

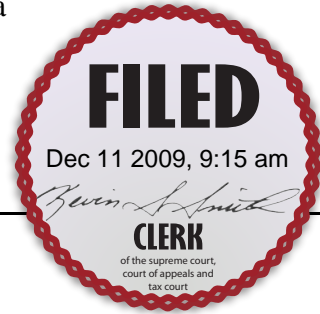
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**IN THE
COURT OF APPEALS OF INDIANA**

VICKIE (TETER) MAXEY,
Appellant-Respondent,

vs.

BARRY W. TETER,
Appellee-Petitioner.

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No. 48A02-0904-CV-372

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable George Pancol, Special Judge
Cause No. 48D03-0610-DR-900

December 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Vickie Teter Maxey (“Mother”) appeals the trial court’s grant of Barry W. Teter’s (“Father”) request for change of counselor. We affirm.

Issue

Did the trial court abuse its discretion by granting Father’s request for change of counselor?

Facts and Procedural History

Mother and Father divorced on October 31, 2001. The trial court awarded Mother custody of the parties’ two young daughters, with visitation rights to Father. On January 23, 2002, Mother filed a verified emergency petition to terminate visitation pending psychological evaluation of Father. She alleged that Father had been arrested for stalking and invasion of privacy. On March 6, 2002, Father filed an emergency motion for visitation. On March 19, 2002, the trial court held a hearing on Father’s motion and took it under advisement pending a report by Court Appointed Special Advocates (“CASA”) and an arrangement for supervised visitation. On May 28, 2002, CASA filed its report, which was based on interviews with various subjects related to the case. The Madison County Prosecutor’s Office confirmed that criminal charges were pending against Father. Madison County Sheriff Sam Hanna told CASA that he had confiscated guns from Father and that he considered him “irrational and dangerous.” Exhibit B at 3. Father refused to release psychiatric records to CASA because of the criminal case pending against him. Based on its investigation, CASA recommended that the children have supervised visits with Father. On

August 14, 2002, the trial court ordered restricted visitation for Father, which was to be every other weekend at the residence of his parents. Father did not exercise his visitation rights pursuant to this court order.¹

On August 12, 2004, Father filed a verified petition for establishment of parenting time schedule. On August 17, 2004, Mother filed an objection to his petition, reiterating the restricted visitation order entered by the trial court two years earlier. That same day, Mother also filed a petition for psychological evaluation of Father. A hearing was set for August 9, 2006, and then continued to November 8, 2006, on the trial court's own motion. On November 9, 2006, the trial court ordered that Mother and Father be psychologically evaluated. The court ordered each party to name a psychologist to perform the other party's evaluation. On November 17, 2006, Father submitted a request that Dr. Frank Krause perform Mother's evaluation. On November 22, 2006, Mother requested that Father be evaluated by Dr. Bart Ferraro. On November 25, 2006, the trial court granted these requests and ordered Dr. Krause and Dr. Ferraro to submit written psychological evaluations.

On December 7, 2006, Father filed a motion to reconsider order requiring evaluation and request for emergency hearing. Father requested that the trial court grant him immediate visitation. He included with the motion a letter from his treating psychiatrist, Dr. Susan M. Anderson, stating in part that Father "is stable psychiatrically and has been for some time." Appellant's App. at 55. Dr. Anderson also wrote, "It is my opinion that [Father] be allowed to have visitation with his children and be actively involved in their lives." *Id.* On December

¹ According to Mother, Father has not seen his children since July 2002.

13, 2006, the trial court again ordered Dr. Krause to evaluate Mother and Dr. Ferraro to evaluate Father. The trial court further ordered that “each party shall be responsible for and pay for the cost of their own evaluation.” *Id.* at 58.

On February 20, 2007, Mother submitted her psychological evaluation to the trial court. At the next hearing, on March 6, 2007, Father argued his motion to reconsider filed on December 7, 2006. He argued that the supervised visitation order should be vacated and that he could not afford a psychological evaluation. On March 21, 2007, the trial court issued an order, stating in relevant part, “The Court reaffirms its previous order, ordering the psychological evaluation of [Father] and notes that the psychological evaluation of [Mother] was received on February 20, 2007. Court further orders [Father] to file [his] request for indigent appointment of counsel and to submit a financial responsibility statement.” *Id.* at 59. On August 1, 2007, Father filed a request for payment of psychological testing to be conducted at public expense due to indigency. The filing included Father’s request that he be evaluated by Dr. Krause (as Mother had been) because he “offers the same services at a much more reasonable cost” than Dr. Ferraro. *Id.* at 60. On August 17, 2007, Mother filed a response to Father’s request, arguing that it was untimely and merely an attempt to further delay the proceedings.

