incarcerated from October to December. Upon his release, Father was placed on probation for a term of three years. One of the conditions of his probation was regular drug screens. Father passed each of those screens, and he did not otherwise violate the terms of his probation.

Father has had steady employment since December 2005, and he bought and remodeled a home. Father married L.W., who has two minor children from a previous relationship. Father has paid child support for D.W. since 2004, and he is not currently in arrears. Father began having unsupervised visitation with D.W. in 2007. In addition to his consistent visitation with D.W. since 2004, both supervised and unsupervised, Father has attended D.W.'s sporting events and school programs.

In February 2009, Father discussed with Guardian the possibility of terminating her guardianship of D.W. so that D.W. could live with Father. Guardian expressed her desire to maintain custody of D.W., and thereafter, Guardian disallowed contact between Father and D.W. Accordingly, on February 27, 2009, Father filed his petition to terminate guardianship. Following a hearing and an in camera interview with D.W., the

trial court denied that petition. But the trial court granted Father limited visitation with D.W. This appeal ensued.

## DISCUSSION AND DECISION

### Issue One: Burden of Proof

Father first contends that the trial court "applied an incorrect standard of law" in its ruling on Father's petition. In particular, Father maintains that the trial court improperly "plac[ed] the burden of proof upon the Father" to show a change in circumstances such that termination was in D.W.'s best interests. Brief of Appellant at 17. We cannot agree.

Our Supreme Court has recently addressed this very issue and set out the applicable law as follows:

> We review custody modifications for abuse of discretion with a "preference for granting latitude and deference to our trial judges in family law matters." Also, as with all cases tried by the court without a jury, the trial judge in this case entered special findings and conclusions thereon pursuant to Indiana Trial Rule 52(A). In reviewing findings made pursuant to Rule 52, we first determine whether the evidence supports the findings and then whether findings support the judgment. On appeal we "shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. A judgment is also clearly erroneous when the trial court applies the wrong legal standard to properly found facts.
>
> * * *
>
> The central issues in this case are: (1) what standard a trial court should apply when ruling on a parent's petition to modify custody of a child who is already in the custody of a third party, and (2) what role, if any, the presumption in favor of the natural parent plays in a modification proceeding. To begin, Indiana Code Section 31-14-13-6 provides in pertinent part: "The court may not modify a child custody order unless: (1)

modification is in the best interests of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 2 and, if applicable, section 2.5 of this chapter."[4]

FN4: The section 2 factors are:

(1) The age and sex of the child.
(2) The wishes of the child's 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 parents;
    (B) the child's siblings; and
    (C) any other person who may significantly affect the child's best interest.
(5) The child's adjustment to home, school, and 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 2.5(b) of this chapter.

Ind. Code Ann. § 31-14-13-2 (West 2006).

The section 2.5 factors are:

(1) The wishes of the child's de facto custodian.
(2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
(3) The intent of the child's parent in placing the child with the de facto custodian.
(4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent seeking custody to:
    (A) seek employment;
    (B) work; or
    (C) attend school.

Ind. Code Ann. § 31-14-13-2.5 (West 2006).

* * *

This Court last addressed the circumstances under which custody of a child may be placed with a party other than a natural parent in In re Guardianship of B.H., 770 N.E.2d 283 (Ind. 2002). B.H. involved an initial custody determination between a father and a stepfather, shortly after the death of the children's mother, who had previously been awarded custody of the children. The stepfather sought and obtained an emergency order appointing him temporary guardian of the children immediately after the children's mother died. Only weeks after the stepfather was appointed guardian, the children's father petitioned to terminate the guardianship and the stepfather cross-petitioned for permanent guardianship.

In upholding the trial court's award of custody to the stepfather, this Court declared:

> [B]efore placing a child in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement. The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child. The presumption will not be overcome merely because "a third party could provide the better things in life for the child." In a proceeding to determine whether to place a child with a person other than the natural parent, evidence establishing the natural parent's unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would of course be important, but the trial court is not limited to these criteria. The issue is not merely the "fault" of the natural parent. Rather, it is whether the important and strong presumption that a child's interests are best served by placement with the natural parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person.

