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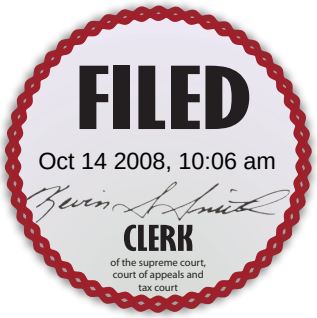

IN THE
COURT OF APPEALS OF INDIANA

VALARIE L. PARKES,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 47A01-0712-CV-538
	)	
WILLIAM R. PARKES,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE LAWRENCE CIRCUIT COURT
The Honorable Richard D. McIntyre, Sr., Judge
Cause No. 47C01-0511-DR-1356

October 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Valarie L. Parkes (Mother), appeals the trial court's denial of her Petition to Modify Custody and Request for an Order.

We affirm.

ISSUE

Mother raises one issue on appeal which we restate as follows: Whether the trial court properly denied her petition to modify custody.

FACTS AND PROCEDURAL HISTORY

During the course of Father's and Mother's marriage, two children were born: B.P., born on June 30, 1993, and K.P., born on January 31, 2000. On May 29, 2001, the Monroe Circuit Court (Monroe trial court)[1] issued a Summary Decree of Marriage Dissolution, dissolving the marriage between Father and Mother and awarding Father physical custody of B.P., while Mother was awarded physical custody of K.P. On February 6, 2003, the Monroe trial court approved and entered an Agreed Entry, granting the parents joint legal and physical custody over the children, with each parent having parenting time with B.P. and K.P. on alternating weekends, starting Friday after school until Monday. Mother has parenting time each Monday and Tuesday, while Father has parenting time each Wednesday and Thursday.

Seven months after the Monroe trial court entered the Agreed Entry, Mother filed a petition for emergency custody. Following a hearing on October 9, 2003, the Monroe trial

[1] We solely have to rely on Appellant's brief with regard to the procedure and filings before the Monroe Circuit Court. In contravention of Indiana Appellate Rule 46(A)(8), Appellant's Appendix is completely devoid of any chronological case history or other evidence supporting the proceedings in Monroe County.

court denied Mother's petition. In fact, the Monroe trial court denied Mother's request to modify custody three times between October 9, 2003 and January 12, 2004. On August 31, 2005, Mother filed a Motion for Relief, which the Monroe trial court deemed to be a Petition to Modify Custody and Request for an Order for reimbursement of medical expenses. On September 21, 2005, Father filed a Verified Petition to Modify child custody.

On November 3, 2005, this cause was transferred from the Monroe trial court to Lawrence County Circuit Court (trial court). Two days of hearings were held, on March 13, 2007 and April 26, 2007 respectively. On August 8, 2007, the trial court entered its findings of fact and conclusions of law, finding in pertinent part that

> 9. [] Given the parties' relationship with each other it is likely that if one or the other party is granted sole legal custody of the children or primary physical custody of the children, he or she would use that superior position to interfere with the other party's relationship with the minor children. The [c]ourt therefore finds that it is in the children's best interest for the current custody and parenting time orders in this cause [to] remain in full force and effect in that it demands that each party have equal access to and responsibility for the children and input into their upbringing. In a sense it services as a check and balance for the parents.
>
> 10. One continuing area of contention between the parties is extra-curricular expenses for the parties' minor children. [Father] has felt reluctant to allow [B.P.] and [K.P.] to incur these expenses because he had five (5) other children and step-children who would also want to participate in activities upon learning that he is paying to allow [B.P.] and [K.P.] to participate in these activities. Currently [Father] and [Mother] are ordered to each pay one-half of the cost of the extra-curricular expenses for [B.P.] and [K.P.] and neither party is ordered to pay child support to the other. Rather than denying [B.P.] and [K.P.] the opportunity to participate in extra-curricular activities, it would be in their best interest for [Father] to pay the presumptive amount of child support to [Mother] and if [B.P.] and [K.P.] wish to participate in extra-curricular activities [Mother] shall pay the same (with [Father's] share of the related costs coming from the weekly child support he will be paying). This should also

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We caution Appellant's attorney to carefully adhere to the Indiana Appellate Rules.

> help alleviate some of the discord between [Father] and [Mother] as it relates to reimbursements for the children's expenses.

(Appellant's App. pp. 39-40).

