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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
	)	
JEFFREY J. ALHOLM,	)	
	)	
Appellant-Petitioner,	)	
	)	
and	)	No. 48A02-0707-CV-598
	)	
REBECCA A. ALHOLM,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable James O. Anderson, Special Judge
Cause No. 48D01-0503-DR-202

December 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Petitioner Jeffrey J. Alholm ("Father") appeals an order for the payment of life insurance premiums and attorney's fees and parenting time modification with respect to his child with Appellee-Respondent Rebecca A. Alholm ("Mother"). We affirm in part and reverse in part.

Issues

Father presents five issues for review, which we consolidate and restate as the following four issues:

I. Whether the trial court's order regarding life insurance amounted to an improper retroactive modification of child support;

II. Whether the trial court abused its discretion by ordering Father to pay $2,000.00 as appellate attorney's fees;

III. Whether the trial court lacked authority to modify the responsibilities of the parenting coordinator; and

IV. Whether the trial court's restriction on Father's parenting time was contrary to law.

Facts and Procedural History

The parties were married on October 5, 2003. They had one child together, T.A., born January 12, 2005. On March 3, 2005, Father petitioned to dissolve the marriage. The trial court conducted a final hearing on November 17, 2005 and on February 9, 2006. At the conclusion of the February 9, 2006 final hearing, the trial court ordered the parties to mediation in order to resolve disputed issues of custody and parenting time. On April 25, 2006, a Partial Mediated Agreement was filed with the trial court. On May 1, 2006, the trial court approved the agreement, which settled issues of custody and parenting time and

provided for the appointment of a parenting coordinator.

On May 11, 2006, the final hearing resumed and was concluded. On June 29, 2006, the trial court issued its findings of fact, conclusions of law, and order dissolving the marriage and dividing the marital estate. This Court affirmed the trial court's orders regarding parenting time, attorney's fees, and the division of the marital estate.

On August 22, 2006, Mother petitioned for appellate attorney's fees. On October 3, 2006, Mother filed a petition for contempt, alleging that Father had failed to pay life insurance premiums. On November 9, 2006, Father filed a Motion for Appointment of New Parenting Coordinator. On January 25, 2007, the trial court conducted a hearing on the pending motions.

On January 25, 2007, the trial court issued an order providing for the following: Father was to maintain a life insurance policy presently owned by Mother; Mother was to effect a change of beneficiary to the parties' child; Father was to reimburse Mother for past premiums; Father was to pay $2,000.00 of Mother's appellate attorney's fees; and Robin Brown Niehaus ("Niehaus") was appointed to act as a Level III parenting coordinator for the parties.

On April 3, 2007, Niehaus filed a Binding Recommendation,[1] recommending that Father not take T.A. out of Boone, Madison, or Marion counties, and not take T.A. out of state without a prior written agreement signed by the parties and sent to the trial court for approval. The trial court conducted a hearing on April 10, 2007, and the parties were

[1] A recommendation was "binding pending review by the court." (App. 24.) If no objection was made within

afforded two weeks to file written responses to the recommendation. On May 17, 2007, the trial court accepted and entered judgment upon the recommendation. Father now appeals.

I. Life Insurance

The dissolution decree provided in relevant part:

> Jeff is hereby ordered to continue to carry [T.A.] as a beneficiary on his current life insurance policy until [T.A.] reaches the age of 21.

(App. 38.) At that time, Mother was the owner of a $700,000.00 life insurance policy on Father's life.

At the January 25, 2007 hearing, Mother argued that Father had been ordered to maintain the life insurance policy she owned. Father argued that he was free to select his own life insurance policy and that the coverage of Mother's policy was excessive and favored one child to the detriment of his other four children. He had maintained a separate $20,000.00 policy.

The trial court declined to find Father in contempt for failing to pay premiums on the $700,000.00 policy, but clarified that the $700,000.00 policy was the focus of the life insurance provision in the dissolution decree, and ordered Father to reimburse Mother for premiums paid since the dissolution. Contrary to Father's contention, the trial court's clarification of a previous order did not amount to a retroactive modification of child support without a petition therefor.[2]

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seven days, a recommendation was binding "pending a substantial change in circumstances." (App. 24.)

[2] Presumably, however, Father may request a deduction from the computation of his gross income for child support purposes to reflect the premiums paid, as those monies are no longer available for the support of his five children.

