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IN THE
COURT OF APPEALS OF INDIANA

CHRISTIE A. ANKNEY,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 18A02-0703-CV-270
	)	
GREGORY A. ANKNEY,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0404-DR-84

September 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Christie Ankney ("Mother") appeals from the trial court's order modifying parenting time regarding her three minor children. Mother presents a single dispositive issue, namely, whether the trial court abused its discretion when it modified parenting time.

We reverse.

FACTS AND PROCEDURAL HISTORY

Mother and Gregory Ankney ("Father") were married and have three minor children: J.G.A., J.M.A., and J.A.A. In 2004, Mother filed a petition for dissolution of the marriage, and the trial court entered a final decree on February 16, 2005. Both parties lived in Muncie at the time. The trial court adopted the parties' agreement regarding custody and parenting time, with the parties sharing legal custody, Mother as primary physical custodian, and Father exercising substantial parenting time. The agreement provided that after Mother moved to Greensburg in April 2005, Father's parenting time would be modified, but he continued to have the children with him three weekends per month, as well as time each Wednesday.

On April 26, 2006, Father filed a Verified Petition to Modify Physical Custody wherein he stated that he planned to move to Greensburg and requested that he and Mother be granted "equal primary physical custody" of the children or, in the alternative, that he be granted sole physical custody. On May 30, Mother filed a Verified Petition for Modification of Decree asking that the trial court modify Father's parenting time. Father asked the trial court to appoint a psychologist to conduct a

custody evaluation, and the trial court appointed Dr. Thomas Murray. Dr. Murray concluded that the parties' essentially shared custody of the children had been beneficial to the children and recommended that custody and parenting time "ought to remain very close to what it is, or something similar." Transcript at 19.

At the hearing on Father's and Mother's petitions, Mother initially requested a continuance. Mother informed the trial court that she had just learned that Father, who has bipolar disorder, had been seeing a psychologist who works in the same office as Dr. Murray, and Mother was concerned about a conflict of interest. In addition, Mother realized that she did not have records from one of Father's medical providers because Father had provided her with an incorrect address for that provider. The trial court denied Mother's request for a continuance and conducted the hearing on the parties' petitions to modify.

After taking the matter under advisement, the trial court made an order book entry, which states in relevant part:

> 1. The parties are the parents of three (3) minor children, to-wit: [J.G.A., J.M.A., and J.A.A]. An agreement concerning custody of the children, support and property settlement was entered between the parties and approved by this Court on February 16, 2005. Pursuant to the agreement "the care, custody, and control of the said children shall be joint, with primary physical custody with wife."
>
> 2. Evidence was presented that the parties have equally shared the custody of their children and the responsibilities for the children's care, custody and control. Based upon the evidence presented, the Court finds that the parties should equally share the physical custody of the children and as such neither party shall be designated as the primary physical custodian. The parties shall continue to enjoy joint physical custody of their children. However, the Court is also aware that a true joint physical custody arrangement requires the parties to communicate and agree on issues concerning the children and that there may be times that the parties are

unable to agree on such decisions. In the event of a dispute, and only after the parties have attempted to agree upon the best interest of the children, Petitioner shall have the final decision making authority. Respondent may request that the Court intervene if the decision is one of major concern and the parties are unable to agree. Until the Court has the opportunity to intervene, as noted above, Petitioner's wishes concerning the decision shall control.

* * *

4. The parties' parenting time shall modify [sic] pursuant to [Father's] Exhibit F as set forth below.

> a. Greg shall have parenting time every other Friday from 5:00 p.m. through Sunday at 6:00 p.m.;
>
> b. Greg shall also enjoy parenting time every Monday at 5:00 p.m. through Tuesday at 8:00 a.m.;
>
> c. Greg shall also enjoy parenting time every Thursday at 5:00 p.m. through Friday at 8:00 a.m. This schedule would then rotate on an every other weekend basis as noted above;
>
> d. Greg's parenting time shall also include two (2) extra weekends per semester, to be agreed upon in advance between the parties;
>
> e. Summer parenting time shall be as originally set forth in the Agreement Regarding Custody of Children, Support and Property Settlement entered by this Court on February 16, 2005, (hereinafter referred to as the parties' agreement);
>
> f. Holidays shall be pursuant to the parties' agreement with the following exceptions:
>
> > 1. Birthdays: Birthdays shall be per the parties' agreement except that if the birthday falls on a weekend, the parties would split the weekend equally;
> >
> > 2. Christmas: Christie shall have the first half of the Christmas vacation. Greg shall then have Christmas day at 2:00 p.m. to the following day at 2:00 p.m. Greg shall also have the second half of the Christmas vacation. Christmas vacation is defined as 5:30 p.m. on the evening the children are released from school and continues until December 30 at 5:30 p.m.;

> 3. New Years: Greg shall have parenting time each New Years, which is defined as December 30th at 5:30 p.m. until the start of school;
>
> 4. Easter: The parties shall split the Easter holiday so that each party shall enjoy parenting time with the children.
>
> 5. Any parenting time not set forth above, or agreed upon between the parties, shall be pursuant to the Indiana Parenting Time Guidelines. For purposes of interpreting the Indiana Parenting Time Guidelines only, Petitioner shall be considered the custodial parent. The Indiana Parenting Time Guidelines Commentary shall also control whether or not either parent is to provide daycare if the other party needs daycare or a babysitter.

