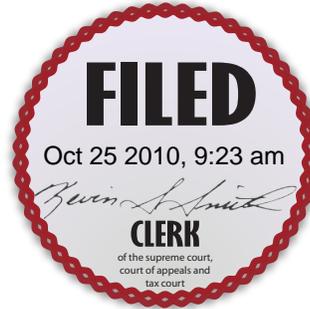


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**MARK A. KING**  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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S. H. P., )  
 )  
Appellant-Petitioner, )  
 )  
vs. ) No. 49A02-1005-DR-680  
 )  
S. P., )  
 )  
Appellee-Respondent. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Christopher B. Haile, Judge  
Cause No. 49D06-9402-DR-339

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**October 25, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

S.H.P. (“Mother”) appeals the trial court’s decision to grant S.P. (“Father”) custody of their son, T.P. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Mother and Father were divorced in 1994, and custody of T.P. was to be determined at a later time. It is not clear from the record if a custody order was ever entered; however, it is undisputed that T.P. has resided with Mother since the dissolution, Father has exercised parenting time pursuant to the Indiana Parenting Time Guidelines, and Father has paid child support since 1995.<sup>1</sup>

Father filed a Verified Petition for Modification of Custody on July 8, 2009. Mother responded with a request for evaluation by the Domestic Relations Counseling Bureau (“DRCB”). Mother, Father, T.P., and his sibling, T.H., were interviewed as part of the evaluation. The DRCB report concluded T.P. should remain in the physical custody of Mother and continue to have parenting time with Father.

After a hearing regarding modification of custody, the trial court awarded primary physical custody to Father, with Mother to exercise parenting time pursuant to the Indiana Parenting Time Guidelines.

### **DISCUSSION AND DECISION**

Father has not filed an appellee’s brief. Under this circumstance, we do not develop arguments for Father. *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1255 (Ind. Ct. App. 2010). Rather, we review under a less stringent standard, which permits us to “reverse if the

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<sup>1</sup> We note the record does reveal that a support order was entered by a Michigan court on December 14, 1995.

appellant establishes . . . error at first sight, on first appearance, or on the face of it.” *Id.*

When a party requests modification of custody, we review the court’s decision for an abuse of discretion, because we give wide latitude to our trial court judges in family law matters. *Id.* at 1256. A petitioner seeking modification has the burden to demonstrate the existing custody arrangement needs to be altered. *Id.* As we undertake our review, we neither reweigh the evidence nor assess witness credibility. *Id.* Rather, we consider only the evidence and inferences most favorable to the trial court’s judgment. *Id.*

Our legislature has defined the circumstances under which a custody order may be modified:

- (a) The court may not modify a child custody order unless:
  - (1) the 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 8 and, if applicable, section 8.5 of this chapter.
- (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.
- (c) The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 and, if applicable, section 8.5 of this chapter.

Ind. Code § 31-17-2-21 (hereinafter “Section 21”). Section 21 requires a court to “consider the factors listed under section 8 of this chapter,” but in ordering a modification of child custody a trial court is not, absent a request by a party, required to make special findings regarding the continuing and substantial changes in the parties’ circumstances. *Clark v. Clark*, 404 N.E.2d 23, 35 (Ind. Ct. App. 1980).

The factors the court must consider under Ind. Code § 31-17-2-8 (hereinafter “Section

8”) include:

- (1) The age and sex of the child.
- (2) The wishes of the child’s parent or parents.
- (3) The wishes of the child, with more consideration given to the child’s wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child’s parent or parents;
  - (B) the child’s sibling; and
  - (C) any other person who may significantly affect the child’s best interests.
- (5) The child’s adjustment to the child’s:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

The record contains evidence that supports the trial court’s decision. T.P. was an infant when the initial custody determination was made and he was seventeen at the time of the request for modification; T.P. expressed desire to have more of a male influence in his life and expressed desire to live with Father; T.P. was doing poorly in school; Father had telephonically assisted T.P. with schoolwork in the past; and Father was aware of and intended to enroll T.P. in a program that would assist T.P. with his educational and behavioral difficulties. The DRCB report recommended T.P. remain in the care of Mother, but noted Mother had failed to ensure proper dental care for T.P., and Mother’s lack of assistance may have factored into T.P.’s poor academic progress.

Mother argues modification in the physical custody of T.P. was erroneous because

there was no substantial change in any of the factors listed under Section 8 to warrant a modification in the physical custody of T.P. and that a change in custody is not in T.P.'s best interest. In *Webb v. Webb*, 868 N.E.2d 589, 593 (Ind. Ct. App. 2007), we held that lack of academic progress was a substantial change in circumstances that warranted a modification in custody. We have also held that a parent's neglect of a child's health is a substantial change in circumstances warranting a modification in custody. *Kanach v. Rogers*, 742 N.E.2d 987, 989 (Ind. Ct. App. 2001). Mother is correct that the court's decision had to be in the best interest of the child, but the court was not required to adopt the DRCB's opinion as to what would be in T.P.'s best interests. There was evidence in the record that transferring custody to Father was in T.P.'s best interest; Mother's arguments are an invitation to reweigh the evidence and assess the credibility of witnesses, which we cannot do. *See Julie C.*, 924 N.E.2d at 1255.

Finding no abuse of discretion by the trial court, we affirm its decision.

Affirmed.

ROBB, J., and VAIDIK, J., concur.