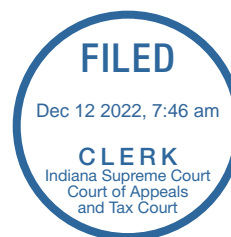


## MEMORANDUM DECISION

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

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In Re: The Paternity of A.Y.A.  
and A.E.A.;

Juma Amon,

*Appellant-Petitioner*

v.

Sarah G. Streeval,

*Appellee-Respondent.*

December 12, 2022

Court of Appeals Case No.  
21A-JP-2854

Appeal from the Bartholomew  
Superior Court

The Honorable James D. Worton,  
Judge

Trial Court Cause No.  
03D01-2104-JP-2145  
03D01-2104-JP-2146

**Pyle, Judge.**

## Statement of the Case

- [1] Juma Amon (“Father”) appeals the trial court’s order that awarded custody of his daughters, A.Y.A. (“A.Y.A.”) and A.E.A. (“A.E.A.”) (collectively “the children”) to their aunt, Brandie Streeval (“Streeval”),<sup>1</sup> awarded Father supervised parenting time with the children, and ordered Father to pay child support. Father specifically argues that the trial court abused its discretion when it awarded custody of the children to Streeval, restricted his parenting time with the children, and calculated his child support obligation.
- [2] Concluding that the trial court did not abuse its discretion in awarding custody of the children to Streeval or in restricting Father’s parenting time, we affirm those portions of the trial court’s order. However, we conclude that the trial court abused its discretion in calculating Father’s child support obligation. We, therefore, affirm in part, reverse in part, and remand with instructions for the for the trial court to recalculate Father’s child support obligation.<sup>2</sup>
- [3] We affirm in part, reverse in part, and remand with instructions.

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<sup>1</sup> Streeval is married to the brother of the children’s mother (“Mother”).

<sup>2</sup> Mother is not participating in this appeal.

## Issues

1. Whether the trial court abused its discretion when it awarded custody of the children to Streeval.
2. Whether the trial court abused its discretion when it restricted Father's parenting time with the children.
3. Whether the trial court abused its discretion when it ordered Father to pay \$192 per week in child support.

## Facts

[4] Father and Mother (collectively "Parents") began dating in 2012 but never married. They are the parents of A.Y.A., who was born in April 2014, and A.E.A., who was born in November 2016. Father signed paternity affidavits when the children were born. Father and Mother ended their relationship in 2017 but lived together until January 2020, when Mother and the children moved out of the family's home.

[5] Thereafter, Mother attempted to schedule visits between the children and Father; however, Father told Mother that the children were "not his kids." (Tr. Vol. 2 at 62). Father frequently ignored Mother's telephone calls, and when Mother sent Father a video of A.Y.A. asking to talk to Father, Father did not respond. On another occasion, Mother took A.Y.A. to Father's house at 10:00 a.m. on a weekend morning. A.Y.A. knocked on the door, but Father failed to answer it. Mother subsequently found Father drinking beer with friends in his backyard. Although Mother continued to contact Father and attempted to

schedule visits between Father and the children, Father did not see the children from June 2020 until November 2020.

[6] In addition, when Mother and the children had left the family's home, Father had agreed to give Mother \$200 per week to help support the children. However, Father only paid Mother \$400 in 2020. When Mother became depressed and encountered financial difficulties, Father refused to help. Mother then turned to Streeval for support, and the children often spent time at Streeval's house.

[7] On January 10, 2021, the children arrived at Streeval's home with dried dog feces in their hair. A.Y.A. was hungry and did not remember when she had last eaten, and A.E.A. had ringworm on her face. Streeval also learned that then-six-year-old A.Y.A. had not been to school in at least a month. Streeval contacted Mother, who explained that she could no longer care for the children because she was suffering from depression, anxiety, and substance abuse issues.

[8] Streeval went to Father's home, explained the situation, and showed Father pictures of Mother's home, which was dirty and had dog feces and cat urine on the floors. Father, who appeared to be intoxicated, told Streeval to bring the children to his house for visits on Sundays. Father later texted the children's health insurance information to Streeval.

