

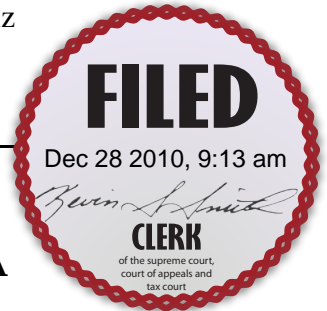
**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

ATTORNEY FOR APPELLANT:

**DONALD E. BAIER**  
Baier & Baier  
Mount Vernon, Indiana

ATTORNEY FOR APPELLEE:

**BETH ANN FOLZ**  
McFadin Higgins & Folz  
Mount Vernon, Indiana



---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

CYNTHIA ANN PAINTER,

Appellant-Petitioner,

vs.

LEE ANDREW GRANDERSON,

Appellee-Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 65A04-1003-DR-203

---

APPEAL FROM THE POSEY CIRCUIT COURT  
The Honorable Maurice C. O'Connor, Special Judge  
Cause No. 65C01-0809-DR-230

---

**December 28, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-petitioner Cynthia Ann Painter (Mother) appeals the trial court's order awarding custody of the parties' minor daughter, R.K., to her former husband, appellee-respondent Lee Andrew Granderson (Father). Specifically, Mother claims that the evidence failed to demonstrate that the grant of custody to Father was in R.K.'s best interests. Concluding that the evidence supports the trial court's award of custody, we affirm.

### FACTS

The parties were married on April 25, 1998, and R.K. was born in September 2001. R.K. was diagnosed with Down's Syndrome at the time of her birth. On September 2, 2008, Father petitioned for dissolution of the marriage.

When the parties first married, Mother was employed at an Evansville law firm. However, she was terminated from her position in 2001 because she had embezzled approximately \$90,000 from the firm. Mother was subsequently convicted of forgery and theft. Although Mother worked other jobs, she was unemployed from 2003 through 2008 and was primarily responsible for taking care of R.K. At the time of the final hearing, Mother was working at a funeral home.

Father had been employed at a GE plastics facility but was laid off in 2002. However, two weeks later, Father began working for the city of Mount Vernon. He also worked at an oil change facility to supplement his income. Father was later recalled to GE in 2004. The name of the company was later changed to Sabic Innovative Plastics, where Father remains employed.

During the marriage, the parties and R.K. lived next door to Father's parents, Russell (Grandfather) and Shirley Granderson (Grandmother) (collectively, Grandparents), and R.K.'s aunt, Brandi Granderson. All three had almost daily contact with R.K. and regularly babysat her. The Grandparents also took R.K. to her speech and occupational therapy appointments, and Grandmother attended several Down Syndrome conferences.

Mother's family lived in Alabama and saw R.K. two or three times a year during holidays and summer vacations. Mother testified at the final hearing that she intended to move to Alabama—with or without R.K.

R.K. always appeared to be happy around Father. Father played games with R.K., took her fishing and hiking, and engaged in other activities with her. Although Mother took the lead in transporting R.K. to and from her appointments, Father also attended many of the therapy sessions and became more active in learning the goals and objectives of R.K.'s therapy during the pendency of the divorce.

R.K. was a student at Farmersville Elementary School (Farmersville). The principal and teachers believed that Farmersville is appropriate and well-equipped to handle R.K.'s special needs. R.K. also had an aide who had worked with R.K. for several years. On at least one occasion, the aide attended a Down Syndrome conference with Mother and paternal Grandmother.

After the parties separated and Father moved to a separate residence, the evidence demonstrated that Father maintained a clean household and paid his bills in a timely

manner. Moreover, with the help of Father's extended family, R.K. was able to continue with her therapy sessions and other activities.

On the other hand, Mother neglected housekeeping chores, as there were dirty dishes, dirty clothing, and trash throughout the house. Mouse droppings were found in the residence, including on R.K.'s nightstand. Dead mice were discovered in the stove, under R.K.'s bed, in her dresser and toy box, and in the laundry room.

R.K.'s mattress was dirty and smelled of urine, and there was an overwhelming "sewer smell" in the house. Tr. p. 965, 1015. There was mold in the refrigerator and trash was strewn throughout the yard. Several of Mother's own witnesses testified that Mother's home was not appropriate for R.K.

The final hearing commenced on March 17, 2009. However, there was not sufficient time to complete the hearing. Thus, the trial court issued an agreed order regarding parenting time on May 26, 2009, and heard additional evidence on June 15-17. At the conclusion of the hearing, the trial court ordered the parties to submit proposed dissolution decrees. Father then requested that a different judge be selected in the case. Judge O'Connor accepted appointment as special judge, and a four-day final hearing commenced on November 16, 2009. Following the final hearing, both parties submitted their proposed decrees that included findings of fact and conclusions of law. On December 11, 2009, the trial court issued its decree, providing, among other things, that awarding custody of R.K. to Father "is in the best interest of [R.K.]." Appellant's App. p. 69.

