

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In re: The Marriage of Jennie  
M. (Morgan) Gray,  
*Appellant-Petitioner,*

v.

Phillip Morgan,  
*Appellee-Respondent.*

November 9, 2023

Court of Appeals Case No.  
23A-DR-195

Appeal from the Johnson Superior  
Court

The Honorable K. Mark Loyd,  
Judge *Pro Tempore*

The Honorable Peter D. Nugent,  
Judge

Trial Court Cause No.  
41D02-1503-DR-154

**Memorandum Decision by Judge Bradford**  
Judges Vaidik and Brown concur.

**Bradford, Judge.**

## Case Summary

- [1] In 2015, Jennie Gray (“Mother”) and Phillip Morgan (“Father”) dissolved their marriage after having three children together, C.J.M., C.M., and L.M. (collectively, “the Children”). After a few years of allegedly cooperative co-parenting, the parties modified their custody-and-parenting-time agreement; however, conflicts began to arise thereafter. On August 27, 2021, after various filings by both parties, the trial court conducted a counsel-only telephonic conference that resulted in a contempt finding against Mother. On October 22, 2021, the trial court conducted another counsel-only telephonic conference, after which it sentenced Mother to forty-eight hours in jail for the previous contempt finding. On January 10, 2023, the trial court concluded the final hearing after which it ordered, in part, that Father would have custody of the Children subject to Mother’s parenting time and Mother shall pay child support. Mother argues that (1) she was denied due process when the trial court found her to be in contempt and sanctioned her with jail time and (2) the modification orders were tainted by the erroneous contempt findings, such that they were rendered clearly erroneous. We affirm the modification orders but reverse the contempt finding.

## Facts and Procedural History

- [2] After Mother and Father’s marriage dissolution in 2015, they co-parented the Children “relatively peacefully” in accordance with the dissolution decree until 2019. Appellant’s App. Vol. II p. 67. In December of 2019, the parties agreed

to modify the custody order to share legal custody and established Father's parenting-time schedule. From September of 2020 until April of 2022, the parties filed a series of motions and petitions, including contempt petitions alleging that the other had failed to comply with the agreed parenting-time schedule and their agreements relating to transportation and participation in extracurricular activities.

[3] In May of 2021, the trial court held a hearing to resolve issues relating to parenting for that summer. Within a few months of that hearing, Mother began denying Father parenting time; in fact, she admitted as much when she testified at the final hearing that she was "not innocent when it comes to denying parenting time [...] in the Summer of 2021." Prior Tr. Vol. I p. 110. From July of 2021 through September of 2021, Father did not exercise parenting time.

[4] On August 27, 2021, the trial court held a counsel-only telephonic pretrial conference. The next month, the trial court issued an order scheduling Father's parenting time for September and October and finding Mother in contempt for denying Father his parenting time. However, the September and October parenting time did not occur because Mother "did not make [her] children go[.]" Prior Tr. Vol. I p. 149. On October 19, 2021, the trial court conducted another counsel-only pretrial conference, after which it ordered Mother to serve "48 hours at the Johnson County Jail" for previously having been found in contempt. Appellant's App. Vol. II p. 102. According to Mother's appellate counsel, no evidence was admitted into the record and no witnesses testified at either of these hearings.

[5] After the trial court had sanctioned Mother, Father received parenting time in late October and November. In December of 2021 and January of 2022, however, Mother again denied Father’s parenting time. Further, Mother, while claiming that she had attempted to make alternative arrangements, later admitted that she had not taken the Children to the pick-up location for Father’s parenting-time visits for February 25–27, March 11–13, and April 8, 2022.

[6] In January of 2022, Mother, Father, and L.M. submitted to psychological evaluations with Dr. Linda McIntire. After Dr. McIntire had completed her reports, Guardian ad Litem (“GAL”) Linda Fears included the evaluations in her updated report, which she submitted in July of 2022. While her initial report recommended that the parties share custody, GAL Fear’s updated report recommended, *inter alia*, that Father be awarded sole legal custody of the Children because Mother “has demonstrated her unwillingness to co-parent or involve Father in any way” and that parenting time be modified and Father be awarded primary physical custody. Appellant’s App. Vol. II p. 119.

