MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Kayla Deckard,

Appellant-Petitioner

v.

Jakob Deckard,

Appellee-Respondent

March 26, 2024

Court of Appeals Case No.
23A-DC-1796

Appeal from the Owen Circuit Court

The Honorable Kelsey B. Hanlon, Judge

Trial Court Cause No.
60C02-2001-DC-5

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Kayla Deckard ("Mother") appeals the Owen Circuit Court's order granting Jakob Deckard's petition to modify custody of the parties' minor children. The court awarded primary physical and sole legal custody to Father and restricted Mother's parenting time to supervised parenting time. Mother appeals pro se and raises two issues, which we reorder and restate as:

> I. Whether the trial court abused its discretion when it admitted into evidence the Guardian Ad Litem's ("GAL") testimony over Mother's objection; and,
>
> II. Whether the trial court's order modifying custody is supported by clear and convincing evidence.

[2] We affirm.

Facts and Procedural History

[3] Mother and Father were married, and then separated in 2019. Mother filed a petition to dissolve their marriage in January 2020. When Mother filed her petition, the parties had one child, D.D. The parties' second child was born in May 2021. Mother and Father's marriage was dissolved in March 2022. Their dissolution agreement, which was approved by the trial court, awarded the parties joint legal and physical custody of the children.

[4] On April 4, 2023, Mother filed a motion to modify custody, parenting time and child support. In response, Father filed a motion to dismiss, a motion for rule to show cause, a motion to suspend Mother's parenting time, and a petition to

modify child custody and parenting time. On April 13, the trial court appointed a GAL.

[5] On April 27, the GAL filed a motion asking the trial court to suspend Mother's parenting time because Mother threatened to leave the area and disappear with the children. Also, Mother had threatened her mother, who filed an affidavit on Father's behalf that was submitted with Father's motion to suspend Mother's parenting time. Appellant's App. p. 67.

[6] The trial court held hearings on the parties' motions on May 3 and July 25. Mother proceeded pro se and Father was represented by counsel. The evidence presented established a volatile and contentious relationship between the parties. Both parties accused the other of physically abusing the children. Father also presented evidence that Mother's boyfriend had physically abused D.D., the parties' oldest child. Father presented evidence that Mother had engaged in a pattern of dishonest behavior in her attempt to hide injuries suffered by the children. Mother also withheld medical information from Father and changed the children's medical providers multiple times without Father's knowledge or consent.

[7] On July 26, the trial court issued an order modifying custody and parenting time after concluding that a substantial change of circumstances had occurred to justify modification of the court's prior custody orders and that modification was in the children's best interests. The trial court issued the following findings of fact:

3. Unsupervised parenting time with Mother at the minimum set out in the Indiana Parenting Time Guidelines (IPTGs) represents a credible threat to the physical safety and emotional health of the Children.

4. Mother has engaged in an ongoing pattern of conduct that puts the Children's physical safety and emotional health at risk. Both [D.D. and S.D.] sustained significant injuries in Mother's care.

5. Mother has been observed to frequently yell and curse at the Children.

6. [D.D.] was physically disciplined by Chandler Crawford (Mother's significant other at the time) in such a fashion as to leave marks on his back that lasted for a sustained period. Mother continues to describe Mr. Crawford as a friend, and he continues to spend time at Mother's home.

7. A portion of one of [S.D.'s] fingers was severed after being slammed in a door. Mother explained that [S.D.] sustained this injury because her finger was in the door during a nightly ritual involving slamming the door to [D.D.'s] room at bedtime.

8. Mother has engaged in a pattern of dishonesty concerning injuries the Children have sustained in her care. Mother has delayed reporting injuries to Father and has attempted to withhold parenting time from Father so that he would not see the Children's injuries.

9. [S.D.] has also had several facial and neck injuries while in Mother's care, including a black eye.

10. Father has a previous domestic violence conviction. In the Court's Provisional Order entered in this matter on February 18, 2020, Father's parenting time was Ordered to be supervised.

11. The Parties—while each were represented by Counsel—entered into the current custody and parenting time arrangement by their agreement filed on March 8, 2022 (hereinafter "the Agreement"). The Agreement called for joint legal and physical custody of the Children.

12. Mother's *Verified Motion to Modify Custody, Parenting Time, and Support* alleges that the Agreement is "invalid as a matter of law" for failure to comply with Ind. Code 31-17-2-8.3. This contention is not supported by the evidence or by a straightforward reading of Ind. Code [section] 31-17-2-8.3. Mother and Father were each counseled upon entering into the Agreement. Father's parenting time had been Ordered to be supervised prior to the Agreement since the Provisional Order entered on February 18, 2020—over two years prior to the Agreement being entered.

