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IN THE COURT OF APPEALS OF INDIANA

Crystal LaMotte,
Appellant-Respondent

v.

Stephen R. LaMotte, Jr.,
Appellee-Petitioner.

November 30, 2022

Court of Appeals Case No. 21A-DR-2608

Appeal from the Marion Superior Court

The Honorable Marshelle D. Broadwell, Judge

Trial Court Cause No. 49D16-1811-DC-45144

Pyle, Judge.

Statement of the Case

[1] Crystal LaMotte ("Mother") appeals the trial court's denial of her motion to correct error requesting a new final hearing in the dissolution of her marriage to Stephen LaMotte, Jr. ("Father"). Mother specifically argues that her due process rights were violated because the trial court judge who issued the

dissolution order did not hear the evidence or observe the witnesses. Concluding that Mother's due process rights were violated, we reverse the trial court's denial of Mother's motion to correct error and remand with instructions for the trial court to hold a new dissolution hearing.

[2] We reverse and remand for further proceedings.

Issue

> Whether Mother's due process rights were violated because the trial court judge who issued the dissolution order did not hear the evidence or observe the witnesses.

Facts

[3] Mother and Father married in August 1995 and are the parents of three children. Daughter S.L. was born in August 1998, daughter K.L. was born in December 2001, and son A.L. ("A.L.") (collectively "the children") was born in March 2007. Mother filed a dissolution petition in November 2018.

[4] Before the hearing on her dissolution petition, Mother filed a written request for findings of fact and conclusions of law. In November 2020, Magistrate Kimberly Mattingly ("Magistrate Mattingly") held a two-day dissolution hearing. The issues before Magistrate Mattingly were Mother's request for rehabilitative maintenance, custody of the children, parenting time with the children, and a distribution of the marital assets.

[5] During the hearing, Magistrate Mattingly heard testimony from Mother's physician, a vocational rehabilitation specialist, the Guardian Ad Litem ("the

GAL"), a psychiatrist/custody evaluator who had completed a 117-page child custody evaluation that was admitted into evidence, two home appraisers, Mother, and Father. These witnesses provided conflicting testimony regarding property values, the best interests of the children regarding custody and parenting time, and Mother's need for rehabilitative maintenance. Following the conclusion of the hearing, Magistrate Mattingly took the matter under advisement.

[6] At some point before Magistrate Mattingly reported factual findings and conclusions thereon to the trial court judge, Magistrate Mattingly left her position.[1] In April 2021, Father filed a petition asking for a ruling on the pending issues. In this petition, Father explained that although Mother was requesting that the entire matter be retried, Father objected to a retrial. Father asked the trial court to either issue Magistrate Mattingly's ruling or to review the evidence and issue a ruling without the necessity of a new trial.

[7] Also in April 2021, Mother filed a request for a final hearing and an objection to Father's petition to rule on the pending issues. According to Mother, the "case ha[d] numerous contested issues regarding property division, disability maintenance, custody, and parenting time which issues should not be decided

[1] According to Father, after Magistrate Mattingly had left her position, she told the parties that she had completed the order in the case but had not submitted it to the trial court judge before leaving. Magistrate Mattingly also apparently offered to arbitrate the matter to allow her findings to be entered as a final order, but Mother apparently refused this offer.

on a review of the record with no ability to assess witness credibility or weigh evidence." (App. Vol. 2 at 56). Mother cited several cases in support of her argument that "[t]he only proper remedy in this situation [was] to conduct a new trial because the credibility of the witnesses relate[d] to all issues before the successor judge." (App. Vol. 2 at 57). According to Mother, "[f]ormer Magistrate Mattingly ha[d] been the only judicial officer who [had been] able to assess the demeanor and credibility of the witnesses and she [was] no longer a judicial off[icer]." (App. Vol. 2 at 57). Mother argued that her "due process rights require[d] that a judicial officer who [had] heard the evidence issue the ruling." (App. Vol. 2 at 57).

[8] In June 2021, Judge Marshelle Dawkins Broadwell ("Judge Broadwell") held a hearing on Father's petition for the court to rule on the pending issues and determined that it would hold an additional hearing limited to custody and parenting time issues. In July 2021, the GAL filed an updated report and recommendations.

[9] In August 2021, Judge Broadwell held the hearing limited to custody and parenting time issues. At the beginning of the hearing, Mother made "a continuing objection to the manner in which th[e] hearing [was] being conducted[]" and reminded Judge Broadwell that Mother had requested a new hearing on all issues. (Tr. Vol. 3 at 229). Mother further argued that, based upon the GAL's updated report, Mother needed to call additional witnesses, including the therapist that she had begun seeing after the November 2020

hearing. Judge Broadwell explained that she had read the transcript of the November 2020 hearing and was going to proceed on the limited hearing.

[10] At the hearing, Judge Broadwell allowed only Mother and Father to testify. Father questioned Mother about the custody evaluator's report that had been admitted into evidence at the November 2020 hearing and referenced it in his closing argument. In addition, Judge Broadwell allowed the GAL to explain the recommendations in her updated report. Mother and Father were also allowed to question the GAL but only about the updated report.