[9] Streeval took the children to Father's home for a visit one weekend morning at 8:00 a.m. When she returned at 11:00 a.m. to pick up the children, Father appeared intoxicated. On another Sunday, Streeval took the children to

Father's home and spent thirty minutes knocking on the door and attempting to telephone Father. Father responded several hours later and explained that he had been at his girlfriend's house. In February 2021, when Streeval took A.E.A. to the hospital for a medical emergency, Father did not answer or return Streeval's telephone calls.

[10] Although Streeval continued to attempt to arrange visits between Father and the children, Father became aggressive and belligerent with her. In April 2021, after Father had accused Streeval on social media of kidnapping the children, Streeval blocked him from her social media account.

[11] Also in April 2021, Father filed a petition to establish custody, parenting time, and child support for the children. In July 2021, Streeval filed a petition to intervene in Father's custody case, which the trial court granted. Also in July 2021, Streeval filed a petition seeking third-party custody of the children. In this petition, Streeval stated that the children had been in her custody since January 2021 and that Father had not attempted to contact the children since that time.

[12] From April 2021 through October 2021, Streeval attempted to schedule visits between Father and the children. Father eventually scheduled a two-hour visit with the children in October 2021. When Father arrived at the visit, the children appeared to be scared of him. During the visit, Father was on his cell phone for fifteen to twenty minutes while the children were playing. Father then took some pictures of the children and left the visit after thirty minutes.

[13] The trial court held a hearing on Father's and Streeval's petitions in October 2021. During the hearing, the trial court heard the facts as set forth above. In addition, Father testified that when Mother and the children had moved out of the family's home in January 2020, Father did not know where Mother had taken the children. According to Father, he had looked for the children but had been unable to find or contact them. Later in the hearing, Father acknowledged that he had known where the children were in January 2020. Father further testified that after Streeval had blocked him from her social media account, he had not known how to reach her.

[14] In addition, Father testified that although he worked Monday through Saturday from 2:45 p.m. until 11 p.m. and would be unable to be home with the children after school and in the evening, he would "let [his girlfriend] work at home to take care of [his] kids while [he was] working." (Tr. Vol. 2 at 24). Father acknowledged that the children had only briefly met his girlfriend one time the previous year. Father denied that he excessively drank alcohol but acknowledged that he had recently been charged with operating a vehicle while intoxicated. Father also acknowledged that when he had seen the children in October 2021, the children had acted as if they were scared of him. Father further testified that he had previously earned \$17.94 an hour but that he was currently earning \$22 per hour. Father did not specify when his hourly pay had increased. When asked why he wanted custody of the children, Father explained, "[b]ecause that's my kid[s][.] My kid[s] belong to me." (Tr. Vol. 2 at 19).

[15] In addition, Mother testified that when she had lived with Father, she had been concerned about his frequent excessive use of alcohol. Mother also testified that she earned \$15 per hour. Mother explained that she was not in the position to properly care for the children and that it was in their best interests for Streeval to have custody of them. According to Mother, the children loved Streeval. Mother further testified that Father had told her that he would send the children to live with his family in Africa or in Kentucky and that she and Streeval would never see them again.

[16] Streeval testified that during the ten months that the children had been in her home, Father had never inquired about the children's well-being or offered her any financial assistance to support them. Streeval further testified that she and her husband were home from work when the children got home from school and were always with the children, who had become a part of their family. Streeval explained that if there ever came a time when either parent was able to properly care for the children, Streeval would be willing to return the children to that parent.

[17] Following the hearing, in November 2021, the trial court issued a detailed twenty-two-page order, which awarded custody of the children to Streeval, awarded Father supervised parenting time, and ordered Father to pay \$192 per week in child support.

[18] In this order, the trial court specifically concluded that Streeval had rebutted the presumption that favors awarding custody of children to the natural parent.

The trial court based its conclusion on the following facts: (1) Father suffers from substance abuse issues and drinks during his parenting time with the children; (2) Father failed to financially support the children; (3) Father has chosen to spend very little time with the children and despite not seeing his children for nine months, Father left a scheduled two-hour visit after thirty minutes of playing on his cell phone; (4) Father proposed that his girlfriend, whom the children had met one time the previous year, be the primary caretaker for the children; and (5) the children have lived with Streeval for ten months and have formed a close, bonded relationship with her.

