

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Mitchell Lucas Haskins,  
*Appellant-Respondent*

v.

Donna Lee Reed,  
*Appellee-Petitioner*

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May 9, 2024

Court of Appeals Case No.  
23A-JP-2000

Appeal from the Morgan Circuit Court  
The Honorable Terry E. Iacoli, Magistrate  
Trial Court Cause No.  
55C01-1602-JP-83

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**Memorandum Decision by Judge Foley**  
Judge Riley concurs.  
Judge Brown dissents with opinion.

## **Foley, Judge.**

- [1] Mitchell Lucas Haskins (“Father”) appeals from the denial of his petition for modification of custody of L.H. (“Child”), the child he shares with Donna Lee Reed (“Mother”). Father raises the following restated issue for our review: whether the trial court abused its discretion when it denied his petition and found that there was not a substantial change in one or more of the statutory factors and that modification was not in the best interests of Child. We affirm.

## **Facts and Procedural History**

- [2] Father and Mother are the parents of Child, born on August 14, 2014. On July 1, 2016, the trial court issued an order, under which Father and Mother agreed to share legal custody of Child and to split physical custody of Child by having alternating weeks with Child. On January 28, 2021, the trial court issued an order memorializing an agreed entry between Father and Mother, under which Father would have Child three-quarters of the weekends during the school year and Mother would have Child the last weekend of every month unless otherwise agreed by the parties. Further, Father and Mother agreed that Father would have Child for spring break, two-thirds of summer break, and fall break. Additionally, they agreed to split Christmas break and holidays pursuant to the Indiana Parenting Time Guidelines. On June 1, 2021, Father filed a petition for custody modification, asserting that there had been a substantial change in circumstances making the existing parenting time order unreasonable. A hearing was held on Father’s petition on April 27, 2023, and May 23, 2023.

[3] At the hearing, Father presented evidence in the form of testimony by Mother's sister, Monica Reed ("Monica"), who testified that, several weeks prior to the hearing, she had reached out to Father about concerns that she had because she believed that Mother was an alcoholic and because of a physical altercation that she had with Mother at Mother's home. Monica said that she had gone to Mother's home about a month before the hearing, and the two of them got into an argument that turned into a physical confrontation, in which Mother hit Monica and threw various items at her. Monica stated that Mother's boyfriend, Robert Bratcher ("Bratcher"), had to step in to diffuse the situation. Monica testified that she had personal knowledge of previous domestic altercations between Mother and Bratcher as well. During direct examination, Monica identified Respondent's Exhibits A and B as texts and texted pictures she sent Father that showed damage to Mother's home that Monica claimed were the result of fighting between Mother and Bratcher. The damage to the home consisted of damage to a bathroom door, a pantry door, and a missing glass shower door. Monica stated that Mother had told her that someone got "pushed into" the glass shower door during a domestic dispute and that it was "knocked . . . over." Tr. Vol. 2 p. 17. Monica indicated that the altercation between her and Mother occurred on March 28, 2023, which was the same date she took the pictures.

[4] Monica testified that Mother had explicitly admitted to her that Mother has a problem with alcohol. Monica testified that Mother would often hide in her closet to drink alcohol and that Mother used the closet as a "getaway" and a

place to hang out. *Id.* at 16. She also stated that on one occasion she and her boyfriend had to pick Child up from school because Mother was “so messed up” from drinking alcohol. *Id.* at 11. Monica testified that the last time she saw Mother prior to the incident on March 28, 2023, was approximately a year prior when they both were working at Subway, and Monica claimed that, at that time, Mother was so drunk that she could not get out of bed to go to work.

[5] Father also testified at the hearing and stated that he had concerns about Child’s education because she was not currently able to “read or write at the level that she needs to.” *Id.* at 39. In support of this, Father introduced test scores from the Child’s first-grade year reflecting that she needed intervention regarding reading skills. Father testified that Child had not improved in second grade. Father also testified that he had concerns about Child’s physical condition and hygiene because, a year prior, Child had an infected ear because Child’s earrings were not being cleaned properly. Father testified that he tried to reach out to Mother regarding this issue, but that she would not respond to him. Father also testified that Child’s feet often get very dry, and the heels split and start bleeding. Father believed that this was caused by “lack of care” for her feet by “not bathing properly” and “not wearing socks” with shoes on a regular basis. *Id.* at 52. Father stated that there were multiple times when he had picked up Child from school, and she was not wearing socks or underwear.

