MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

William O. Harrington
Danville, Indiana

ATTORNEY FOR APPELLEE

Riley L. Parr
Lebanon, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Shelby L. James,
Appellant-Petitioner,

v.

Craig E. James,
Appellee-Respondent.

October 5, 2023

Court of Appeals Case No. 23A-PO-222

Appeal from the Hendricks Superior Court

The Honorable John G. Baker, Special Judge

Trial Court Cause No. 32D04-1810-DC-000560

Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case[1]

[1] Shelby L. James ("Mother")[2] filed pro se motions to suspend the parenting time of Craig E. James ("Father") and to change the parenting time supervisor. Following an evidentiary hearing, the trial court entered an order that resumed Father's parenting time under a new schedule that removed the supervision requirement. Mother now appeals the court's order regarding parenting time provisions. We affirm.

Facts and Procedural History

[2] Mother and Father were divorced on August 12, 2019, pursuant to an agreed Decree of Dissolution of Marriage ("Decree") entered in case number 32D04-1810-DC-560 ("Divorce Case"). The Decree and post-dissolution orders, all based on agreement by the parties, consistently provided Father parenting time with the parties' two children ("Children"). In all post-dissolution orders, Mother and Father agreed to parenting time that was less than that

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[1] The cause number for this case incorrectly indicates the appeal pertains to a protective order. There is a companion protective order case to this post-dissolution matter, but this appeal does not involve the protective order case.

[2] In their briefs, the parties have replaced their names with initials, presumably because of the protective order matters. However, at all relevant times, "[n]ames shall not be redacted in protection order cases. . . ." Ind. Access to Court Records Rule 5(C)(2). Further, the trial court records in the dissolution matter already, and properly, use the parties' and the Children's full names. Thus, we likewise use the parties' names and not their initials. *See Mason v. Mares*, 188 N.E.3d 42, 43 n.1 (Ind. Ct. App.), *trans. denied sub nom. T.M. v. T.M.*, 194 N.E.3d 594 (Ind. 2022) (applying Access to Court Records Rule 5(C)(2) to support use of parties' full names in protection order case).

recommended by the Indiana Parenting Time Guidelines and was supervised by Father's parents ("Grandparents").

[3] Since approximately 2020, Mother routinely inquired, "Did you keep your body safe?" whenever the Children had been in someone else's care. On May 15, 2022, when the Children returned from time with Father, the parties' daughter ("Daughter"), then five years old, answered this question in the negative, stating Father had touched her genitals inappropriately while changing her bathing suit.

[4] Mother filed a pro se petition for a protective order in cause number 32D04-0522-PO-221 ("PO Case"), alleging Father had touched Daughter's genitals inappropriately during parenting time. Based on the allegation of sexual abuse, she also filed in the Divorce Case a pro se motion to suspend parenting time as to the Children and a pro se motion to modify visitation to change the parenting time supervisor. Without objection from Father, the trial court entered an order that suspended Father's parenting time pending a hearing.

[5] On January 3, 2023, the trial court held an evidentiary hearing on Mother's pending motions. Regarding the date that Father was alleged to have inappropriately touched Daughter, Grandparents testified that Daughter was never alone with Father and that Father had not changed Daughter's clothes. Father also testified that he had not changed Daughter's bathing suit that day. Finally, Mother testified in part that the Children said they missed Father.

Both parties requested the reinstatement of the suspended parenting time order, and Mother requested the entry of a protective order.

[6] On January 4, 2023, the trial court entered its Order on Hearing ("Order"), which dissolved the ex parte protective order, dismissed Mother's petition for an order of protection, and reinstated Father's parenting time but with changes from previous orders. After finding that Mother had not proven the allegations of inappropriate touching, the Order further provides:

> 4. Notwithstanding the Court's findings, the Court is not unmindful of the trauma caused to not only [Father] and his family, but also the loss of contact by [Daughter] and her brother with their father. The Court further has been persuaded [Father] is on a road of recovery and encourages his active continuation of this process.
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> 5. [Mother] has testified that she desires the children have a relationship with their father . . . . In order to facilitate this restitution of parental relationship, the reinstated order requiring supervised parenting time will remain in effect through June 30, 2023. Thereafter, [Father] will have unsupervised parenting time at the same time presently authorized until the end of December 2023.
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> 6. On January 1, 2024, [Father] shall have the parenting time provided for in the Indiana Parenting Time Guidelines.

