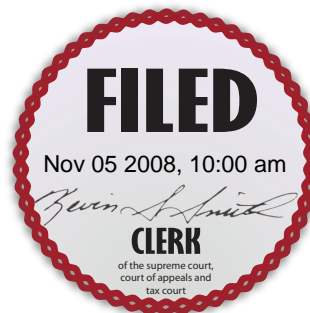


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE PATERNITY OF C.W.R.)

Catherine W.,)
Appellant,)

vs.)

Frederick R.,)
Appellee.)

No. 31A01-0712-JV-601

APPEAL FROM THE HARRISON CIRCUIT COURT
The Honorable Richard Striegel, Sr. Judge
Cause No. 31C01-0502-JP-011

November 5, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Frederick R. (“Father”) filed a petition to modify custody in Harrison Circuit Court seeking primary physical custody of his minor child, C.W.R. Catherine W. (“Mother”), the child’s mother, responded by asking the court to award primary custody to her. The trial court granted Father’s petition and Mother appeals. However, we remand this case to the trial court with instructions to determine whether there has been a substantial change in at least one of the factors enumerated in Indiana Code section 31-17-2-8 and whether the modification of custody is in C.W.R.’s best interests.

Facts and Procedural History

C.W.R. was born on January 20, 2003. On April 11, 2006, Father established paternity, and Mother and Father were ordered to share joint custody of C.W.R. On March 19, 2007, Father filed a petition to modify custody and asked the court to award primary physical custody of C.W.R. to Father.

In his petition, Father alleged that Mother was not allowing Father to exercise his parenting time with C.W.R., and that Mother had made false and unsubstantiated allegations of abuse to the Sheriff’s Department in Edwards County, Illinois. Father also alleged that Mother had pleaded guilty to a charge of driving with an open container of alcohol with C.W.R. in her vehicle. Appellant’s App. p. 56. In response, Mother filed a petition to modify custody requesting primary physical custody of C.W.R.

After a special judge was appointed, a hearing spanning several days was held on the parties’ petitions. On November 7, 2007, the court made the following entry on the chronological case summary: “Court grants custody to Father, parenting time per

guidelines, pick up and delivery to continue as per present arrangement.” Appellant’s App. pp. 1, 11. Mother now appeals.

Discussion and Decision

Mother contends that the trial court abused its discretion when it granted Father’s petition to modify custody and awarded him primary physical custody of C.W.R. “We review custody modifications for abuse of discretion, with a preference for granting latitude and deference to our trial judges in family law matters.” Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (quotation omitted). We set aside judgments only when they are clearly erroneous, and we will not substitute our own judgment if any evidence or legitimate inferences support the trial court’s judgment. Id. On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal. Id.

Indiana Code section 31-17-2-21 (1998 & Supp. 2007) provides that a court may not modify a child custody order unless: (1) the modification is in the child’s best interests; and (2) there is a substantial change in one or more of several factors that a court may consider in initially determining custody. Those factors include the following: (1) The child’s age and sex; (2) the wishes of the child’s parent or parents; (3) the child’s wishes, with more consideration given to the wishes of a child who is at least fourteen years old; (4) the child’s interaction and interrelationship with his or her parents, siblings, and any other person who may significantly affect the child’s best interests; (5) the child’s adjustment to his or her home, school, and community; (6) the mental and physical health of all individuals involved; (7) evidence of a pattern of

domestic or family violence by either parent; and (8) evidence that the child has been cared for by a de facto custodian. Ind. Code § 31-17-2-8 (1998 & Supp. 2007). Although both parents are presumed equally entitled to custody when the initial custody determination is made, a petitioner seeking subsequent modification bears the burden of demonstrating that the existing custody should be altered. Kirk, 770 N.E.2d at 307.

In interpreting Indiana Code section 31-17-2-21, this Court has held that “all that is required to support modification of custody . . . is a **finding** that a change would be in the child’s best interests, a consideration of the factors listed in I.C. § 31-17-2-8, and a **finding** that there has been a substantial change in one of those factors.” Nienaber v. Nienaber, 787 N.E.2d 450, 456 (Ind. Ct. App. 2003) (emphases added). A trial court is **required** to make findings regarding the best interests of the child and a substantial change in factors. Kanach v. Rogers, 742 N.E.2d 987, 989 (Ind. Ct. App. 2001). However, absent a request by a party, a trial court is not required to make special findings regarding those factors. Id. That is, a trial court does not have to enter special findings that specify which factor or factors has substantially changed and explaining why a change in custody is in the best interests of the child. Id.

Here, the trial court made no findings other than the following entry: “Court grants custody to Father, parenting time per guidelines, pick up and delivery to continue as per present arrangement.” Appellant’s App. p. 1. Consequently, we cannot determine whether the trial court considered the factors enumerated in section 31-17-2-8 or considered whether the custody modification was in C.W.R.’s best interests, which is required before the court may modify an existing custody order. See I.C. § 31-17-2-21.

We therefore remand this case to the trial court with instructions to issue findings addressing whether there has been a substantial change in one of the section 31-17-2-8 factors and whether a custody modification is in C.W.R.'s best interests.

Remanded for proceedings consistent with this opinion.

BAKER, C.J., and BROWN, J., concur.