[6] Father also stated that he had concerns about Mother’s physical health and testified about an incident the prior summer when he went to Mother’s home to drop off Child. He stated that he knocked on the door for approximately forty-

five minutes before Mother finally responded and came to the door. Father indicated that Mother stumbled to the door and said that she was sleeping on the couch. Father's wife also testified that she was present on the day where it took Mother an extended period of time to come to the door but stated that it only took about fifteen or twenty minutes. Father further indicated that he had concerns about domestic violence in Mother's home prior to being contacted by Monica. Bratcher was charged in 2021 with domestic battery in the presence of a minor child related to an incident in Mother's home, and Father asked the trial court to take judicial notice of the cause number of the case.

- [7] Mother also testified at the hearing and stated that, although Child was doing well in school, she did struggle with reading and writing. Mother testified that Child had a tutor and small group intervention that Mother believed was helping, although Child's reading grades had not "improved dramatically." *Id.* at 94. Mother testified that Child was set to advance to third grade and would continue with the tutor and intervention in the third grade at her school. Mother stated that she and Father did not communicate well in 2021 because she did not have a working phone, but she felt that they communicated well at the time of the hearing. As to her lack of a phone, she explained that she had dropped her phone on the concrete and had to wait several months to get a new one due to her contract. Starting in 2022, Mother experienced health issues, where she had several surgeries, in which part of her intestines were removed due to pre-cancerous polyps. She testified that, on the day that it took her a lengthy time to answer the door for Father, she was recuperating from one of

her surgeries, so it took her longer to get to the door. Mother stated she was not employed at the time of the hearing and had been unemployed since October of 2021, which was before her surgeries. She stated that she was looking for employment and hoped to begin during the summer when Child was done with school.

[8] Mother agreed that Child had very dry feet but testified that she had been applying a cream on Child's feet for about a year, which was helping with the issue. Mother also denied ever sending Child to school without socks. Mother also testified about an incident in the spring of 2021 where the police were called to Child's school in response to Father getting upset at Mother for not giving him Child's bookbag. Mother explained that there had been issues with Child not getting her homework done when she went to Father's so Mother decided to keep Child's bookbag. Father got upset and began using inappropriate language in front of parents and children, so the police were called. There were two other incidents around the same time where Father became angry about Mother not sending the bookbag to his home with Child, but the police were not called on those occasions.

[9] On cross-examination, Mother testified that, after each of her surgeries, she was on pain medications for a couple of weeks but never mixed alcohol with those medications. Mother also admitted that she had a problem with alcohol in the past but did not currently have any issues with alcohol. She also denied Monica's testimony that Mother had lost her job at Subway due to drinking alcohol. As to the pictures of damage to Mother's home that Monica sent to

Father, Mother stated that the pictures were from over two years ago and that her home no longer looked that way. Mother explained that damage done to a door where it was broken in half was done when Bratcher fell through it.

Mother admitted on cross-examination that she did have a physical confrontation with Monica that began when Monica tried to tell Mother how to parent Child. Mother also admitted that she caused marks on her sister's face but testified that Monica hit her first. Mother did not address or dispute the prior domestic violence incident with Bratcher in her testimony.

[10] On June 26, 2023, the trial court issued its order denying Father's petition for custody modification. In its order, the trial court specifically found that, "Mother did not dispute the conviction of . . . Bratcher[,] . . . [and] Mother countered Father's evidence related to [Child's] school performance, Father's concerns with [Child's] feet, and Father's evidence that she struggles with an alcohol problem." Appellant's App. Vol. II p. 9. The trial court then found, "After careful consideration of the evidence presented by the parties and the [statutory] factors set out above, . . . modification is NOT in the best interests of [Child], and that there is NOT a substantial change in one (1) or more of the factors under [Indiana Code section] 31-17-2-8." *Id.* Father now appeals.