Appellant's App. at 8-11. This appeal ensued.

DISCUSSION AND DECISION

Mother contends that the trial court abused its discretion when it modified parenting time pursuant to Father's proposal.[1] In Spoor v. Spoor, 641 N.E.2d 1282, 1284-85 (Ind. Ct. App. 1994), this court detailed our standard of review:

> Upon an initial custody determination, the trial court presumes that both parents are equally entitled to custody. However, in a petition to modify custody, the petitioner must demonstrate the existence of changed circumstances so substantial and continuing as to make the existing custody order unreasonable. The standard is in place to avoid the disruptive effect of moving children back and forth between divorced parents and to dissuade former spouses from using custody proceedings as vehicles for revenge. Accordingly, it has long been recognized that the welfare of the children is paramount and is promoted by affording them permanent residence rather than the insecurity and instability that follow changes in custody. This is so even though at any given point in time the noncustodial parent may appear capable of offering "better" surroundings, either emotional or physical.
>
> The standard, however, does not require a trial court to find that the present custodial parent is unfit prior to granting a change. The changes asserted in the petition are to be judged in the context of the whole environment. A trial court's inquiry in proceedings to modify a custody decree is strictly

[1] Because we reverse on this issue, we need not address whether the trial court abused its discretion when it denied Mother's motion to continue the hearing.

> limited to consideration of changes in circumstances which have occurred since the last custody decree.
>
> When reviewing a trial court's decision as to modification of custody, this Court determines whether the record discloses evidence or reasonable inferences to be drawn therefrom which serve as a rational basis to support the findings of the trial court. The trial court's determination will be reversed only when the petitioner fails to allege and prove a decisive change in conditions and the trial court does not make findings that there was a change in conditions which warranted a modification of custody, or when the trial court abuses its discretion.

(Citations omitted, emphases added).

Indiana Code Section 31-17-2-21 provides in relevant part:

> (a) The 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 (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter.
>
> (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

And Indiana Code Section 31-17-2-8 provides:

> 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.

(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.

Here, the only evidence of changes since the previous custody decree consists of the following: Father moved from Muncie to Greensburg; and Father's bipolar disorder was more stable.[2] But there is no evidence showing that either of those changes was so substantial "as to make the original residential arrangement unreasonable." See Lamb v. Wenning, 600 N.E.2d 96, 98 (Ind. 1992). Indeed, while Father lived approximately sixty miles away from Mother when the previous order was in place, he managed to exercise parenting time with the children every Wednesday, including two Wednesday overnights per month, in addition to three weekends per month. In light of that evidence showing that the previous order was workable and reasonable, we cannot say that

[2] Father contends that another change was the wishes of the parents, in that "each parent wanted to modify" the previous agreement. Brief of Appellee at 16. But we are unpersuaded by that assertion. The undisputed evidence shows that both parties have always desired shared custody of their children. There has not been a substantial change in that factor.

Father's move to Greensburg constitutes a substantial change. See, e.g., Green v. Green, 843 N.E.2d 23, 27 (Ind. Ct. App. 2006) (holding custodial parent's relocation, alone, will not support modification of custody). And while Father's bipolar disorder was described by Dr. Murray as more stable at the time of the hearing, Dr. Murray also testified that the previous parenting time order was "working very well." Transcript at 43.

Despite the fact that both parties petitioned for modification of parenting time, and, therefore, both allege a change of circumstances, we are bound by our standard of review. In Lamb, our Supreme Court held: "where there is joint legal custody with one parent providing the child's primary residence, a court may modify that residence only upon a showing of changed circumstances so substantial and continuing as to make the original residential arrangement unreasonable." 600 N.E.2d at 98 (emphasis added). Father has not made that showing. The trial court did not make a finding of a substantial change in circumstances or that modification was in the best interest of the children. And we cannot say that the evidence in this case supports either determination. We reverse the trial court's order modifying physical custody and parenting time.[3]

Reversed.

MATHIAS, J., and BRADFORD, J., concur.

[3] Absent a showing of a substantial change in circumstances, the parties can try to resolve the parenting time dispute by agreement.