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IN THE
COURT OF APPEALS OF INDIANA

KENT SHAFER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 08A02-0605-CV-410
	)	
AMBER SHAFER,	)	
	)	
Appellee.	)	

APPEAL FROM THE CARROLL CIRCUIT COURT
The Honorable Donald Currie, Judge
Cause No. 08C01-0303-DR-20

November 21, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Kent Shafer ("Father") appeals from the trial court's judgment awarding primary physical custody of his minor child, K.S., to his former wife, Amber Shafer ("Mother"), in the parties' dissolution decree. He presents the following issues for our review:

1. Whether the trial court abused its discretion in awarding Mother primary physical custody of K.S.

2. Whether the trial court erred in not addressing the parties' petitions for contempt.

3. Whether the trial court erred in not holding a hearing on Father's Motion to Correct Error.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father married on August 31, 1996. At that time, Mother was seventeen and Father was twenty-four. They dated approximately two years before their marriage. On March 8, 2001, Mother gave birth to their daughter, K.S. On March 5, 2003, Father filed a Petition for Dissolution of Marriage. Mother and Father separated for approximately three months, during which time K.S. lived with Father. Mother and Father then attempted to reconcile, but on April 15, 2005, Mother and Father agreed to a provisional order pending the dissolution of their marriage. The trial court adopted that agreement by order on April 22, 2005.

During the marriage, Mother and Father agreed to work different shifts to avoid significant daycare for K.S. Mother worked at night in Logansport, and Father worked during the day in Lafayette. Mother's commute to work at that time was approximately

thirty minutes and Father's was forty minutes. However, after their separation, Mother moved closer to work and is now approximately fifteen minutes from work.

In the April 2005 agreement, Mother and Father agreed to share parenting time with K.S. However, on October 31, 2005, the court-appointed Guardian Ad Litem filed a report with the trial court stating "it is my opinion that [K.S.] would be better off in the care, physical custody and control of her mother, Amber Shafer." Appellee's App. at 53. In support of that conclusion, the Guardian Ad Litem cited the fact that Father had "gone out of his way to limit contact between [K.S.] and her maternal grandparents and other [maternal] relatives." Id. The Guardian Ad Litem also noted that:

> Although Kent Shafer is very good with his daughter, he seems to be far more interested in pointing out what he perceives to be Amber's faults and inadequacies and also how he can still control Amber, though they are separated. Many of the points he raises are more important to his control over his wife than they are to the welfare of the child. My impression is that he would be less likely to be flexible about co-parenting than would his wife.

Id.

The trial court held a final hearing on the dissolution over two days in January of 2006. At that hearing, Mother testified that, during the marriage, she primarily prepared K.S.'s meals, shopped for groceries and other staple items for K.S., purchased and cleaned K.S.'s clothes, took K.S. to medical appointments, and toilet-trained K.S. Autumn McAninch, a long-time friend of Mother and Father, and Jennifer McAtee both corroborated Mother's testimony on those matters. Those nonfamily witnesses also testified that Mother provided for the "emotional needs" of K.S., while Father often avoided interacting with K.S. on the same level. Id. at 122. Also, Father testified that he

has sought treatment and medication for anxiety and depression; Mother, on the other hand, described her physical and mental health as good.

Mother and Father both testified that Father had hit Mother during the marriage, including in K.S.'s presence. During her testimony, Mother stated: "one time, I believe it was a closed fist . . . . He's hit me on the head, or pulled my hair, or swung my head into the couch, under the couch, pushed me." Id. at 106. Mother stated that such episodes had occurred on approximately ten occasions.

On March 6, 2006, the trial court entered its order dissolving the marriage and awarding primary physical custody of K.S. to Mother. Father received parenting time consistent with the Indiana Parenting Time Guidelines, including the right of first refusal of additional parenting time while Mother was working. Although the trial court had earlier stated that it would address cross-petitions for contempt in its final order, it did not do so. However, at the conclusion of the hearing, the trial court admonished both parties to "act mature" and end their "gamesmanship." Id. at 126-27. On April 3, 2006, Father filed a Motion to Correct Error, supported by an affidavit, which the trial court denied without a hearing. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Primary Physical Custody

Child custody determinations lie within the sound discretion of the trial court. Bojrab v. Bojrab, 786 N.E.2d 713, 728 (Ind. Ct. App. 2003), summarily aff'd on this issue, 810 N.E.2d 1008, 1010 (Ind. 2004). 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.

Father's first contention on appeal is that the trial court did not properly consider the evidence in light of Indiana Code Section 31-17-2-8, which provides in relevant part:

> 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.