The trial court adopted a portion of Father's proposed decree that included an examination of the custody factors in Indiana Code section 31-17-2-8. The trial court found that R.K. is well adjusted to her home, school, and community. Although Father's mental and physical health was "never in question," the trial court noted Mother's felony convictions, her lack of ability to maintain a clean household, and the inability to maintain steady employment. Id. at 67. The trial court further observed that

Mother did considerable research on Down's Syndrome. She attended a number of conferences on Down's Syndrome children. She was active in [R.K.'s] therapy and the therapists and teachers considered her a resource when it came to dealing with a child who has Down's Syndrome. She made suggestions as to treatment for [R.K.]. For these reasons the therapists and teachers thought [R.K.] would be better off in the custody of the Mother. This was the public face of the Mother which the Court is having trouble in reconciling with the private face of the Mother.

...

Mother took care of the family finances. Even though the Father made substantial money, bills were not paid on time, bill collectors called and there were loans not repaid timely. One disturbing bit of evidence was that the Mother, unknown by the Father, opened a separate bank account in her name only and withdrew monies from the joint account and deposited them into her own personal account. The reason for the account was not explained to the Court's satisfaction as a number of checks written by the Mother did not clearly indicate they were for family expenses. In addition, the mother suffered several hundred dollars in overdrafts.

Another troubling factor is when Mother turned the family residence over to the Father, among the mountains of trash; he found copies of receipts for sales transactions from one of the businesses the Mother had been terminated from. These appeared to contain a number of copies of the original receipt and appeared to be the business record of the sale.

During the later stages of the marriage and while the dissolution was filed Mother sought employment and she was terminated from two of those jobs for violations of the employer's rules and policy.

One of the most glaring problems with the Mother's public face verses the private is how she took care of the home environment that [R.K.] lived in. During the time that the Father lived with the Mother and [R.K.] the Mother's house cleaning and maintenance of the home environment were below marginal. Once the Father left the house things deteriorated. The Father has not resided in the home since August 2008. There was evidence and testimony presented about the time period of October 2008 which clearly showed that the Mother could not maintain an appropriate living environment for [R.K.].

Id. at 68-69. Mother now appeals the custody determination.

## DISCUSSION AND DECISION

### I. Standard of Review

When, as here, the trial court enters findings of fact and conclusions of law, we apply a two-tiered standard of review. Stonger v. Sorrell, 776 N.E.2d 353, 358 (Ind. 2002). We must first determine whether the evidence supports the findings and then whether the findings support the judgment. Id. "Reversal is appropriate only if we find the trial court's decision is against the logic and effect of the facts and circumstances before the Court or the reasonable inferences drawn therefrom." In re Guardianship of B.H., 770 N.E.2d 283, 288 (Ind. 2002).

### II. Mother's Claims

#### A. Adoption of Father's Proposed Decree

Mother claims that the trial court's judgment must be set aside because it erred in adopting "nearly verbatim representations" of Father's proposed findings. Appellant's Br. p. 13. Mother claims that the trial court failed to give consideration to all of the evidence and that the order disregarded or minimized the issues that are significant to R.K.'s welfare.

We initially observe that while a wholesale adoption of a party's proposed findings is not prohibited, we do not encourage trial courts to engage in this practice. In re Marriage of Nickels, 834 N.E.2d 1091, 1096 (Ind. Ct. App. 2005). Although we do not apply an altered standard of review when a trial court adopts a party's findings verbatim, "near verbatim reproductions may appropriately justify cautious appellate scrutiny." Stevens v. State, 770 N.E.2d 739, 762 (Ind. 2002). The critical inquiry remains whether the findings are clearly erroneous. In re Marriage of Nickels, 834 N.E.2d at 1096.

Contrary to Mother's contention, the trial court did not adopt "almost verbatim" Father's proposed findings in this case. Appellant's Br. p. 7. Rather, the decree was interspersed with the trial court's own observations and determinations. Most notably, nearly one-and-one-half pages of the order was not contained in Father's brief. Indeed, the trial court made specific findings regarding Mother's research and knowledge of Down's Syndrome and the fact that she was active in R.K.'s therapy. Appellant's App. p. 68.

