ATTORNEY FOR APPELLANT:

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APPELLEE PRO SE:

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IN THE COURT OF APPEALS OF INDIANA

T.J.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 27A02-1002-GU-150
	)	
K.M.,	)	
	)	
Appellee-.	)	

APPEAL FROM THE GRANT CIRCUIT COURT
The Honorable Mark E. Spitzer, Judge
Cause No. 27C01-0810-GU-62

August 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

T.J. ("Stepmother") appeals the trial court's order granting the petition of K.M. ("Mother") to terminate Stepmother's guardianship of Mother's son, C.J. Stepmother presents a single issue for review, namely, whether the trial court applied the correct standard when it granted Mother's petition.

We affirm.

FACTS AND PROCEDURAL HISTORY[1]

The relevant facts are stated in the order terminating guardianship, as follows:

> This matter was initiated on October 23, 2008[,] by a Verified Petition for Temporary Guardianship, together with a Petition for regular guardianship, which was filed by [Stepmother]. In the petitions, she alleged that she was the former spouse of [Father], who had passed away on October 11, 2008. [Stepmother] further alleged that at the time of his death, [Father] had custody of [C.J.], born January 8 of 2002, to [Mother]. The petitions alleged the whereabouts of [Mother] were unknown. Service of the petitions was provided by publication to [Mother]. Notice was published in the Fairmount News-Sun [in Indiana].
>
> [Mother] did not appear for any hearings relating to the guardianship, and a temporary guardianship was granted in favor of [Stepmother] on October 24, 2008. Regular guardianship was granted on December 23, 2008. It was clear at the hearing that [Mother] had not received actual notice of the guardianship petitions.
>
> On June 1, 2009, [Mother] filed a pro se request to the Court to terminate the guardianship, together with a copy of an order establishing that she and [Father] had been granted joint legal custody of [C.J.] in the Virginia Beach Juvenile and Domestic Relations District Court, with [Father] having been awarded physical custody. A hearing was set by this Court and, after a continuance, the matter was heard on October 14, 2009.

[1] We observe that Mother has not included citations to the Record of Appeal in the presentation of the facts in her brief. We acknowledge that Mother is proceeding pro se. But pro se litigants are held to the same standards as licensed attorneys. Goosens v. Goosens, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). We ask Mother to provide the required citation in the future or risk waiver of issues for review.

At the hearing, the testimony established that [Mother] and [Father had] served together in the Navy in Virginia Beach, Virginia, wherein [Father] was [Mother]'s superior officer. Although [Father was married to [Stepmother], [Mother] and [Father] began a relationship which resulted in the birth of [C.J.] The issue of custody and parenting time for [C.J.] was a matter of some dispute between [Biological Mother] and [Father], and at different times [Father] was in a relationship with his wife, [Stepmother], and at other times back to his relationship with [Mother]. Following a hearing, a Virginia Beach Court ultimately determined on October 5, 2005[,] that [Father] was to be the physical custodian of [C.J.] After that time, [Mother] exercised intermittent visitation with her son. For a time, she was out to sea and unable to exercise regular visitation. While the testimony of the parties was somewhat conflicting, the Court finds that both [Mother] and [Father] bore some fault as to [Mother]'s spotty visitation with her son.

[Mother] left the military with a disability[] and left Virginia Beach in mid-2006 to go to Florida, where she now resides. (At the time of the hearing, she had recently had a child, so was staying with her sister in New York temporarily, but intends to return to Florida.) While in Florida, she was not permitted to exercise visitation, and in November 2006, filed a petition of noncompliance with the Virginia Beach Court. She last spoke with her son in February of 2007 on the phone.

Following the 2007 phone conversation, [Mother] lost contact with [Father and Stepmother]. In October of 2006, [Father and Stepmother] had moved to Marion, Indiana, but had not provided [Mother] with an address. No physical visitation occurred with [C.J.] after the [Father and Stepmother's] move to Marion.

After [Father] died, while it appears that [Stepmother] would have had sufficient information to contact [Mother] regarding the death of [C.J.]'s joint custodial parent, she made no effort to contact [Mother] and advise her of the change in circumstances. While searching for the [Father and Stepmother's] location in a Navy database, [Mother] ran across [Father's] obituary and began calling people named in the obituary. She obtained [Stepmother]'s address from her mother[] and contacted her in May 2009. After being unable to work out a transfer of custody with [Stepmother], [Mother] learned of the guardianship and filed her Motion to Terminate on June 1, seeking to regain custody of her son. [Stepmother] contests the petition.[]

Appellant's App. at 5-7. The court then set out the applicable legal standard for determining custody disputes between a parent and a nonparent. The court stated that to prevail in such a case, the burden on a non-parent

> is a strict and heavy burden. Based upon the evidence presented, the Court does not find clear and convincing evidence that the best interests of [C.J.] are substantially and significantly served by placement with his stepmother. The evidence does not establish that [Mother] is incapable of caring for [C.J.] (and in fact she had done so in the past). While [Mother] has a 60% service-connected physical disability, she is currently in school for network administration and is likely to be able to return to the workforce. Further, her physical disabilities, which include back and thyroid issues, do not prevent her from providing adequate care to [C.J.]'s siblings.