13. Mother has willfully violated the Court's Orders by withholding the Children from Father during his parenting time, forcing him to request a *Writ of Assistance* from the Court.

14. Father has failed to pay Child Support as Ordered and is in arrears in the amount of $2,475.27 as of July 7, 2023. Any child support obligation Ordered of Mother should be reduced to credit her the arrearage owed to her by Father.

Appellant Br. Appealable Order.[1]

[8] The trial court then modified custody of the children and awarded Father sole legal and physical custody. The court further awarded Mother supervised parenting time for three hours per week. Mother was ordered to pay child support of $57.00 per week and given a credit for $60.00 per week until Father's arrearage is satisfied in full. When Father's arrearage is fully paid, Mother's child support obligation will change to $117.00 per week.

[9] Mother now appeals pro se.

Standard of Review

[10] Our supreme court has made clear that in family law matters, Indiana has a preference "for granting latitude and deference to our trial judges." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind. 1993)). A trial court's decisions regarding custody modification and parenting time lie within its broad discretion, and we will reverse only for an abuse of that discretion. *McDaniel v. McDaniel*, 150 N.E.3d 282, 288 (Ind. Ct. App. 2020); *Gomez v. Gomez*, 887 N.E.2d 977, 983 (Ind. Ct. App. 2008). "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or if the court misinterpreted the law." *Hazelett v. Hazelett*, 119 N.E.3d

[1] Mother only included the first page of the trial court's order in her Appellant's Appendix. Therefore, we cite to her separately filed "Appellant Brief Appealable Order."

153, 161 (Ind. Ct. App. 2019). An appellate court is "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*, 51 N.E.3d at 124 (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002)).

[11] Next, we observe that the trial court entered findings and conclusions in this case *sua sponte*. These specific findings control only with respect to issues they cover, and a general judgment standard applies to issues outside the findings. *In re Marriage of Sutton*, 16 N.E.3d 481, 484–85 (Ind. Ct. App. 2014). "The trial court's findings or judgment will be set aside only if they are clearly erroneous." *Id.* at 485. A finding is clearly erroneous only if there are no facts or inferences drawn therefrom to support it. *Id.*

[12] Finally, "on appeal we will not 'reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.'" *McDaniel*, 150 N.E.3d at 288 (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)). "[I]t 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." *Duncan v. Duncan*, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006), *trans. denied*. "It is not impossible to reverse a trial court's decision regarding child custody on appeal, but given our deferential standard of review, it is relatively rare." *Hecht v. Hecht*, 142 N.E.3d 1022, 1029 (Ind. Ct. App. 2020).

Hearsay Testimony

[13] Mother argues that the trial court abused its discretion when it admitted into evidence the GAL's hearsay testimony.

> Our standard of review of a trial court's admission of evidence is an abuse of discretion. *In re Des.B.*, 2 N.E.3d 828, 834 (Ind. Ct. App. 2014). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* However, it is well established that errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *Id.* "To determine whether the admission of evidence affected a party's substantial rights, we assess the probable impact of the evidence upon the finder of fact." *Id.*

M.R. v. B.C., 120 N.E.3d 220, 224–25 (Ind. Ct. App. 2019).

[14] Mother only objected on one occasion to the GAL's testimony. On that occasion, the GAL relayed information he had received from Joyce Dawson,[2] who did not testify at the hearing. Mother did not specifically raise a hearsay objection but objected because Joyce was not present to testify.[3] Tr. pp. 214-15. The trial court overruled Mother's objection.

---

[2] It is not entirely clear from the record, but Joyce Dawson appears to be the children's maternal great grandmother. Tr. p. 214.

[3] Hearsay is a statement that is not made by the declarant while testifying at the trial or hearing that is offered into evidence to prove the truth of the matter asserted. Ind. Evidence Rule 801(c). Hearsay evidence is generally inadmissible. Evid. R. 802.

[15] The GAL testified that Joyce informed him that Mother had sent her photos of bruises suffered by the children, and Joyce shared those photos with the GAL. Tr. p. 214. The GAL then testified that the bruising he saw from the photos appeared to be injuries kids would receive from normal childhood activities. *Id.* Therefore, the GAL was not alarmed by the bruising shown in the photos. *Id*. Mother objected to this statement. *Id*.