Id. at 287 (citations omitted). As recounted above, the trial court cited the presumption that a natural parent should have custody of a child (the parental presumption). Then, citing Hendrickson v. Binkley, 161 Ind. App. 388, 316 N.E.2d 376 (1974), the trial court declared that to overcome the presumption, a third party seeking custody must show by clear and convincing evidence either (i) unfitness on the part of the parent, (ii) long

acquiescence in the third party's custody of the child, or (iii) voluntary relinquishment of the child such that the affections of the child and third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child. But in B.H., this Court clarified that in determining whether the parental presumption has been overcome, "the trial court is not limited to the three Hendrickson factors."

* * *

We are of the view that the distinctions between the statutory factors required to obtain initial custody and those required for a subsequent custody modification are not significant enough to justify substantially different approaches in resolving custody disputes. Instead both require a determination of the child's best interest, and both require consideration of certain relevant factors. See Ind. Code Ann. § 31-14-13-2 (West 2008) (Factors for custody determination), Ind. Code Ann. § 31-14-13-6 (West 2008) (Modification of child custody order). And importantly, Indiana courts have long held that "[e]ven when a parent initiates an action to reobtain custody of a child that has been in the custody of another, the burden of proof does not shift to the parent . . . [r]ather, the burden of proof is always on the third party." A burden shifting regime that places "the third party and the parent on a level playing field" is inconsistent with this State's long-standing precedent. We acknowledge that in this case J.H. is not seeking to reobtain custody. He never had custody in the first place. But he is K.I.'s natural parent and the underlying rationale is the same.

It is of course true that a party seeking a change of custody must persuade the trial court that "(1) modification is in the best interests of the child; and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 2 and, if applicable, section 2.5 of this chapter." I.C. § 31-14-13-6. But these are modest requirements where the party seeking to modify custody is the natural parent of a child who is in the custody of a third party. The parent comes to the table with a "strong presumption that a child's interests are best served by placement with the natural parent." Hence the first statutory requirement is met from the outset. And because a substantial change in any one of the statutory factors will suffice, "the interaction and interrelationship of the child with . . . the child's parents"—one of the grounds on which the trial court relied in this case—satisfies the second statutory requirement. In essence, although in a very technical sense, a natural parent seeking to modify custody has the burden of establishing the statutory requirements for modification by showing modification is in the child's best interest, and that there has been a substantial change in one or more of the enumerated factors, as a practical matter this is no burden at all. More precisely, the burden is minimal.

> Once this minimal burden is met, the third party must prove by clear and convincing evidence "that the child's best interests are substantially and significantly served by placement with another person." If the third party carries this burden, then custody of the child remains in the third party. Otherwise, custody must be modified in favor of the child's natural parent.

K.I. ex rel. J.I. v. J.H., 903 N.E.2d 453, 457-61 (Ind. 2009) (some citations omitted, emphases added).

Here, again, Father asserts that the trial court did not apply the presumption in his favor and that the trial court improperly placed the burden of proof on him. First, Father misconstrues the case law regarding the burden of proof. Father's argument indicates that he believes that he has no burden of proof in this matter. But, to the contrary, as our Supreme Court explained in K.I., "a natural parent seeking to modify custody has the burden of establishing the statutory requirements for modification by showing modification is in the child's best interest, and that there has been a substantial change in one or more of the enumerated factors[.]" Id. at 460. While the burden is "minimal," it is still a burden of proof. Id. Only after that burden is met is the third party required to prove by clear and convincing evidence that the child's best interests are substantially and significantly served by placement with another person. Id. at 460-61. Thus, Father's contention on this issue fails.