Id. at 9. As a result, the court granted Mother's petition to terminate the guardianship. Stepmother now appeals.

DISCUSSION AND DECISION

Stepmother contends that the trial court abused its discretion when it terminated the guardianship. A guardianship proceeding is, in essence, a child custody proceeding, and the termination of the guardianship resulted in a change of custody. 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.

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).

Stepmother contends that the trial court applied an incorrect legal standard when it terminated her guardianship and returned custody of C.J. to Mother. Custody determinations are governed by 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. And we have described the standard of review in natural parent-third party custody disputes as follows:

> 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).

Trial courts are accorded deference in their determinations as to children's best interest in custody disputes between a parent and a non-parent. A.B. v. S.B., 837 N.E.2d 965, 967 (Ind. 2005). The reviewing court does not reweigh the evidence, but considers only the evidence favorable to the trial court's judgment. Id. A challenger must show that the trial court's findings are clearly erroneous. Id. In the review of a non-parent custody award, which requires clear and convincing evidence:

> [A]n 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.

Id. (quoting In re B.H., 770 N.E.2d at 287 (internal citations omitted)).

Here, Stepmother asserts that the trial court abused its discretion in two ways when it terminated the guardianship. Stepmother first asserts that the trial court shifted the burden to her without first finding that Mother had established the presumption in favor of a custody award to her. In particular, Stepmother complains that the court made no finding regarding a change in circumstances. Next Stepmother contends that the trial court should have found that she was a de facto custodian and therefore should have applied Indiana Code Section 31-17-2-8.5, which sets out part of the standard for determining custody disputes involving a de facto custodian. We address each contention in turn.

First, Stepmother contends that the court abused its discretion because it "made no findings as to any change in [the] factors" required by Indiana Code Section 31-14-13-2 to be considered for a change of custody. Appellant's Brief at 7. She further contends

that the trial court did "not even acknowledge the necessity of a showing of a change in circumstances." Id. We cannot agree.

The court found that Mother is C.J.'s natural parent. As such, the "first statutory requirement is met from the outset." K.I., 903 N.E.2d at 460. The court also found that, "while it appears that [Stepmother] would have had sufficient information to contact [Mother] regarding the death of [C.J.]'s joint custodial parent, she made no effort to contact [Mother] and advise her of the change in circumstances." Appellant's App. at 7. Thus, the court recognized that Father's death was a change in circumstances that affected C.J.'s custody. Although the court did not include this finding in the "Legal Analysis" section of the Order to Terminate Guardianship, such is not dispositive. Stepmother has not demonstrated that the trial court failed to consider evidence of a change in circumstances, and we hold that the court did not abuse its discretion on this issue.[2]

Stepmother also contends that she was a de facto custodian and that the trial court abused its discretion when it did not use the change of custody standard of review applicable when a de facto custodian is involved. Again, we cannot agree. First, Stepmother has not shown by citation to the record that she argued to the trial court that she was a de facto custodian. Further, the Order Terminating Guardianship does not reference the de facto custodian statutes, nor does it include any findings regarding de

[2] Even if we were to determine that the court's mention of Father's death as a change in circumstances does not show that this factor was considered in reaching the court's decision, such an error is harmless. Again, the court made sua sponte findings. On review, those findings control only as to the issues they cover. Borovilos Rest. Corp. II, 920 N.E.2d at 763. The court clearly found that Stepmother had not met her burden to show by clear and convincing evidence "that the child's best interests are substantially and significantly served by placement" with her. K.I., 903 N.E.2d at 461. On appeal Stepmother does not challenge the court's finding that she had not met her burden.

facto custodianship. Substantive issues not presented to the trial court are waived on appeal. Showalter v. Town of Thorntown, 902 N.E.2d 338, 342 (Ind. Ct. App. 2009), trans. denied. Because Stepmother has not shown that she presented the issue of de facto custodianship to the trial court, the issue is waived. See id.

Affirmed.

BAKER, C.J., and MATHIAS, J., concur.