MEMORANDUM DECISION

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

Whitney Hammel,
Appellant,

v.

Logan Hammel,
Appellee.

September 15, 2021

Court of Appeals Case No. 21A-DC-594

Appeal from the Shelby Circuit Court

The Honorable Trent E. Meltzer, Judge

Trial Court Cause No. 73C01-2003-DC-53

Weissmann, Judge.

[1] Whitney Hammel (Mother) appeals the trial court's custody modification awarding Logan Hammel (Father) primary physical custody of his and Mother's two children, 10-year-old H.H. and 7-year-old W.H. (collectively, Children). Finding sufficient evidence that the custody modification was in Children's best interests and based on a substantial change in Children's homelife adjustment and parent-child relationships, we affirm.

Facts

[2] Shortly after parents divorced in Ohio, Mother moved Children to Indiana where their maternal grandmother also resides. According to Father, he discovered the move when Children's new school called concerning their repeat absences. Father, who regularly traveled for work at the time of the divorce, has since settled in Iowa and now works for a company which does not require overnight travel.

[3] Given his newfound stability, Father petitioned for modification of child custody, claiming Mother's lifestyle was chaotic and that she left Children with their maternal grandmother for long periods of time. At Father's request, a court appointed special advocate (CASA) was assigned to investigate Children's bests interests. The CASA recommended that Father have primary physical custody of Children, and following an evidentiary hearing, the trial court agreed. Though Mother and Father maintained joint legal custody of Children, the court entered a custody modification order awarding Father primary

physical custody of Children, with Mother having parenting time. Mother now appeals.

Standard of Review

[4] "We review custody modifications for an abuse of discretion with a preference for granting latitude and deference to our trial judges in family law matters." *Hecht v. Hecht*, 142 N.E.3d 1022, 1028 (Ind. Ct. App. 2020) (internal quotation omitted). "We will not reweigh the evidence or judge the credibility of the witnesses." *Id.* at 1029. "Rather, we will reverse the trial court's custody determination only if the decision is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom." *Id.* (internal quotation omitted).

Discussion and Decision

[5] Mother argues that the trial court abused its discretion in awarding Father primary physical custody of Children. Indiana Code § 31-17-2-21(a) prohibits a trial court from modifying 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 factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter."[1]

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[1] Section 8.5 "only applies if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian." Ind. Code § 31-17-2-8.5(a).

[6] Indiana Code § 31-17-2-8 identifies nine factors relevant in determining a child's best interest. They include "[t]he interaction and interrelationship of the child with . . . the child's parent or parents," Ind. Code § 31-17-2-8(4)(A), and "[t]he child's adjustment to the child's . . . home." Ind. Code § 31-17-2-8(5)(A). Our review of the record reveals that the trial court's custody modification was based on substantial changes in these two factors, which support a determination that awarding Father primary physical custody was in Children's best interests.

[7] As the trial court found in its custody modification order:

> 11. The evidence presented at the hearing indicated that the children spend every day at maternal grandmother's home. On school days, Mother drops the children off at grandmother's house before school and picks them up from grandmother's house between 5:00 and 7:00 p.m., despite leaving work in Indianapolis at 3:30 pm (sic). The children also frequently spend the night at grandmother's house.
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> 12. Father led an itinerant lifestyle at the time of the divorce where he traveled from state to state working. He ceased this lifestyle in May 2020 and settled in Waukee, Iowa, his home state. He has a job with Northern Natural Gas Company, working Monday through Friday from 7:00 a.m. through 3:30 p.m. He has traveled outside the state of Iowa one time for work but has not been required to be away from home overnight.
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> 15. . . . Both parties have moved, and [they] now live 8 hours away from each other. . . .

App. Vol. II, pp. 14-16.

[8] Beyond the trial court's limited findings above, which Mother does not dispute, the record contains evidence that Children are "always with their grandmother" and "never with their mom." Tr. Vol. II, p. 29. There is also evidence that Mother once dropped Children off at maternal grandmother's home, told them she was going to a store, and did not return for several days. Tr. Vol. II, pp. 29-30, 87. In contrast, the record indicates that Father's work schedule normally will permit him to be home when Children get off the bus from school. Tr. Vol. II, p. 133. And he generally will be home every night. Tr. Vol. II, p. 31.

[9] Still, Mother claims the trial court's findings do not support the judgment because Father failed to prove Children's best interests are not served by spending time with maternal grandmother. This, however, is not a custody dispute between Father and maternal grandmother. If it were, there would be a "strong presumption" that Children's best interests would be served by placement in the custody of Father—the natural parent. *In re Guardianship of B.H.*, 770 N.E.2d 283, 287 (Ind. 2002) ("This presumption . . . embodies innumerable social, psychological, cultural, and biological considerations that significantly benefit the child and serve the child's best interests.").

[10] The proper inquiry is whether Children's best interests are served by modifying primary physical custody from Mother to Father. *See Wilson v. Myers*, 997 N.E.2d 338, 340 (Ind. 2013) ("[T]he party seeking the modification bears the burden of demonstrating that the *existing arrangement* is no longer in the best

interests of the child . . . ." (emphasis added)). On this issue, we further highlight several evidentiary observations, which the trial court made in its custody modification order. H.H. told the CASA she wished to live with Father. App. Vol. II, p. 14. The CASA expressed concern that Mother was not meeting Children's educational needs, as shown by their numerous school absences and tardies while in Mother's care. *Id.* at 14-15. W.H. also struggled to complete e-learning with Mother but had no such issues when visiting Father. *Id.* at 15. The CASA further expressed concern that Children's medical needs were not being met, as they did not have a primary care physician and did not receive regular check-ups while in Mother's care. *Id.* at 14-15.

[11] Mother does not challenge the observations above. Instead, she attempts to explain them away. Specifically, Mother points to evidence that many of H.H.'s school absences were excused, that W.H.'s absences ceased to be an issue when he returned to in-person learning, that the State of Indiana's e-learning standards were different when Children were in Father's care, and that Children do not have any ongoing health concerns. Mother's explanations, however, are an invitation for this Court to reweigh the evidence, which we will not do. *See Hecht v*, 142 N.E.3d at 1028.

[12] We find sufficient evidence that awarding Father primary physical custody was in Children's best interests and based on substantial changes in Children's homelife adjustment and parent-child relationships. Accordingly, we affirm the trial court's custody modification.

[13] Affirmed.

Mathias, J., and Tavitas, J., concur.