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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE MARRIAGE OF TRACY A. )  
BUTLER and ALAN D. BUTLER, )  
 )  
TRACY A. BUTLER, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
ALAN D. BUTLER, )  
 )  
Appellee-Petitioner. )

No. 49A02-0703-CV-222

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Caryl F. Dill, Magistrate  
The Honorable Victoria M. Ransberger, Judge  
Cause No. 49D07-0503-DR-9669

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**September 28, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Tracy Butler (“Mother”) appeals the grant of custody of their two children to her ex-husband Alan Butler (“Father”). Mother claims the court erroneously gave preference to Father because he would be “co-parenting” with Nancy Butler, the children’s paternal grandmother (“Grandmother”). This was improper, she asserts, because the court did not enter the findings required for Grandmother to be a *de facto* custodian. Because the evidence, findings, and judgment do not support Mother’s position regarding the court’s consideration of Grandmother, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On dissolution of Mother’s marriage to Father, both Mother and Father sought custody of the parties’ two children, who are currently eleven-years-old and eight-years-old. Mother works from 7:00 p.m. to 7:30 a.m. as a nurse. She is routinely scheduled to work Monday, Friday, Saturday, Sunday, Tuesday and Thursday of each two-week pay period. Father works for FedEx from 12:30 p.m. to 9:30 p.m., but the transcript does not make clear how many days he works. Grandmother testified if Father had custody she could care for the children on the evenings when Father was not home.

The court heard evidence that Father’s new home is in an area with a better school than the area where Mother’s home is located. Both children asked to live with Father. Mother’s eighteen-year-old son from her first marriage recommended the children live with Father. The custody evaluator strongly recommended the children be placed with Father because they were more relaxed with Father and because Mother had an anger control problem, which caused her to yell at the children and throw things.

The court awarded full legal and physical custody to Father, with Mother to have parenting time in accordance with the Indiana Parenting Time Guidelines.

### **DISCUSSION AND DECISION**

Mother's argument appears based on the premise the court granted some form of custody to Grandmother, in violation of Mother's Constitutional Rights and Indiana statutes governing custody. It did not. Neither does the record support Mother's assertion the court's decision was clearly erroneous.

The record suggests the court placed these two children in Father's custody because the custody evaluator "strongly recommended" the court do so.<sup>1</sup> (Appellant's App. at 14.) The children reported Mother yells, throws things, curses, and scares them. Mother's son from another marriage reported she was not a very good mother because she was angry all the time and took her anger out on those around her. The court noted Mother was "not owning up to" any of her anger control problems, (Tr. at 84), and it was not required to ignore the reports of Mother's anger problems. Because the record supports the court's judgment, Mother has demonstrated neither clear error nor an abuse of discretion in the court's selection of Father as the sole legal and physical custodian.<sup>2</sup>

As for Grandmother, the court's order leaves her in the role she has had in these

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<sup>1</sup> Mother claims the court should have ignored the custody evaluator's report because she received therapy at St. Vincent Stress Center after receiving a copy of the report. At trial, Mother reported she had approximately six sessions and the therapist did not think she had an anger issue. The trial court is to decide the credibility of the witnesses and the weight to be given to the evidence. *See Dewbrew v. Dewbrew*, 849 N.E.2d 636, 640 (Ind. Ct. App. 2006) (Appellate Court may not reweigh the evidence or reassess the credibility of witnesses). The court was not required to ignore the custody evaluator's report simply because Mother received therapy.

<sup>2</sup> Because the trial court did not err in relying on the custody evaluation, and because the findings based on that evaluation are sufficient to support the judgment, we need not address Mother's arguments other findings are erroneous, superfluous, irrelevant, or moot.

children’s lives in the past – she will care for them when neither parent is available to do so because of his or her work schedule. Mother will have parenting time “pursuant to the Indiana Parenting Time Guidelines, and at all other times as the parties may agree.” (Appellant’s App. at 15.)

One of the “General Rules Applicable to Parenting Time” provides:

3. Opportunity for Additional Parenting Time. When it becomes necessary that a child be cared for by a person other than a parent or a family member, the parent needing the child care shall first offer the other parent the opportunity for additional parenting time. The other parent is under no obligation to provide the child care. If the other parent elects to provide this care, it shall be done at no cost.

Indiana Parenting Time Guidelines § 1(C)(3). Grandmother is not a “family member” for purposes of this Parenting Time Guideline because she does not live with Father and the children. *See Shelton v. Shelton*, 840 N.E.2d 835, 835 (Ind. 2006) (for purposes of Indiana Parenting Time Guideline § 1(C)(3) “family member” includes only those persons who live with the parent having custody). Accordingly, on all nights when Father works (or is otherwise unavailable), Mother must be offered the opportunity to care for the children. Thus, the trial court did not implicitly find Grandmother to be a *de facto* custodian.

Affirmed.

CRONE, J., and DARDEN, J., concur.