[7] Appellant's App. Vol. 2 at 39–40. Mother now appeals the Order's removal of the supervision requirement from parenting time.

Discussion and Decision

[8] Indiana recognizes that the right of a noncustodial parent to visit his or her children is a precious privilege. *Perkins v. Perkinson*, 989 N.E.2d 758, 762 (Ind. 2013). A child also has a right to parenting time. Ind. Parenting Time Guidelines § 1(E)(5). With these rights in mind, the court may modify a parenting time order "whenever modification would serve the best interests of the child." Ind. Code § 31-17-4-2. However, a court order that restricts parenting time must be accompanied by a finding that parenting time without such restrictions would endanger the child's physical health or impair the child's emotional development. *Randolph v. Randolph*, 210 N.E.3d 890, 897 (Ind. Ct. App. 2023) (quoting Ind. Code § 31-17-4-2).

[9] When faced with an appeal from a parenting time order, we "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." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124, (Ind. 2016) (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)). As a result, we review parenting time decisions for an abuse of discretion. *Perkinson*, 989 N.E.2d at 761. An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* If there is a rational basis for the trial court's determination, then no abuse of discretion will be found. *Hazelett v. Hazelett*, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019).

[10] Here, Mother first contends that the trial court abused its discretion by issuing a parenting time order that allowed for unsupervised parenting time because the issue of supervision was not the subject of a motion or request before the trial court. She frames this claim in part as a violation of due process. We cannot agree.

[11] Mother placed parenting time before the trial court when she asked the court to suspend parenting time altogether and to change the parenting time supervisor. In particular, supervision of parenting time was clearly before the court based on Mother's motion to change the parenting time supervisor.

[12] Still, Mother points out that she and Father both requested supervised parenting time at the hearing. However, she has not demonstrated that the trial court was limited to choosing from the parenting time parameters proposed by either party nor that the court's failure to adopt the parties' proposals somehow constitutes an abuse of discretion or exceeded the trial court's authority.

[13] Mother does not develop a specific due process argument, but she appears to rely on *Bailey v. Bailey*, 7 N.E.3d 340 (Ind. Ct. App. 2014). There, the trial court entered an order changing custody following a hearing on mother's contempt petitions and petition to restrict the father's parenting time. We held that a trial court cannot sua sponte enter an order changing custody. *Id.* at 344. *Bailey* is inapposite to the case before us. The present case does not involve a change of custody. Moreover, parenting time overall and supervision of parenting time in

particular were squarely before the trial court in this case, and both parties had an opportunity to offer evidence at the hearing on those motions.

[14] Finally, we consider Mother's argument that removal of the supervision requirement for Father's parenting time finds no rational basis in the record. Again, we cannot agree.

[15] Mother's pro se motions regarding parenting time are both based on the sexual abuse allegation. In the Order, the trial court found that Mother did not demonstrate by a preponderance of the evidence that the sexual abuse allegation was true. Indeed, DCS unsubstantiated the report that Father had allegedly touched Daughter inappropriately, and the State never filed charges against Father arising from the allegation. Moreover, again, Grandparents testified that Father was never alone with Daughter on the day on which the abuse was alleged to have occurred. Father also testified that he did not change Daughter's clothes on the day in question. Mother testified that she wished for the Children to have a relationship with Father and that both Children said they missed Father.

[16] Having determined that Mother had not proved the sexual abuse allegation, the trial court crafted a new parenting time order. In her appellate Brief, Mother recites a litany of facts in the record in support of her argument that the trial court's modification of parenting time removing the supervision requirement finds no rational basis in the record. However, the trial court also heard the evidence that would support the Order, such as testimony that the sexual abuse

allegation was determined to be unsubstantiated; the lack of criminal charges arising from the allegation; Mother's wish for the Children to have a relationship with Father; and that Father had been in recovery from substance abuse for a significant period of time.

[17] We are in a poor position to review a cold record and say that the trial court's conclusions from firsthand observation of the evidence and testimony in this case is clearly against the logic and effect of the facts and circumstances before it. *Perkinson*, 989 N.E.2d at 761. The evidence before the trial court provides a rational basis for the trial court's Order regarding parenting time supervision. Therefore, we affirm.

Judges Crone and Brown concur.