[19] The trial court further concluded that awarding custody of the children to Streeval was in their best interests. The trial court based its conclusion on the following facts: (1) Mother prefers that Streeval, not Father or herself, be granted custody of the children; (2) the children have become a part of Streeval's family; (3) Father has gone for months without having contact with the children, and he and the children have become estranged; (4) based on Father's work schedule, Father would be unable to play an active role in the children's lives; (5) Father is currently suffering from substance abuse issues, has consumed alcohol during parenting time, and was recently charged with operating a vehicle while intoxicated. The trial court further concluded that Father had "made a voluntary relinquishment [of the children] such that the affections of [the children] and [Streeval] ha[d] become so interwoven that to sever them would seriously mar and endanger the future happiness of the children." (App. Vol. 2 at 30).



[20] In addition, the trial court concluded that it was in the children's best interests that Father's parenting time be restricted to supervised parenting time three hours per week because Father having unsupervised parenting time would endanger the children's physical health and well-being or significantly impair the children's emotional development. The trial court based its decision to restrict Father's parenting time on the following facts: (1) Father had gone for months without seeing the children, and there was currently no bond or emotional connection between Father and the children; (2) Father excessively used alcohol, including during parenting time; (3) Father did not plan to be the primary caretaker of the children; and (4) Father had stated his intention to harm the children's relationships with both Mother and Streeval and had told Mother that neither she nor Streeval would ever see them again. The trial court further ordered that Father engage in reunification counseling with the children through a licensed therapist. In addition, the trial court specifically found that much of Father's testimony was not credible.

[21] Lastly, the trial court ordered Father to pay \$192 per week in child support based on Father earning \$23 per hour. The trial court also ordered Father's child support payments to be retroactive to January 2021, when Mother placed the children in Streeval's care, and based the retroactive payments on Father earning \$23 per hour.

[22] Father now appeals.

## Decision

[23] At the outset, we note that there is a well-established preference in Indiana for granting latitude and deference to the trial court in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). Appellate courts “are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.” *Id.* (cleaned up). “On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.” *Id.* (cleaned up). “Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Id.* (cleaned up).

[24] We further note that Father requested specific findings and conclusions pursuant to Indiana Trial Rule 52. The purpose of Trial Rule 52(A) is to provide the parties and the reviewing court with the theory upon which the trial court decided the case in order that the right of review for error may be effectively preserved. *In re Paternity of S.A.M.*, 85 N.E.3d 879, 885 (Ind. Ct. App. 2017). When a trial court enters findings of fact and conclusions of law pursuant to Trial Rule 52, we apply the following two-tiered standard of review: (1) whether the evidence supports the findings; and (2) whether the findings support the judgment. *Hazelett v. Hazelett*, 119 N.E.3d 153, 157 (Ind. Ct. App.

2019). The trial court’s findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting the judgment. *Id.* A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.* We neither reweigh the evidence nor assess the credibility of the witnesses but consider only the evidence most favorable to the judgment. *Id.*

[25] We now turn to the issues in this case. Father argues that the trial court abused its discretion when it: (1) awarded custody of the children to Streeval; (2) restricted his parenting time; and (3) ordered him to pay \$192 per week in child support. We address each of his contentions in turn.

### **1. Custody**

[26] Father first argues that the trial court abused its discretion when it awarded custody of the children to Streeval. We disagree.

[27] “Child custody determinations fall squarely within the discretion of the trial court and will not be disturbed except for an abuse of discretion[,]” which occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before it, or the reasonable inferences to be drawn therefrom. *In re Guardianship of B.H.*, 770 N.E.2d 283, 288 (Ind. 2002) (cleaned up). In a custody dispute between a natural parent and a third party, there is a presumption that the natural parent should have custody of his children. *A.J.L. v. D.A.L.*, 912 N.E.2d 866, 871 (Ind. Ct. App. 2009). The third party bears the burden of overcoming this presumption by clear and convincing evidence. *In re*

*Paternity of W.M.T.*, 180 N.E.3d 290, 297 (Ind. Ct. App. 2021), *trans. denied*.