With regard to the presumption in Father's favor, the trial court expressly acknowledged the presumption in its findings and conclusions:

> The Petitioner, [Father], argues that in accordance with due process and the [F]ourteenth [A]mendment, that he as the biological father of the child is entitled to the presumption that as a natural parent he has a fundamental right to the care, custody, and control of the child. In considering this ruling, the Trial Court cannot ignore that standard, and must consider all

> aspects and reasons which would support the father's call for custody and cessation of guardianship.

Appellant's App. at 15 (emphasis added). Still, Father takes issue with the trial court's conclusion that "it is not in the best interest [of D.W.] for his custody to be placed with his father . . . and that circumstances[,] although changed, have not changed substantially to warrant the cess[at]ion of the guardianship now enjoyed by [D.W.] with his grandmother . . . ." Id. at 16. Father maintains that that conclusion "places the burden of proof on [Father]" and improperly places Father and Guardian "on a level playing field[.]" Brief of Appellant at 15, 18. Again, we cannot agree. The trial court expressly recognized the presumption in favor of Father in its Order, and Father is incorrect that he has no burden of proof to show a change in circumstances. Father has not demonstrated that the trial court applied an "incorrect standard of law." Brief of Appellant at 18.

**Issue Two: Evidence**

Father next contends that the evidence is insufficient to support the trial court's denial of his petition to terminate guardianship. In particular he maintains that he met his burden of proof showing a substantial change in circumstances making modification of custody in D.W.'s best interest; that Guardian did not present sufficient clear and convincing evidence to overcome the presumption in Father's favor; and that the trial court erred when it placed primary emphasis on the in camera interview with D.W. We address each contention in turn.

**Change of Circumstances**

As Father correctly points out, from the outset, we presume that D.W.'s interests are best served by placement with Father. See K.I., 903 N.E.2d at 460. And Father has

only a minimal burden to show that a change in circumstances in the statutory factors warrants modification of custody. See id. On appeal, Father points to the evidence that: D.W.'s age has changed significantly since Guardian was first granted custody; both Mother[3] and Father have changed their wishes with respect to who should have custody of D.W.; D.W.'s interaction with Father and Father's family has changed in that D.W. has developed bonds with Father, Father's wife, and Father's stepchildren; and Father's mental and physical health has drastically improved in that he has not abused illicit drugs since 2005 and has maintained steady housing and employment.

However, the evidence also shows that D.W. has expressed his desire to remain in Guardian's custody; D.W. has undergone psychological counseling throughout his life and continues to do so; D.W. has expressed apprehension about spending time with Father; and D.W. is well-adjusted in his home with Guardian and does well in school. Father's contention on this issue amounts to a request that we reweigh the evidence, which we will not do. As our Supreme Court stated in B.H., 770 N.E.2d at 288:

> Child custody determinations fall squarely within the discretion of the trial court and will not be disturbed except for an abuse of discretion. Reversal is appropriate only if we find 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. We also note that, in reviewing a judgment requiring proof by clear and convincing evidence, an appellate court may not impose its own view as to whether the evidence is clear and convincing but must determine, by considering only the probative evidence and reasonable inferences supporting the judgment and without weighing evidence or assessing witness credibility, whether a reasonable trier of fact could conclude that the judgment was established by clear and convincing evidence.

[3] Mother executed an agreed entry in the paternity court whereby she granted full custody of D.W. to Father.

(Citations omitted, emphasis added). In light of the evidence, Father has not demonstrated that the trial court abused its discretion when it concluded that there has not been a change in circumstances significant enough to warrant the termination of guardianship.

**Presumption**

Again, Father maintains that Guardian did not present clear and convincing evidence sufficient to overcome the presumption that Father's custody of D.W. is in D.W.'s best interests. In particular, Father asserts that "there [is no] evidence of long acquiescence, abandonment, or voluntarily [sic] relinquishment such that the affections of a child and the third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child." Brief of Appellant at 23. But again, Father's contention on this issue amounts to a request that we reweigh the evidence.