In that same paragraph, the trial court balanced these factors against Mother's inability to provide R.K. with an appropriate home environment. Moreover, the trial court opined that Mother's residence was a danger to R.K. and demonstrated that she either neglected or was not able to provide her with proper shelter. Id. at 69. As discussed in more detail below, it is apparent that the trial court determined that Mother's weaknesses outweighed her strengths. In short, Mother does not prevail on her claim that the judgment must be set aside because the trial court adopted a portion of Father's proposed findings.

#### B. Custody Determination

Mother next claims that the evidence presented at the final hearing fails to support the trial court's determination that granting custody of R.K. to Father was in R.K.'s best interests. Mother claims that the evidence established that she was the parent who was "best equipped" to care for R.K.'s needs as a custodial parent. Appellant's Br. p. 6.

Child custody determinations fall squarely within the discretion of the trial court and will not be disturbed except for an abuse of discretion. Klotz v. Klotz, 747 N.E.2d 1187, 1189 (Ind. Ct. App. 2001). On review, we will not reweigh the evidence, judge the credibility of witnesses, or substitute our judgment for that of the trial court. Id. We will reverse the trial court only if it has abused its discretion. Id. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or reasonable inferences therefrom, that were before the court. Id.



We also note that there is a preference for granting latitude and deference to the trial court in family law matters. In re Marriage of Richardson, 622 N.E.2d 178, 178 (Ind. 1993). The trial court is in the best position to judge the facts, to get a feel for the family dynamics and to obtain a sense of the parents and their relationship to the children. Miller v. Sugden, 849 N.E.2d 758, 759-60 (Ind. Ct. App. 2006).

Pursuant to Indiana Code section 31-17-2-8, the trial court “shall determine custody and enter a custody order in accordance with the best interests of the child.” Moreover, this statute lists the following factors relevant to determining the best interests of the child in custody determinations:

- (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 old.
- (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.

(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.

Id.

In addition to the findings discussed above, the trial court also considered R.K.'s wishes and determined that she did not want to live with Mother. Several witnesses testified that when it was time for R.K. to go with Mother, she would routinely cling to Father, cry, run, and pull away from Mother. Appellant's App. p. 65. Moreover, the trial court heard the evidence about the interaction between R.K. and her parents, both sets of grandparents, her aunt, and others who significantly impacted R.K.'s best interests.

The paternal Grandparents had almost daily contact with R.K. and were an integral part of her life, both before and during the pendency of the dissolution. Contrary to Mother's contention, the trial court heard and considered the evidence of the contact that her extended family had with R.K. And the evidence demonstrated that such contact was significantly less than that of Father's family. Moreover, as discussed above, Father's close-knit family babysat R.K. on a regular basis, drove her to therapies, and attended Down Syndrome conferences. In light of this evidence, it was reasonable for the trial court to find that the factor of R.K.'s interaction and relationship with her paternal extended family weighed in favor of Father having custody.

The witnesses also testified that R.K. was well adjusted to her school and community. As noted above, R.K. had her own aide and a special services teacher who had worked with her for three years. On the other hand, Mother sought to uproot R.K. from her school, healthcare providers, therapist, extended family, and her Father. Everyone acknowledged that a move to Alabama would be an adjustment for R.K.<sup>1</sup>

Also, as discussed above, the trial court considered both Mother and Father's employment records, their financial habits, and their ability to maintain a stable and clean residence for R.K. In light of the evidence regarding these circumstances, we cannot say that the trial court abused its discretion in determining that these factors weighed in favor of granting custody of R.K. to Father.

The trial court also considered the contradictory evidence that was presented regarding an alleged pattern of domestic violence. Although Mother had accused Father of committing a battery against her at some point, Father denied the accusation and the evidence showed that he was the individual who contacted the police. Moreover, Father was never arrested or charged with any criminal offense.

Finally, the trial court observed that Mother agreed to leave R.K. in Father's care following the hearing and observed that if Mother had truly believed that Father was not a fit and proper custodian, she would not have left R.K. in his care during this time. The trial court noted Mother's inability to cooperate with Father and pointed to her initial

---

<sup>1</sup> Although Mother claims that her speech therapist believed that R.K. would "easily adjust to school and therapy and community in Alabama," appellant's br. p. 10, the therapist testified that R.K. would certainly "test her new teachers," and it was important for a new school to follow the Individualized Education Program that was in place. Tr. p. 903.

refusal to permit Father to have weekend visitation on his extended break from work and her refusal to allow Father to have R.K. on his birthday until the police became involved.

In sum, it is apparent that the trial court considered the evidence, balanced all of the factors relevant to the custody determination, and concluded that it was in R.K.'s best interest to be in Father's custody. Put another way, the evidence supported the trial court's findings and the findings supported the judgment. Thus, we decline to set aside the award of custody to Father.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.