Evidence sufficient to rebut the presumption may, but need not necessarily, establish the natural parent’s unfitness or acquiescence or demonstrate that a strong bond has formed between the children and the third party. *Id.* Evidence sufficient to rebut the presumption may also “consist of the parent’s . . . past abandonment of the child[ren] such that the affections of the child and the third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child[ren].” *A.J.L.*, 912 N.E.3d at 872.

The issue is not merely the “fault” of the natural parent. Rather, it is whether the important and strong presumption that [the] child[ren]’s best interests are served by placement with the natural parents is clearly and convincingly overcome by evidence proving that the child[ren]’s best interests are substantially and significantly served by placement with another person. This determination falls within the sound discretion of our trial courts, and their judgments must be afforded deferential review. A generalized finding that a placement other than with the natural parent is in [the] child[ren]’s best interests, however, will not be adequate to support such a determination, and detailed specific findings are required[.]

*Paternity of W.M.T.*, 180 N.E.3d at 297 (cleaned up).

[28] If the third party rebuts this presumption by clear and convincing evidence, then the trial court engages in a general best interests’ analysis. *A.J.L.*, 912 N.E.2d at 872. INDIANA CODE § 31-14-13-2, which governs custody following a paternity determination, provides:

The court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, 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 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 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 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.
- (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 section 2.5(b) of this section.

I.C. § 31-14-13-2.

[29] “An appellate court should not disturb a trial court determination awarding child custody to a non-parent unless there is no evidence supporting the findings or the findings fail to support the judgment.” *A.J.L.*, 912 N.E.2d at 872

(cleaned up). We consider only the evidence favorable to the trial court's judgment and do not reweigh the evidence. *Id.*

[30] Here, the trial court concluded that Father had voluntarily relinquished the children, that the lives and affections of the children and Streeval had become completely interwoven, and that awarding custody of the children to Streeval was in the children's best interests. The evidence in the record, as set forth in the trial court's findings, supports these conclusions. Specifically, our review of the evidence reveals that several months after Mother and the children had left the family's home, Mother began suffering from mental health issues and encountered financial difficulties. When Father refused to help her and the children, Mother turned to Streeval. In January 2021, the children arrived at Streeval's home with dried dog feces in their hair. A.Y.A. was hungry and could not remember when she had last eaten, and A.E.A. had ringworm on her face. After Mother had told Streeval that she could no longer care for the children, Streeval went to Father's home and explained the situation to him. Rather than offering to take the children into his home, Father told Streeval to bring the children to his house for visits on Sundays. However, when Streeval took the children to Father's home on two Sundays, Father was either intoxicated or not at home.

[31] During the year that the children lived with Mother, Father paid her \$400 to help support the children. During the ten months that the children lived with Streeval, Father had not offered her any financial assistance to support the children and had never checked on the children's well-being. Father did not see

the children from January 2021 until October 2021, when he finally attended a scheduled two-hour visit with the children. During that visit, the children seemed scared of him, and he played on his phone for fifteen to twenty minutes before leaving the visit after thirty minutes. The evidence further reveals that because Father works Monday through Saturday from 2:45 p.m. until 11 p.m., Father planned for his girlfriend, who had met the children only one time the previous year, to be their primary caretaker. In addition, the children have bonded with Streeval and become a part of her family. The trial court did not abuse its discretion in awarding custody of the children to Streeval.

## **2. Parenting Time**

[32] Father also argues that the trial court abused its discretion when it restricted his parenting time. Father specifically contends that “[t]here was no evidence or testimony in the record that standard parenting time by Father would endanger the children’s physical health or significantly impair their emotional development.” (Father’s Br. 20).