Guardian presented evidence that D.W. has lived with her since 2002 and that Father did not seek to terminate guardianship until 2009. That evidence, alone, is clear and convincing evidence of Father's long acquiescence in Guardian's custody of D.W. See K.I., 903 N.E.2d at 459. And that evidence, without more, is sufficient to overcome the presumption that D.W.'s interests are best served by granting custody to Father. See id. at 458. Regardless, the trial court concluded that "the bond which has been established between [D.W.] and [Guardian] now exists so strongly that it is a bond of a parent and child, and not that of a child and grandmother." Appellant's App. at 15. The evidence supports that conclusion, and that conclusion is also sufficient to overcome the presumption in Father's favor in that it shows the extent that the bonds between D.W. and

Guardian have become interwoven. See K.I., 903 N.E.2d at 459. Father's contention on this issue must fail.

**In Camera Interview**

Finally, Father asserts that the trial court based its decision primarily on its in camera interview with D.W., which, Father contends, is impermissible. In its findings and conclusions, the trial court stated in relevant part as follows:

> Although the Trial Court feels compelled not to divulge information gleaned in the in-camera interview, the Court would point out that it feels a Termination of the Guardianship and Granting of Custodial Rights to the biological father would be overwhelmingly detrimental to the child, [D.W.]. The Court determines that [D.W.] is fearful and uneasy about his father, and that although there are occasions [in] which he can partially enjoy the times with his father, most of those times are with much apprehension.
>
> The Court would consider its understanding of the visitation times [D.W.] does spend with his father as a time of uneasiness and apprehension. That even as hard as [D.W.]'s father would want to recapture the years lost with [D.W.], while he was incarcerated and[/]or unable to care for [D.W.] in any fashion, not only have those years been lost, but [D.W.]'s knowledge, both of his father's past history as well as certain current activities, still make [D.W.] uncomfortable. Those actions include the use of alcohol as well [as] the psychological and behavioral matters concerning [Father's] suicide attempt in which [D.W.] was a witness, and for which [D.W.] has been in need of counseling.
>
> [D.W.] not only is comfortable and well cared for in the home with his grandmother and guardian but also has fully adapted to an enjoyable, and [for the] most part, carefree life with her, his school, and his friends. He has developed a love for his grandmother comparable to the love one would have for a parent who has raised them, and he is extremely fearful at the loss of all of this, as well as the potential environment he would be placed in if custody were now changed to his father.

Appellant's App. at 15.

In Blue v. Brooks, 261 Ind. 338, 303 N.E.2d 269, 272 (1973), our Supreme Court observed that

> in cases where child custody is in issue, and with the parties' consent, confidential interviews between the court and the children involved should be encouraged where the minors are of sufficient age and understanding. Such a procedure better enables the trial court to ascertain the best interests of the child, because the constraints of open court with both parents and witnesses present are lifted.

And the Court held that, as long as the trial court's decision does not rest primarily on the results of a private interview, it is not error for the court to exclude the results of the interview from the record. See id.

Father maintains that there is "no evidence in the record" other than the in camera interview to support the trial court's determination that D.W. had apprehension about spending time with Father. Brief of Appellant at 28. And Father contends that Guardian presented insufficient evidence to support the denial of Father's petition. Thus, Father concludes that the trial court's decision was primarily based on the in camera interview with D.W.[4] We cannot agree.