## **Discussion and Decision**

[11] We begin by noting that Mother has not filed an appellee's brief. When an appellee fails to file a brief, we need not undertake the burden of developing an argument on the appellee's behalf. *C.V. v. C.R.*, 64 N.E.3d 850, 852 (Ind. Ct. App. 2016). Instead, applying a less stringent standard of review, we may

reverse the trial court’s judgment if the appellant can prove a case of prima facie error. *Id.* “Prima facie error in this context is defined as, ‘at first sight, on first appearance, or on the face of it.’” *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006) (quoting *Santana v. Santana*, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)).

[12] We review custody determinations for an abuse of discretion. *McDaniel v. McDaniel*, 150 N.E.3d 282, 288 (Ind. Ct. App. 2020), *trans. denied*. “There is a well-established preference in Indiana for granting significant latitude and deference to our trial judges in family law matters.” *Id.* (citing *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.” *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002). Therefore, on appeal we will not “reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). 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.” *McDaniel*, 150 N.E.3d at 288 (quoting *In re Paternity of C.S.*, 964 N.E.2d 879, 883 (Ind. Ct. App. 2012), *trans. denied*). “[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.” *Kirk*, 770 N.E.2d at 307.

[13] Indiana Code Section 31-17-2-21 provides that a trial court may not modify an existing custody order unless (1) the modification is in the best interests of the child, and (2) there has been a substantial change in one or more statutory factors that are outlined in Indiana Code Section 31-17-2-8. Those factors are:

- (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.

(8) Evidence that the child has been cared for by a de facto custodian . . . .

Ind. Code § 31-17-2-8.

[14] Here, it appears that neither party requested special findings under Indiana Trial Rule 52(A) and that the trial court entered its findings sua sponte. “As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review any remaining issues under the general judgment standard, where the judgment will be affirmed if it can be sustained on any legal theory consistent with the evidence. *Id.* “[W]e may look both to other findings and beyond the findings to the evidence of record to determine if the result is against the facts and circumstances before the court.” *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013). Clear error occurs when the appellate court’s review of the evidence most favorable to the trial court’s judgment leaves us firmly convinced that a mistake has been made. *Quinn v. Quinn*, 62 N.E.3d 1212, 1220 (Ind. Ct. App. 2016).

[15] Father argues that the trial court abused its discretion in denying his petition to modify custody because the court erroneously concluded that there had not been a substantial change of circumstances and that a modification of custody was not in the best interests of Child. Father contends that the evidence presented revealed a substantial change in several of the statutory factors, including that there was a pattern of domestic or family violence by either parent, Child's adjustment to her home, school, and community, and the mental and physical health of all involved individuals.

[16] The party seeking modification of a custody order "bears the burden of demonstrating [that] the existing custody should be altered." *Steele-Giri*, 51 N.E.3d at 124. "This more stringent standard is required to support a change in custody because permanence and stability are considered best for the welfare and happiness of the child." *Riggen v. Riggen*, 71 N.E.3d 420, 422 (Ind. Ct. App. 2017) (internal quotations omitted).

[17] Father's arguments focus on his claim that the trial court failed to consider certain evidence and that the trial court erred in finding that Mother countered Father's evidence on certain issues. First, contrary to Father's assertion that the trial court ignored evidence of a pattern of domestic and family violence, the trial court specifically found that Bratcher had been previously convicted for domestic battery against Mother in 2022. Additionally, as to Monica's testimony that she was involved in a physical altercation with Mother on March 28, 2023, Mother admitted that she was involved in an argument with Monica that progressed to a physical altercation and that she did hit Monica,

but that Monica had hit her as well. The trial court was within its discretion to find that the one conviction of Bratcher and a mutual physical confrontation between two sisters was not sufficient to prove a substantial change in whether there was a pattern of domestic violence by Mother.

[18] Father next asserts that the trial court erred in indicating that Mother countered Father's concerns about a substantial change in Child's school performance. Although Father expressed concerns about Child's reading and writing skills and ability to move on to third grade without summer school, Mother testified that Child was doing well in school and agreed that she struggled with reading and writing but that Child had a tutor and small group intervention that was helping Child. Further, although Child's reading grades had not improved dramatically, Mother testified that Child was set to advance to third grade and would continue with the tutor and intervention in the third grade at her school. This was sufficient evidence to support the trial court's finding that Mother had countered Father's evidence regarding Child's performance in school.