[33] A trial court’s primary consideration in parenting time disputes is the children’s best interests. *Hazelett*, 119 N.E.3d at 162. Parenting time decisions are generally committed to the sound discretion of the trial court. *In re B.J.N.*, 19 N.E.3d 765, 769 (Ind. Ct. App. 2014). We, therefore, review parenting time decisions for an abuse of discretion. *Id.* A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.* In reviewing the

trial court's parenting time decision, we will not reweigh the evidence or judge the credibility of the witnesses. *Gomez v. Gomez*, 887 N.E.2d 977, 983 (Ind. Ct. App. 2008).

[34] INDIANA CODE § 31-14-14-1, which governs parenting time in paternity cases, provides that “[a] noncustodial parent is entitled to reasonable parenting time[.]” I.C. § 31-14-14-1(a). However, a non-custodial parent's parenting time may be halted or limited if “the court finds, after a hearing, that parenting time [by the noncustodial parent] might: (1) endanger the child's physical health and well-being; or (2) significantly impair the child's emotional development.” *Id.*

[35] The trial court made such a finding here, and that finding is supported by the evidence presented at the October 2021 hearing and set forth in the trial court's findings of fact. Specifically, our review of that evidence reveals that there was no bond or emotional connection between Father and the children. Father had gone for months without seeing the children, and they acted scared of Father at the October 2021 visit. The evidence further revealed that Father excessively used alcohol, including during parenting time. In addition, Father had told Mother that he intended to send the children to live with his family in Africa or in Kentucky and that she and Streeval would never see them again.

[36] Father's argument is an improper request that we reweigh the evidence and reassess the credibility of the witnesses. We decline his request. *See Gomez*, 887 N.E.2d at 983. The trial court did not abuse its discretion when it restricted Father's parenting time.



### 3. Child Support

[37] Father also argues that the trial court abused its discretion when it calculated his child support obligation. “Decisions regarding child support are generally left to the discretion of the trial court.” *Pryor v. Bostwick*, 818 N.E.2d 6, 11 (Ind. Ct. App. 2004). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it. *Barber v. Henry*, 55 N.E.3d 844, 850 (Ind. Ct. App. 2016).

[38] Here, Father specifically argues that the trial court abused its discretion when it calculated his current and retroactive child support obligations based on Father earning \$23 per hour. Father points out that he testified that he earns \$22 per hour. Father is correct that the trial court abused its discretion when it calculated his current and retroactive child support obligations based upon an incorrect hourly wage. We, therefore, reverse the trial court’s child support calculation and remand with instructions for the trial court to recalculate Father’s current and retroactive child support obligations using Father’s correct hourly wage of \$22 per hour.<sup>3</sup>

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<sup>3</sup> Father also argues that the trial court abused its discretion when it failed to award him an overnight parenting time credit when it calculated his child support obligation. However, the trial court did not award Father overnight parenting time. Accordingly, he was not entitled to an overnight parenting time credit, and we find no abuse of the trial court’s discretion. Father further argues that the trial court abused its discretion when it ordered his child support payments to be retroactive to January 10, 2021, the date that Mother placed the children in Streeval’s care. Father has waived appellate review of this argument because he has failed to support it with cogent argument and relevant authority. See *Himes v. Himes*, 57 N.E.3d 820, 829 (Ind. Ct. App. 2016) (holding that an argument was waived for failure to cite authority or provide cogent argument), *trans. denied*. Waiver notwithstanding, we find no error. It is well-established that “fathers have a common law duty to support their children which exists apart from any court order or statute.” *In re Adoption of*

[39] Affirmed in part, reversed in part, and remanded with instructions.

Robb, J., and Weissmann, J., concur.

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*A.K.S.*, 713 N.E.2d 896, 899 (Ind. Ct. App. 1999), *trans. denied*. Here, Father has not contributed to the support of his children since they were placed in Streeval's care. The trial court did not abuse its discretion when it ordered Father's child support payments to be retroactive to the date that mother placed the children in Streeval's care. Lastly, Father argues that the trial court abused its discretion when calculating his retroactive child support obligation. He believes that the trial court should have used his previous hourly rate of \$17.94 to calculate the retroactive support. However, Father has never stated when his pay rate changed from \$17.94 per hour to \$22 per hour. We, therefore, find no abuse of the trial court's discretion.