[7] On July 26, 2022, the trial court conducted a final hearing on all pending matters. At the hearing, GAL Fears testified that she had changed her recommendations in the updated report because of the results of Dr. McIntire’s evaluations and “a sustained campaign of parent alienation [...] orchestrated by Mom” and “reinforced by [...] stepfather[.]” Prior Tr. Vol. I p. 8. After the hearing, the trial court modified custody of the parties’ two sons to Father, found Father in contempt for failure to pay child support as ordered, found

Mother in contempt for depriving Father of his parenting time, and ordered Father and L.M. to participate in reunification counseling with clinical social worker and licensed family therapist, Rick Shepard. The trial court then set the matter for further hearing on the issue of custody of L.M.

[8] In January of 2023, GAL Fears recommended that Father be awarded custody of L.M. GAL Fears testified that “the level of conflict between the parties, which [...] has a direct impact on the psychological well being of the [C]hildren,” would be significantly assuaged if the Children lived together and Father and L.M. were able to cultivate a relationship without L.M. controlling when Father can exercise parenting time with her. GAL Fears further testified that she had feared that Mother’s alienating behavior had continued since the filing of her July of 2022 report and that the prior change in custody for the boys had been “favorable[.]” Tr. Vol. II p. 23. After the hearing, the trial court ordered that the modification of custody regarding the boys would remain in full effect and that legal and physical custody of L.M. be awarded to Father, subject to Mother’s parenting time.

## Discussion and Decision

### I. Contempt Orders

[9] Mother argues that the trial court denied her due process when it found her in contempt and sentenced her to a forty-eight-hour jail sentence without adhering to the statutory requirements for indirect-contempt proceedings in Indiana

Code section 34-47-5-3. Indirect-contempt proceedings require an array of due-process protections, including notice and an opportunity to be heard. *Henderson v. Henderson*, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010). The purpose of civil contempt is not “to punish the contemnor[.]” and “jail time is generally punitive in nature[.]” *Reynolds v. Reynolds*, 64 N.E.3d 829, 835 (Ind. 2016). “To avoid being purely punitive, a contempt order must offer an opportunity for the recalcitrant party to purge himself or herself of the contempt.” *In re Paternity of C.N.S.*, 901 N.E.2d 1102, 1106 (Ind. Ct. App. 2009). Here, the contempt finding and corresponding order sentencing Mother to jail give no indication that Mother had an opportunity to purge herself of the contempt, “making the sentence purely punitive and impermissible.” *Id.* We therefore vacate the contempt finding.

## II. Custody Modifications

[10] Indiana Code section 31-17-2-21, in relevant part, provides:

- (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 [IC 31-17-2-8] and, if applicable, section 8.5 [IC 31-17-2-8.5] of this chapter.

Indiana Code section 31-17-2-8’s factors include:

- (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.

When reviewing a trial court’s decision to modify custody, “we review the court’s decision for an abuse of discretion, because we give wide latitude to our trial court judges in family law matters.” *In re Paternity of W.M.T.*, 180 N.E.3d 290, 296 (Ind. Ct. App. 2021), *trans. denied*.

[11] Mother argues that the contempt findings “irretrievably tainted and stained” the custody-modification orders such that they should be reversed. Appellant’s Br.

p. 28. We are unconvinced. Independent of the contempt orders, the record sufficiently supports a finding that the modifications were in the Children’s best interests and there was a substantial change in at least one of the best-interest factors. *See Kanach v. Rogers*, 742 N.E.2d 987, 989 (Ind. Ct. App. 2001) (stating that, while a trial court must consider all of the factors listed in Indiana Code section 31-17-2-8, it needs only to find one substantial change to warrant a custody modification).

[12] Custody modification should not be used to punish a parent for noncompliance with a custody order; however, “[i]f one parent can demonstrate that the other has committed conduct so egregious that it places a child’s mental and physical welfare at stake, the trial court may modify the custody order.” *Montgomery v. Montgomery*, 59 N.E.3d 343, 350 (Ind. Ct. App. 2016) (internal citation and quotation omitted), *trans. denied*. We conclude Father has made that showing.