[11] Two months later, in October 2021, Judge Broadwell issued an order distributing the marital assets and denying Mother's request for rehabilitative maintenance. Judge Broadwell also awarded sole legal and physical custody of A.L. to Father and awarded Mother supervised parenting time with A.L.

[12] In November 2021, Mother filed a motion to correct error requesting a new final hearing. Mother argued that "it was error for the Court to deny her request to have the judicial officer who was issuing findings of fact and conclusions of law hear all the testimony and the evidence and that this error deprived [Mother] of due process of law." (App. Vol. 2 at 59). Judge Broadwell denied Mother's motion.

[13] Mother now appeals.

Decision

[14] Mother argues that the trial court abused its discretion when it denied her motion to correct error requesting a new final hearing. The trial court has wide discretion to correct errors and grant new trials. *Centennial Mortgage, Inc. v. Blumenfeld*, 745 N.E.2d 268, 273 (Ind. Ct. App. 2001). We will reverse only for an abuse of discretion. *Id*. An abuse of discretion will be found when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences which may be drawn therefrom. *Id*. An abuse of discretion also results from a trial court's decision that is without reason or is based upon impermissible reasons or considerations. *Id*.

[15] Mother contends that her due process rights were violated because "a successor judge made factual findings and legal conclusions without a trial *de novo* following the departure of the original judge who conducted a two-day evidentiary hearing but did not issue an order." (Mother's Br. 4). We agree.

[16] We addressed this issue in *In re D.P.*, 994 N.E.2d 1228 (Ind. Ct. App. 2013). In that case, the Department of Child Services ("DCS") filed a petition to terminate the father's parental rights. Magistrate Julie Cartmel ("Magistrate Cartmel") conducted a termination hearing wherein she heard testimony from the DCS case worker, the Guardian Ad Litem, and the father. These witnesses provided conflicting testimony regarding whether the reasons for removing the father's child from his care could be remedied in the future and whether

termination was in that child's best interests. Following the conclusion of the hearing, Magistrate Cartmel took the matter under advisement.

[17] At some point before Magistrate Cartmel reported recommended factual findings and conclusions thereon to the juvenile court, Magistrate Cartmel resigned from her position as a magistrate. The case was transferred to Magistrate Larry Bradley ("Magistrate Bradley"). Magistrate Bradley did not conduct a new evidentiary hearing. Rather, he simply reviewed the record created during the previous evidentiary hearing and reported recommended factual findings and conclusions thereon to the juvenile court. The juvenile court approved Magistrate Bradley's factual findings and conclusions thereon and issued an order terminating the father's parental rights.

[18] On appeal, the father argued that his due process rights had been violated because the magistrate who had conducted the evidentiary hearing was not the same magistrate who had made and reported the recommended findings of fact and conclusions thereon to the juvenile court. We agreed and explained as follows:

> Indiana courts have long held that "[a] party to an action is entitled to a determination of the issues by the jury or judge that heard the evidence, and where a case is tried by the judge, and the issues remain undetermined at the death, resignation, or expiration of the term of such judge, his successor cannot decide, or make findings in the case, without a trial *de novo*." *Wainwright v. P.H. & F.M. Roots Co.*, 176 Ind. 682, 698–99, 97 N.E. 8, 14 (1912) (providing that a judge did not have a right to decide the issues presented in a case in which he had not heard the evidence, and, accordingly, the case should have been retried); *see*

> *also Dawson v. Wright,* 234 Ind. 626, 630, 129 N.E.2d 796, 798 (1955); *State ex rel. Harp v. Vanderburgh Cir. Ct.,* 227 Ind. 353, 363, 85 N.E.2d 254, 258 (1949); *Bailey v. State,* 397 N.E.2d 1024, 1027 (Ind. Ct. App. 1979). This is because due process requires that the trier of fact hear all of the evidence necessary to make a meaningful evaluation in a case where the resolution of a material issue requires a determination as to the weight and credibility of testimony. *Farner v. Farner,* 480 N.E.2d 251, 257 (Ind. Ct. App. 1985).
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> "When a successor judge attempts to resolve questions of credibility and weight of evidence without having had an opportunity to hear the evidence and observe the demeanor of witnesses, he is depriving a party of an essential element of the trial process." *Urbanational Devrs., Inc. v. Shamrock Eng'g, Inc.,* 175 Ind. App. 416, 421, 372 N.E.2d 742, 746 (1978). "Such an undertaking by the successor judge is against the logic and effect of the facts and circumstances before the court and amounts to an abuse of discretion." *Id.* "To hold otherwise would be to grant a power of review to the successor judge that is not even claimed by appellate courts." *Id.*

D.P., 994 N.E.2d at 1232. *See also In re I.P.*, 5 N.E.3d 750, 753 (Ind. 2014) (citing *Harp*, 227 Ind. 353, 85 N.E.2d at 258, for the proposition that "[a] party is entitled to a determination of the issues by the judge who heard the evidence, and, where a case is tried to a judge who resigns before determining the issues, a successor judge cannot decide the issues or enter findings without a trial *de novo*.").