[19] Lastly, Father takes issue with the trial court's finding that Mother had countered his expressed concerns that she had a problem with alcohol. Father points to testimony by Monica that Mother had admitted to her that Mother had a problem with alcohol and had been unable to pick Child up from school on at least one occasion. However, although Monica did testify to these statements, Mother testified that she had a problem with alcohol in the past but did not currently have any issues with substance abuse and denied Monica's testimony that Mother had lost her job at Subway due to drinking alcohol.

Mother also testified that she experienced health issues in 2022, where she had several surgeries, in which part of her intestines were removed and explained that on the day that it took her a lengthy time to answer the door for Father, she was recuperating from one of her surgeries, so it took her longer to get to the door. It is evident that, in making its findings, the trial court determined that Mother's testimony was more credible than Monica's. The evidence was sufficient to support the trial court's finding that Mother countered Father's evidence that she struggled with an alcohol problem.

[20] All in all, we grant latitude and deference to our trial judges in family law matters because 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. *Steele-Giri*, 51 N.E.3d at 124. Here, the trial court was able to observe the witnesses and scrutinize their testimony and then make a determination on what evidence it deemed to be pertinent and credible. The trial court was within its authority to do so, and we do not second-guess the trial court's determinations. Father's arguments are simply a request for this court to reweigh the evidence and reassess the credibility of the witnesses, which we do not do on appeal. *Id.*

[21] We conclude that there was ample evidence in the record to support a determination that there was not a substantial change in the circumstances and that a custody modification was not in Child's best interests. "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.” *Steele-Giri*, 51 N.E.3d at 124. We, therefore, conclude that the trial court did not err in determining that Father failed to meet his burden of establishing grounds for a modification of child custody.

[22] Affirmed.

Riley, J., concur, Brown, J., dissent with opinion.

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**Brown, Judge, dissenting.**

[23] I respectfully dissent from the majority's decision. As noted by the majority, Mother has not filed an appellee's brief, and we need not undertake the burden of developing arguments for her. *See Meisberger v. Bishop*, 15 N.E.3d 653, 656 (Ind. Ct. App. 2014). We apply a less stringent standard of review and reverse if Father establishes *prima facie* error. *See id.* *Prima facie* is defined as "at first sight, on first appearance, or on the face of it." *Graziani v. D & R Const.*, 39 N.E.3d 688, 690 (Ind. Ct. App. 2015). This rule was established so that we might be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002).

[24] There was ample evidence before the trial court indicating a pattern of domestic violence in Mother's home. Mother did not dispute that her live-in boyfriend was convicted of domestic battery in the presence of Child, and she admitted that she had a physical altercation with her sister and caused marks on her sister's face. There was evidence of three damaged doors in the home due to domestic violence, including a shattered glass shower door.

[25] As to Child's adjustment to school, Mother acknowledged that Child had been "having trouble with . . . her reading and writing" and her reading grade had not "improved dramatically." Transcript Volume II at 93–94. When asked if she admitted that Child was not "where she should be when it comes to reading and writing," Mother answered affirmatively. *Id.* at 111.

- [26] As to Mother's drinking, she acknowledged that she had an issue with alcohol in the past, and while she testified that she did not think she had an issue with alcohol recently and did not drink around Child, she admitted that she still drinks "over the weekend." *Id.* at 115. There was testimony that Mother is an alcoholic, and continuing to drink is evidence of a continuing problem.
- [27] Also, among the statutory factors that warrant a change in custody is the health of the parties. Mother admitted that her health has declined to the point of requiring several surgeries, and that due to her health problems, she has had a long period of unemployment.
- [28] Given the pattern of domestic violence in Mother's home, Child's lack of progress in school, Mother's problem with alcohol, and Mother's serious health issues, I would find that Father has demonstrated prima facie error in the trial court's findings that there had not been a substantial change in circumstances and that modification was not in the child's best interest. Accordingly, I would reverse the trial court's order.
- [29] For the foregoing reasons, I would find the trial court abused its discretion and reverse.