The matter was set for hearing on October 3, 2007, and Father moved to continue the hearing. The trial court granted Father’s motion and continued the hearing “to a later date convenient to the court and the parties.” *Id.* at 66. Nearly one year later, on September 9, 2008, Father filed a praecipe for hearing upon his request for payment of psychological

testing. The trial court granted the praecipe and scheduled a hearing for November 5, 2008. On October 16, 2008, Father filed a petition requesting that, in lieu of requiring Father to undergo a psychological evaluation, the trial court order all parties to undergo counseling with Pastor Dennis A. Coppock of Family Forever Ministries, Inc., in Anderson. At the November 5, 2008, hearing, the trial court ordered Father to submit Pastor Coppock's credentials, which he did a week later. Coppock's résumé indicates that he has a bachelor's degree in family science and psychology, a master of divinity degree in Christian counseling, and that he is a board-certified Christian counseling therapist.

On November 17, 2008, the trial court ordered Pastor Coppock to evaluate Father and report his findings and recommendations, with the costs of such evaluation to be paid by Father. On November 24, 2008, Mother filed an objection to the trial court's order appointing Coppock to evaluate Father. On December 12, 2008, the trial court overruled Mother's objection. On December 17, 2008, Mother filed a motion to set aside the trial court's order of November 17, 2008, and a motion to correct error.

On January 6, 2009, Pastor Coppock filed his "[p]ersonal [e]valuation" of Father. *Id.* at 89. On February 19, 2009, Father filed a petition for specific parenting time orders. On February 24, 2009, Mother filed an objection, stating that "Father's report from his Christian counselor does not qualify as a 'psychological evaluation' that was previously ordered and falls way short of establishing any legal basis for visitation to be modified at this time." *Id.* at 95. On March 20, 2009, the trial court denied Mother's motion to correct error. This appeal ensued.

Discussion and Decision

Mother claims that the trial court erred by denying her motion to correct error, in which she argued that the trial court should not have granted Father's request for change of counselor for two reasons: (1) the amount of time that had passed since the trial court's November 2006 order that Father undergo an evaluation, and (2) her claim that Coppock was not qualified to conduct the evaluation. We review the trial court's ruling on a motion to correct error for an abuse of discretion. *Stott v. Stott*, 737 N.E.2d 854, 857 (Ind. Ct. App. 2000). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences therefrom. *Adams v. Adams*, 873 N.E.2d 1094, 1098 (Ind. Ct. App. 2007).

Mother fails to cite any authority in support of her argument that the trial court erred by ordering a different counselor to evaluate Father nearly a year after it had ordered Dr. Ferraro to do so. Our research fails to reveal any caselaw or statute that requires the trial court to deem such a request for modification untimely after a specific amount of time has passed. It is not unusual for visitation disputes to continue for years, with the parties often dictating the speed of the case. Here, on October 4, 2007, according to the trial court's civil case summary, it granted Father's motion to continue the hearing set for October 3, 2007, and ordered that it "shall be reset to a later date convenient to the court and the parties." Appellant's App. at 6. Eleven months went by with only the filing of an appearance by Father's new attorney and no filings by Mother. It wasn't until September 10, 2008, that Father filed his praecipe for hearing regarding psychological testing. It was within the trial

court's discretion to conduct the hearing and rule on the petition to modify. There was no error here.

As for Mother's second contention, that Pastor Coppock was not qualified to conduct the psychological evaluation, it is not properly raised at this point in the case because the trial court has not yet considered the evaluation as evidence related to Father's petition for visitation. At the hearing on Father's petition, Mother will have the opportunity to challenge Pastor Coppock's credibility and, consequently, the weight the trial court should give to his report. According to Indiana Code Section 31-17-2-10, "[t]he court may seek the advice of professional personnel even if the professional personnel are not employed on a regular basis by the court. The advice shall be given in writing and made available by the court to counsel upon request." The statute also states: "Counsel may call for cross-examination of any professional personnel consulted by the court." *Id.* If Mother—after cross-examining Pastor Coppock on his qualifications and the nature of his evaluation of Father—disagrees with the trial court's order as to visitation, then she may pursue a motion to correct error and/or an appeal to this Court which may include the issue of the pastor's qualifications or lack thereof. Until then, there is no legal basis for her claim of error.

Affirmed.

RILEY, J., and VAIDIK, J., concur.