[19] We further note that we have "a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters[]" because the judge presiding at a family law hearing has a superior vantage point

for assessing witness credibility and weighing evidence. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (further explaining that appellate courts "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.") (internal citations omitted).

[20] In the *D.P.* case, we noted that our review of the record revealed that Magistrate Cartmel had conducted a hearing on DCS' petition to terminate the father's parental rights. *Id*. During this hearing, Magistrate Cartmel had heard the testimony of witnesses and accepted exhibits into the record. *Id*. The witnesses' testimony and exhibits required Magistrate Cartmel to weigh the exhibits and judge witness credibility to make a factual determination as to whether termination of the father's parental rights was warranted. *Id*. We further noted that Magistrate Cartmel had resigned from her position as magistrate before making and reporting findings and conclusions thereon to the juvenile court. Magistrate Cartmel's successor, Magistrate Bradley, had not held a new hearing. *Id*. Rather, he had simply reviewed the record and had made factual findings and conclusions thereon and had reported these findings and conclusions to the juvenile court, which had issued an order terminating the father's parental rights. *Id*.

[21] Based on these facts, we concluded that the father's due process rights had been violated. *Id*. at 1233. Citing *Wainwright*, 176 Ind. at 698-99, 97 N.E.2d at 14 and *Farner*, 480 N.E.2d at 257, we concluded that Magistrate Bradley could not

have properly resolved questions of credibility and weight of the evidence because he had not had the opportunity to hear the evidence and observe the demeanor of the witnesses. *Id*. at 1233. Citing *Urbanational Developers*, 175 Ind. App. at 421, 372 N.E.2d at 746, we further concluded that to hold otherwise would be to grant a power of review to Magistrate Bradley that was not even claimed by this Court.

[22] The facts before us are analogous to those in *D.P.* Here, our review of the record reveals that in November 2020, Magistrate Mattingly conducted a hearing on Mother's dissolution petition. During this two-day hearing, Magistrate Mattingly heard the testimony of witnesses and accepted exhibits into the record. The witnesses' testimony and exhibits required Magistrate Mattingly to weigh the exhibits and judge witness credibility to make a factual determination as to Mother's request for rehabilitative maintenance, a distribution of the parties' property, and the children's best interests. However, Magistrate Mattingly left her position as magistrate before reporting her findings and conclusions to the trial court judge.

[23] Magistrate Mattingly's successor in this case, Judge Broadwell, reviewed the record and made factual findings and conclusions thereon. We note that Judge Broadwell held a hearing that was limited to child custody and parenting time. However, she allowed only Mother and Father to testify. Father questioned Mother about the custody evaluator's report that had been admitted into evidence at the November 2020 hearing and referenced it in his closing argument. In addition, Judge Broadwell allowed the GAL to explain the

recommendations in her updated report. Mother and Father were also allowed to question the GAL but only about the updated report. Judge Broadwell then issued an order denying Mother's request for rehabilitative maintenance, dividing the parties' property, awarding custody of A.L. to Father, and awarding Mother supervised parenting time.

[24] Based on these facts, we conclude that Mother's due process rights were violated. Judge Broadwell could not have properly resolved questions of credibility and weight of the evidence from the November 2020 hearing because she did not have an opportunity to hear that evidence or observe the demeanor of those witnesses. *See D.P.*, 994 N.E.2d at 1233 (and cases cited therein). To hold otherwise would be to grant of power of review to Judge that is not even claimed by this Court on appeal. *See id*. (and cases cited therein).

[25] Having concluded that Mother's due process rights were violated, we reverse the trial court's judgment and remand this case to the trial court for a new dissolution hearing on all issues. *See D.P.*, 994 N.E.2d at 133. Any subsequent factual findings and conclusions thereon should be issued in accordance with this opinion.[2] *See id*.

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[2] We note that Father's reliance on Indiana Trial Rule 63 is misplaced. Trial Rule 63(A) provides, in relevant part, as follows:

> If the judge before whom the trial or hearing was held is not available by reason of death, sickness, absence or unwillingness to act, then any other judge regularly sitting in the judicial circuit or assigned to the cause may perform any of the duties to be performed by the court *after the verdict is returned or the findings or decision of the court is filed*, but if he is

[26] Reversed and remanded for further proceedings.

Robb, J., and Weissmann, J., concur.

> satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial or new hearing, in whole or in part.

(Emphasis added). Here, because Magistrate Mattingly left her position before reporting recommended findings to the trial court, Trial Rule 63(A) simply does not apply. *See I.P.*, 5 N.E.3d at 753 (finding Trial Rule 63(A) inapplicable where the magistrate who presided over a termination hearing became unavailable before reporting recommended findings to the juvenile court). *See also Meade v. State*, 588 N.E.2d 521, 523 (Ind. Ct. App. 1992) (finding Trial Rule 63(A) inapplicable where judge who presided over post-conviction hearing became unavailable before entering findings or decision).

We further note that, in a separate argument, Mother argues that the trial court abused its discretion when it "den[ied] [her] the ability to present testimony and evidence regarding a change in value of marital assets between the November 2020 trial and the October 2021." (Mother's Br. 22). However, because we are remanding this case for a new final hearing, we need not address this issue.