Based upon these findings, the trial court denied Mother's request to modify custody. However, although the trial court did not change the current custody arrangements, it did vacate the original payment structure of extracurricular expenses in exchange for a weekly child support order to be paid by Father. On September 6, 2007, Mother filed a Motion to Correct Error.[2]

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother contends that the trial court erred in denying her request to modify the joint legal and physical custody arrangement into sole legal and physical custody over the minor children to Mother. In general, we review custody modifications for an abuse of discretion, with a preference for granting latitude and deference to our trial courts in family law matters. *Leisure v. Wheeler*, 828 N.E.2d 409, 414 (Ind. Ct. App. 2005) (quoting *Apter v. Ross*, 781 N.E.2d 744, 757 (Ind. Ct. App. 2003), *trans. denied*). We will not reverse unless the trial court's decision is against the logic and effect of the facts and circumstances before it or the reasonable inferences drawn therefrom. *Truelove v. Truelove*, 855 N.E.2d 311, 314 (Ind. Ct. App. 2006).

Additionally, Mother is appealing from a decision in which the trial court entered findings of fact and conclusions of law pursuant to Indiana Trial Rule 52. Thus, we must

[2] The chronological case history does not indicate when the trial court denied Mother's motion to correct error. Nevertheless, pursuant to Ind. Trial Rule 53.3(A), the motion was deemed denied at the time Mother

first determine whether the evidence supports the findings and second, whether the findings support the judgment. *Staresnick v. Staresnick*, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005), *reh'g denied*. The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* We neither reweigh the evidence or assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. *Id.*

We note at the outset that Father did not file an Appellee's Brief in this case. When the appellee fails to file a brief on appeal, we may in our discretion reverse the trial court's decision if the appellant makes a *prima facie* showing of reversible error. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Id.*

In the initial custody determination, both parents are presumed equally entitled to custody, but a petitioner seeking subsequent modification bears the burden of demonstrating that the existing custody arrangement should be altered. *Leisure,* 828 N.E.2d at 414. Ordinarily, a trial 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 or more of the facts a court may consider under I.C. § 31-17-2-8. *See* I.C. § 31-17-2-21. The factors listed in I.C. § 31-17-2-8 are the following:

(1) The age and sex of the child.
(2) The wishes of the child's parent or parents.

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filed her Notice of Appeal.

(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;
(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.

In essence, Mother maintains that Father's new marriage and subsequent living situation has resulted in a substantial change of circumstances, such that the emotional and intellectual development of the children will be hampered by continued joint custody. Therefore, she asserts that modification of the current custody arrangement would be in the children's best interests.

First, in a one-sentence argument, Mother complains about Father's failure to understand "the effect [of] sharing a room with three other females, two of whom are not her siblings, will have on [B.P.]." (Appellant's App. p. 8). Here, the record reflects that Father married his current wife (Wife) in February of 2002. By joining two households, Father and Wife care for Wife's four children from previous relationships, Father's two children, and Father's and Wife's subsequent born child. Together, they now live in a three bedroom house which has a bath and a half. Although Father is in the midst of remodeling the house to increase its capacity, at the time of trial, B.P. and K.P. were sharing a bedroom with

Wife's two older daughters, who were fifteen and seventeen years old. This shared room is large enough to hold two sets of bunk beds and two large walk-in closets.

On the other hand, Mother testified that she lives in a three bedroom, one bath mobile home that she shares with her boyfriend. While B.P. and K.P. could have their own room at Mother's, B.P. would still share her room on alternate weekends with Mother's boyfriend's daughter. Occasionally, when Mother's boyfriend's son visits, B.P. would share her room with K.P. and boyfriend's daughter. However, beyond the nature of the living arrangements, Mother has not submitted any evidence proving its impact on B.P.'s emotional wellbeing.

Additionally, Mother suggests that the joint custody arrangement, which amounts to "shuttling midweek between two households," has created confusion and stress for both children. We note that the joint custody arrangement has been in place since the trial court entered the Agreed Entry on February 6, 2003. Only now does Mother assert that this arrangement creates a burden on the children. Nevertheless, without anything more than this mere claim, we are not inclined to revisit the custody arrangement.

While no custody situation is ever perfect, here the record clearly supports that both Mother and Father care about their children and try to provide for them as best as they can. While Mother advanced several arguments, we do not believe that these rise to the level of a substantial change required under the statute. Thus, viewing the evidence in light of our deferential standard of review, we conclude that Mother failed to carry her burden of demonstrating that the existing custody arrangement should be altered. *See Leisure*, 828 N.E.2d at 414.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly denied Mother's petition to modify custody.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.