[13] In the August 2, 2022 modification order, the trial court found that there had “been a substantial change in [Father]’s wishes; the interaction and interrelationship of the [C]hildren with their parents and stepparents; as well as the mental health of the [C]hildren in relation to their parents” (“Finding No. 5”). Appellant’s App. Vol. II pp 181–82. In support of Finding No. 5, the record shows that GAL Fears reported that “Mother ha[d] engaged in significant parent alienation against Father by disparaging Father, telling the minor children to call Father ‘Phillip’ instead of Dad, [and] encouraged or allowed the minor children to call stepdad ‘dad.’” Appellant’s App. Vol. II p. 116. Mother had also “[e]ncouraged or allowed the minor children to refuse to



participate in parenting time for Father and encouraged or allowed Stepfather to exhibit aggression toward Father in the presence of the minor children.” Appellant’s App. Vol. II p. 116; *see Arms v. Arms*, 803 N.E.2d 1201, 1212 (Ind. Ct. App. 2004) (upholding modification after mother had encouraged child to speak ill of father and displayed ongoing unreliability in getting child to school and exchanging child with father for parenting time).

[14] Dr. McIntire’s evaluation of Mother also supports Finding No. 5. In her report, Dr. McIntire noted that Mother “employed various methods of deception throughout the evaluation”; “has little or no insight into the emotional harm endured by the [C]hildren, secondary to her ongoing campaign against [Father]”; and she had been “a hostile, name-calling, and withholding co-parent from the onset of their separation[.]” Appellant’s App. Vol. II pp. 138–39. According to Dr. McIntire, the “totality of these evaluations substantiates that [Mother] has continued to tell the [C]hildren information from which they should have been shielded [...] and has undermined [Father]’s parenting time.” Appellant’s App. Vol. II p. 139. Further, Mother “has caused the deterioration of [L.M.]’s relationship with her father in numerous ways” that have proved “highly detrimental to the father-daughter relationship.” Appellant’s App. Vol. II pp. 139–40. Dr. McIntire also reported that Mother’s claim that she had been unable to get the Children to go to parenting time with Father “is not feasible; it appears she didn’t try to make them or encourage them.” Appellant’s App. Vol. II p. 140. Perhaps more troubling, Mother “allowed and supported her husband’s grossly aggressive actions toward [Father] in front of

[the Children.]” Appellant’s App. Vol. II p. 140. In short, Dr. McIntire concluded that Mother “is fully unwilling to co-parent.” Appellant’s App. Vol. II p. 140.

[15] When it comes to the trial court’s modification of the custody of L.M., we likewise conclude that the evidence sufficiently supports the trial court’s decision. In its January of 2023 modification order, the trial court found that “under the current status, the Father has zero chance of any decent relationship with [L.M.]. Mother continues to interfere and create problems.” Appellant’s App. Vol. II p. 198. At the January hearing, Shepard testified that “the circumstances of her parents’ post[-]marriage adjustment, as conflict based as it’s been,” has “so diluted how [L.M.] perceives things[.]” Tr. Vol. II p. 8. Additionally, Shepard expressed concern that “step father has been significant in some of the evolution of this conflict” and wondered how much “is being said behind the scenes that might sabotage the effort.” Tr. Vol. II p. 13. Moreover, GAL Fears testified that she had recommended that Father receive custody of L.M. due to L.M.’s relationship with Father continuing “to be estranged[.]” Tr. Vol. II p. 8. GAL Fears also explained that the psychological impact on the Children would be mitigated if they lived primarily together and if L.M. and Father had the opportunity to cultivate a relationship without L.M.’s manipulating his parenting time, which is what had “been in play for the last two years.” Tr. Vol. II p. 21. Importantly, GAL Fears further noted that she believed “alienation has continued to occur” against Father since July of 2022. Tr. Vol. II p. 22.

[16] In summary, the record establishes that there has been a substantial change in at least one of the Indiana Code section 31-17-2-8 factors, thereby justifying the trial court's modifications. Respecting the trial court's wide latitude in family law matters, we cannot say that the trial court abused its discretion in modifying the custody orders or that the modifications were tainted by the contempt orders. *In re Paternity of W.M.T.*, 180 N.E.3d at 296. We conclude that Mother's argument essentially amounts to an invitation to reweigh the evidence, which we will not do. *Trust No. 6011, Lake Cnty. Trust Co., v. Heil's Haven Condos. Homeowners Ass'n*, 967 N.E.2d 6, 14 (Ind Ct. App. 2012), *trans. denied*.

[17] The judgment of the trial court is reversed in part and affirmed in part.

Vaidik, J., and Brown, J., concur.