II. Attorney's Fees

Father next complains that the award of $2,000.00 in attorney's fees is not supported by the evidence and thus constitutes an abuse of discretion. Mother's attorney advised the trial court that Mother was working part-time and attending school. The attorney further advised the trial court that the anticipated cost of her associate preparing an appellate brief was $3,000.00. Father contends that these representations to the trial court do not amount to admissible evidence and are wholly inadequate to establish the reasonableness of the $2,000.00 award of attorneys fees.

At the hearing, Father was not present, and the following exchange took place:

> Court: Now, it's my understanding that we are going to go ahead and proceed in the absence of Mr. Alholm? He's ill or –
>
> Father's Attorney: Yes. Let me tell you what we had in mind.
>
> Court: Okay.
>
> Father's Attorney: First is the issue of attorney fees for Miss Allen. She's requested appellate attorney fees. That is something I felt that we could argue legally without the presentation of evidence and I think Ms. Warner-Sims agrees with that. So I agreed to do that in the absence of my client.
>
> Court: Okay.

(Tr. 2.) A party may not take advantage of an error that he or she commits, or which is the natural consequence of his or her own neglect or misconduct. Evans v. Evans, 766 N.E.2d 1240, 1244 (Ind. Ct. App. 2002). Invited error is not subject to review by this Court. Id. Accordingly, Father may not be heard to complain that Mother failed to submit evidence of reasonable attorneys fees after his attorney advised the trial court that the presentation of evidence was not necessary.

III. Increase of Parenting Time Coordinator Authority

The trial court appointed Niehaus, who had previously acted as a Level II parenting coordinator for the parties, to act as a Level III parenting coordinator in the future. A Level III parenting coordinator has the ability to order evaluations by therapists and to coordinate necessary family services.

Father points out that he and Mother participated in mediation and agreed to the appointment of a Level II coordinator rather than a Level III coordinator. He argues that the trial court lacked legal authority to increase the powers of the parenting coordinator beyond that reflected in his and Mother's agreement.

We do not find that the trial court is restricted by the scope of the initial appointment as agreed by the parties. Whenever custody, support, or parenting time issues are being determined, the best interests of the child are the primary consideration. Beaman v. Beaman, 844 N.E.2d 525, 532 (Ind. Ct. App. 2006). Although courts should give great weight to parental wishes, the trial court retains the duty to determine if any agreement is in the child's best interests. Id. Moreover, the terms of the appointment order specifically contemplated that the parenting coordinator was to file a recommendation with the court when and if she believed it necessary to modify the level at which she was operating. Father has demonstrated no reversible error in the trial court's order increasing the parent coordinator's responsibilities.

IV. Restriction of Parenting Time

Finally, Father complains that the trial court unduly restricted the exercise of his parenting time such that he cannot pick up T.A. in Madison County and travel to another

county. Because of past occasions when the parenting coordinator and Mother were allegedly misadvised of T.A.'s whereabouts during Father's parenting time, the parenting coordinator recommended that Father not take T.A. out of Boone, Madison or Marion counties and not travel with T.A. out of state without a written agreement and court approval. The trial court adopted the recommendation.

Restriction of parenting time is governed by Indiana Code Section 31-17-4-2, which provides as follows:

> The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

When interpreting a statute, the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself. State v. Eilers, 697 N.E.2d 969, 970 (Ind. Ct. App. 1998). Here, the statutory language is clear and unambiguous. Parenting time may not be restricted absent a finding by the court that the interaction might endanger the child's health or significantly impair his or her emotional development. Here, the trial court essentially placed responsibility for the determination of potential harm upon the parenting coordinator and did not make an independent and specific finding as required by statute. Moreover, because T.A.'s home county of Madison is not contiguous to Boone or Marion counties, the order is not practicable.

A party who seeks to restrict a parent's visitation rights bears the burden of presenting evidence justifying such a restriction. Farrell v. Littell, 790 N.E.2d 612, 616 (Ind. Ct. App.

2003). Accordingly, at any future hearing on the merits of Mother's motion for restrictions on Father's parenting time, she bears the burden of presenting evidence justifying such restrictions.

Conclusion

The trial court properly clarified an order for the maintenance of life insurance and ordered the payment in part of Mother's appellate attorney's fees. It was within the discretion of the trial court to increase the responsibilities of the parenting coordinator. However, the trial court could not restrict Father's parenting time absent a finding of potential endangerment.

Affirmed in part; reversed in part.

NAJAM, J., and CRONE, J., concur.