In its dissolution order, the trial court stated that "both parents have been involved in [K.S.'s] care, and that joint legal custody would be in the best interest of the child

with primary physical custody vesting with the Mother." Appellee's App. at 10. The trial court also stated that "the parties[']work schedules and work locations may present difficulty with regard to arranging for [K.S.'s] care . . . . Kent's employment creates a distance problem and Amber's work schedule presents a time issue which the parties are going to have to work around." Id. Regarding the statutory factors listed above, the trial court simply recited those factors and stated, "[t]he Court, pursuant to [Indiana Code Section] 31-17-2-8, has determined custody and entered a custody order in accordance with the best interests of the child." Id. at 13.

Father argues that the trial court's determination of primary physical custody was erroneous on a number of counts. Specifically, he argues that the trial court failed to consider or improperly weighed approximately thirty-five facts in the record. As an initial matter, we note that a trial court is not required to make specific findings of fact in its order unless a party makes a written request prior to the entry of evidence. Coster v. Coster, 452 N.E.2d 397, 401 (Ind. Ct. App. 1988). Here, neither party made such a request; hence, to the extent Father contends that the trial court erred in not making specific findings, that argument is untimely.

Father's argument that the trial court failed to consider or improperly weighed approximately thirty-five facts in the record constitutes a request that we retry and/or reweigh the evidence, which we will not do. There is sufficient evidence in the record that supports the trial court's custody determination. Namely, the trial court's order is supported by the following facts, among others: the independent testimony of mutual friends that Mother, and not Father, provided for K.S. emotionally; Mother was more

likely than Father to be flexible in participating in co-parenting time; Father had engaged Mother in at least ten violent episodes, some in the presence of K.S.; Father's tendency both to be overly rigid with K.S. and to point out only flaws to her; Father's comments that, after him, the next most important person in K.S.'s life was her paternal grandmother rather than her mother; Father had sought to limit K.S.'s contact with her maternal relatives; Mother had acted as K.S.'s primary caregiver during the marriage; and Father's history of depression or anxiety.

In addition, the evidence supports the trial court's specific finding that the distance to Father's work created a unique consideration. At the time of the dissolution, Mother testified that she did not live as far away from her employment as Father did. Also, insofar as Father now argues that the trial court erred by not adopting the parties' April 2005 agreement in its final order, that argument is unpersuasive. "[N]o agreement between parties that affects child custody, support, and visitation issues is automatically binding upon the trial court." Beaman v. Beaman, 844 N.E.2d 525, 532-33 (Ind. Ct. App. 2006). Finally, to the extent that Father relies on Johnson v. Johnson, 406 N.E.2d 1236 (Ind. Ct. App. 1980), for the proposition that we must reverse when "nothing in the record" supports the trial court's judgment, such reliance is misplaced. As discussed above, the trial court's determination is supported in the record.

Under the abuse of discretion standard that controls our review in this appeal, we must affirm even if we might have ruled differently than the trial court. The determination of primary physical custody was within the facts and circumstances before

the trial court. Thus, Father has not demonstrated that the trial court abused its discretion when it awarded Mother primary physical custody of K.S.

Issue Two: Contempt Order

Father next contends that the trial court erred in not addressing each party's contempt citations against the other in its final order despite stating in an earlier order that it would do so. Indiana Code Section 33-28-1-5 provides, in relevant part, that "[a] circuit court may . . . [p]unish, by fine or imprisonment, or both, all contempts of the court's authority." (Emphasis added). The punishing or refusal to punish for contempt is generally a matter left to the sound discretion of the trial court. Ind. Stream Pollution Control Bd. v. Tippecanoe Sanitary Landfill, Inc., 511 N.E.2d 473, 475 (Ind. Ct. App. 1987). Nevertheless, when the trial court's action is clearly against the logic and effect of the circumstances, an abuse of discretion will be found on appeal. Id.

Here, the contempt requests arose out of parenting time issues. Although the trial court did not expressly address the requests in its final order, the record demonstrates that it did address the substance of those requests at the end of the hearing, when it admonished both parties. In so doing, the trial court directed the parties:

> to get along, not for your individual benefit but for your daughter's benefit. . . . I would hope that in the future, because you are going to have dealings with one [an]other . . . that you take the high road and you act mature with your dealings with one another . . . . [T]he gamesmanship needs to end with the Court's order . . . . Until the Court makes its final ruling, you should continue with the exchange and parenting time and the support as ordered . . . . I encourage the parties to do that, whether it be the videotape[d exchanges], whether it be the photographs, or whether it be a few other items of personal property . . . . And hopefully then, the Court will not have to address it.

Appellee's App. at 126-27. The context of those statements indicates that the trial court believed it had adequately responded to the "gamesmanship" taking place between the parties over parenting time. Hence, we cannot say that the trial court abused its discretion in refusing to address the contempt requests further.

Issue Three: Hearing on Motion to Correct Error

Finally, Father argues that the trial court erred by not conducting a hearing on his Motion to Correct Error. But our supreme court has held, in Keys v. State, 271 Ind. 52, 57, 390 N.E.2d 148, 151 (1979), that hearings are not required on motions to correct error. As such, the trial court did not err when it did not hold a hearing on Father's motion.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.