[16] The GAL was merely offering his lay opinion as to whether the bruising in the photos was child abuse or bruising children normally might experience while engaging in normal childhood activities. *See* Ind. Evidence Rule 701 (allowing testimony in the form of an opinion that is "rationally based on the witness's perception" and "helpful to a clear understanding of the witness's testimony or to a determination of a fact in issue"). And the GAL's testimony was not elicited to prove that the bruising depicted in the photos was not caused by abuse. He simply offered his opinion on the cause of the bruising as allowed by Evidence Rule 701. Moreover, the GAL's testimony was cumulative of other unchallenged testimony concerning whether the bruising Mother alleged occurred while the children were in Father's care was the result of abuse or normal childhood activities. Therefore, even if the trial court erred when it admitted this testimony, the probable impact on the trial court was minimal and its admission did not affect Mother's substantial rights.

[17] Mother also challenges the admission of several other statements the GAL made while testifying. However, Mother did not object to this testimony at trial. A party's "[f]ailure to object at trial to the admission of the evidence results in

waiver of the error." *Raess v. Doescher*, 883 N.E.2d 790, 796 (Ind. 2008). Therefore, we will not consider Mother's challenges to the GAL's remaining statements that Mother claims were inadmissible hearsay.

The Child Custody Modification

[18] Mother also challenges the custody modification. "The party seeking a modification of custody bears the burden of demonstrating that the existing custody order should be altered." *Maddux v. Maddux*, 40 N.E.3d 971, 975 (Ind. Ct. App. 2015). The trial 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 [Indiana Code Section 31-17-2-8]." Ind. Code § 31-17-2-21(a). In making its determination, the trial court is required to "consider the factors" listed under Section 31-17-2-8. Ind. Code § 31-17-2-21(b). The trial court is prohibited from hearing "evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by [Section 31-17-2-8]." Ind. Code § 31-17-2-21(c). The list of factors in Section 31-17-2-8 is as follows:

> (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.

[19] Mother claims that "[t]here simply exists no substantial change in circumstances that would support modification of custody" and that modification of custody to Father is not in the children's best interests. Appellant's Br. at 13.

[20] The evidence presented at the hearing established a contentious and volatile relationship between the parties.[4] Mother has made several allegations that Father physically abused the children, which DCS investigated and concluded were unsubstantiated. Mother has engaged in a pattern of dishonest behavior to

[4] At both the hearings in this case and in her brief on appeal, Mother relied heavily on a violent incident that occurred between the parties during their marriage when their youngest child was an infant. The incident, while concerning and involving a firearm, occurred nearly four years before the hearings in this case and before the parties agreed to joint legal and physical custody. The trial court appropriately focused on the parties' behavior and parenting abilities during the post-dissolution time period.

attempt to prevent Father from learning of the numerous injuries the children have suffered while in her care. Mother was also romantically involved with a man who physically disciplined D.D., leaving marks on his back. Mother's boyfriend was still living with Mother within weeks of the hearing dates in this case. Mother also interfered with Father's parenting time and withheld information from Father concerning the children's medical care and education. Moreover, the GAL believed that awarding custody of the children to Father was in the children's best interests.

[21] The trial court heard and considered evidence on the statutory factors relevant to the circumstances in this case. And the trial court's order modifying custody to Father is supported by clear and convincing evidence. Moreover, Mother's threats to abscond with the children, the instability in her home life, and her poor-decision making support the trial court's conclusion that modifying custody to Father was in the children's best interests.[5]

Conclusion

[22] Mother has not persuaded us that any evidentiary error that occurred in this case requires reversal. And the trial court's order modifying custody is supported by clear and convincing evidence. To the extent that Mother argues

---

[5] Mother raises additional arguments in reply brief, including challenges to the evidentiary support for certain findings of fact. It is well settled that "[a]ppellants are not permitted to present new arguments in their reply briefs, and any argument an appellant fails to raise in [her] initial brief is waived for appeal." *Kelly v. Levandoski*, 825 N.E.2d 850, 858 n.2 (Ind. Ct. App. 2005), *trans. denied*; *see also* Ind. App. R. 46(C). And we also observe that pro se litigants are held to the same standards as licensed attorneys. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*.

otherwise, her arguments are merely a request to reweigh the evidence and credibility of the witnesses, which our court will not do.

[23] Affirmed.

Tavitas, J., and Weissmann, J., concur.

APPELLANT PRO SE

Kayla Deckard
Bloomington, Indiana

ATTORNEY FOR APPELLEE

Hannah L. England
England Law Office, P.C.
Spencer, Indiana