While the trial court's findings and conclusions indicate that it gave substantial weight to the in camera interview, there is clear and convincing evidence independent of that interview to support the court's denial of Father's petition. Guardian testified that D.W. was "uncomfortable" with "drinking and stuff" going on at Father's house. Transcript at 68. Guardian testified that D.W. was "not happy" about the possibility of

[4] Father seems to take our Supreme Court's holding in Blue a bit too far. In Blue, the Court addressed the trial court's exclusion of the results of an in camera interview from the record. Here, Father makes no suggestion that the trial court should have made the contents of its confidential interview with D.W. a part of the record. Thus, the applicability of the rule in Blue is unclear. Regardless, we address Father's contention.

changing schools. Id. at 69. Guardian testified that D.W. "told [Father] that he did not want to live [with him.]" Id. at 70. Guardian also confirmed that she considered Father to be "unfit to care for" D.W. Id. at 74. Guardian testified that D.W. does not want to talk to Father on the telephone and that D.W. cried when he thought he would have to move in with Father. Finally, Guardian testified that D.W. was "disappointed" in Father for "putting [D.W.] through" the proceedings to terminate guardianship. Id. at 78. Even if the in camera interview was a "crucial factor" in the trial court's determination, substantial evidence appears on the record to support the judgment. See Truden v. Jacquay, 480 N.E.2d 974, 979 (Ind. Ct. App. 1985). Father's contention on this issue is without merit.

**Issue Three: Parenting Time**

Decisions regarding child visitation are generally committed to the trial court's sound discretion and should be reversed only upon a showing of a manifest abuse of discretion. Walker v. Nelson, 911 N.E.2d 124, 130 (Ind. Ct. App. 2009). When reviewing the trial court's decision, we neither reweigh the evidence nor reexamine the credibility of the witnesses. Id. Rather, we view the record in the light most favorable to the trial court's decision to determine whether the evidence and reasonable inferences therefrom support the trial court's decision. Id. An abuse of discretion has occurred if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

In Haley v. Haley, 771 N.E.2d 743, 752 (Ind. Ct. App. 2002), we explained as follows:

> The Guidelines state that there is a presumption that they are applicable in all cases covered by the Guidelines. Ind. Parenting Time Guidelines, Scope of Application, 2. Therefore, we must start with the proposition that any visitation order established by the trial court should mirror the Guidelines. However, while we may start with that proposition, it is only a presumption, one which may be overcome by the facts particular to the circumstances. According to the Guidelines, before a trial court may enter a visitation order which deviates from the model contained in the Guidelines, the trial court must provide a written explanation for the deviation.

Here, the trial court deviated from the Guidelines in that it granted Father a "trial period" of visitation with D.W. consisting of one weekend per month and one week during the summer. Appellant's App. at 16. But the trial court stated that it would consider modifying Father's parenting time "one year from the date of this ruling." Id.

Father maintains that, pursuant to Indiana Code Section 31-17-4-1, he is entitled to "reasonable parenting time" unless the court found that Father's exercise of parenting time "might endanger the child's physical health or significantly impair the child's emotional development." Father contends that the record on appeal is "devoid of any . . . evidence that Father is in any way an endangerment to D.W.'s physical or emotional well-being." Brief of Appellant at 30. Father asserts that the trial court's determination that D.W. was "apprehensive" and "uncomfortable" with Father was solely and, therefore, impermissibly based upon the in camera interview. Id.

But, as we have already discussed, in addition to the trial court's statements gleaned from the in camera interview with D.W., reasonable inferences drawn from Guardian's testimony that D.W. did not want to spend time with Father support the court's deviation from the Guidelines in this case. Regardless, the trial court's order was issued on July 15, 2009. Accordingly, Father may request modification of parenting time

on July 15, 2010. Father has not shown that the trial court abused its discretion when it deviated from the Guidelines in awarding parenting time.

## CONCLUSION

Father has turned his life around since his addiction to drugs and criminal activity. And he has demonstrated a strong and consistent desire to be a good father to his son. But D.W. has lived with Guardian for the majority of his life, and Father acquiesced in Guardian's custody and subsequent guardianship of D.W. for almost seven years before he filed his petition to terminate guardianship. The trial court concluded that the bond between Guardian and D.W. is like that of mother and son. We cannot say that the trial court's denial of Father's petition to terminate guardianship is clearly erroneous or an abuse of discretion. And Father has not shown that the trial court abused its discretion when it awarded parenting time.

Affirmed.

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