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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE PATERNITY OF R.M.C., Minor Child,	)	
P.M.C., Mother,	)	
Appellant-Petitioner,	)	
and	)	No. 50A05-0811-JV-638
J.J.P., Father,	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARSHALL SUPERIOR COURT
The Honorable Robert O. Bowen, Judge
Cause No. 50D01-0301-JP-1

January 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

P.C. ("Mother") appeals the court's modification of child custody to J.P. ("Father"). Mother asserts the evidence does not support the modification. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 27, 2003, Father acknowledged paternity of R.C., who was born on August 24, 2002. Pursuant to an order dated August 5, 2003, Father and Mother shared legal and physical custody of R.C.

On September 4, 2007, Father petitioned for modification of custody and for a custody evaluation. On September 24, 2007, Mother filed a petition to modify the order establishing paternity, a motion to enforce the order of child support, and a motion for attorney fees. The court granted Father's request for a custody evaluation, and on January 31, 2008, Eric Foster performed that evaluation. On May 21, 2008, Mother filed an "Objection to Admission of Child Custody Evaluation by Eric Foster and Motion for Child Custody Evaluation by Qualified Psychologist" and a motion for specific findings of fact and conclusions of law pursuant to Ind. Trial Rule 52.

Testimony at the hearing revealed R.C. is a healthy, bright, well-behaved six year-old girl who is beginning kindergarten. Both Mother and Father live in homes that are suitable for raising a child, and R.C. had been well cared for in both homes. However, Mother and Father are not communicating well.

Mother resides in Bremen with her mother and step-father. Mother works at Lowe's Home Improvement Store. Her hours vary from week to week. When Mother is not available to watch R.C., her mother watches R.C. If the child were to live with

Mother, she would attend school in Bremen and take the bus to and from school. On at least half of the days, Mother would be unavailable to prepare R.C. for school in the morning and/or be home in the evening after R.C. returns from school.

Father lives in the home he has owned for nearly five years. Father works in Mishawaka, Indiana, and leaves for work at 7 a.m. He plans to have his two nieces, ages 11 and 13, care for R.C. in the morning when Father goes to work. The nieces' father would bring them to Father's house before Father left, and then he would return to take all of the girls to school. After Father returns home at 5 p.m., he will be available to care for R.C. Between school and Father's return, Father had an after-school program in mind for R.C. to attend.

In the custody evaluation report and at the evidentiary hearing, Foster recommended Father have physical custody of R.C. because "[Father] has consistently demonstrated an involvement in his daughter's life, stability in his housing and financial resources, availability for [R.C.] when she starts school, and a parenting style and structure that will be positive for [R.C.] in the future." (App. at 40.)

On August 19, 2008, the trial court ordered the parents to continue sharing joint legal custody. The court gave Father primary physical custody and Mother visitation in accordance with the Marshall County Alternate Child Visitation Guidelines.[1]

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[1] The Marshall County Courts' website includes the following Local Rule:

> (A) The Courts of Marshall County have adopted the Indiana Parenting Time Guidelines and have also established the Marshall County Alternate Parenting Time Guidelines either of which may be agreed to by the parties or Ordered imposed by the Courts of Marshall County. The Marshall County Alternate Parenting Time Guideline shall be made available to the parties or their counsel as

DISCUSSION AND DECISION

Mother asserts the evidence does not support the modification. We review custody modifications for abuse of discretion, and we are deferential to trial court judges in family law matters. *K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 457 (Ind. 2009). Where, as here, the trial court entered findings and conclusions pursuant to T.R. 52, "we first determine whether the evidence supports the findings and then whether the findings support the judgment." *Id.* We will not set aside the findings and judgment unless they are clearly erroneous because there is no evidence supporting them. *Id.* In our review, we give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." *Id.*

Custody modifications in paternity actions are governed by Ind. Code § 31-14-13-6, which provides modification may not occur unless modification is in the best interests of the child and there has been a substantial change in one or more of the factors identified in Ind. Code § 31-14-13-2. Those factors are:

> (1) The age and sex of the child.
> (2) The wishes of the child's 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 parents;

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requested and are subject to change, on review by the Courts of Marshall County, annually or as deemed necessary.

Marshall County Local Rule, *Parenting Time Guidelines*, LR50-FL00-MLR-020, 24 available at http://www.in.gov/judiciary/marshall/docs/lr070909.pdf (last visited December 8, 2009). We did not find the details of Marshall County's Alternate Parenting Time Guidelines on the Marshall County Courts' website. Neither has Mother provided us with a copy in her appendix. Therefore, we do not know when Mother has visitation with R.C.

> (B) the child's siblings; and
> (C) any other person who may significantly affect the child's best interest.
> (5) The child's adjustment to the child's home, school, and 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, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

Ind. Code § 31-14-13-2.

The trial court found a substantial change in circumstances because R.C. is now school-aged, the parents do not live in the same school district, and the shared custody arrangement would be difficult now that R.C. attends school daily. (*See* App. at 17.) A child's adjustment to school and home are proper for the court to consider under Ind. Code § 31-14-13-2(5), and there was evidence in the record to support finding a substantial change. R.C. is six years old and was beginning kindergarten. The parents do not communicate well consistently. (*See* App. at 36 ("at times, they can't communicate well at all. . . . she will not talk to him") and at 38 ("they do not communicate well now")). "Mother also believes that splitting the week for [R.C.] has been hard on her. She believes her daughter becomes confused about where she is supposed to be." (Id. at 35.) No clear error occurred when the trial court found a change in circumstances sufficient to support a modification. *See, e.g.*, *Walker v. Nelson*, 911 N.E.2d 124, 128 (Ind. Ct. App. 2009).

The court found it was in the best interest of R.C. for Father to have physical custody because (1) Mother has demonstrated a pattern of instability in her relationships and her places of residency, while Father's lifestyle is more stable and conducive to

rearing a child; and (2) Father's job has set daytime hours, while Mother's work hours vary and may extend late into the evening beyond R.C.'s bedtime. These findings are supported by the custody evaluation:

> There are several factors that suggest to this evaluator that [Father] be considered the primary physical custodian: First of all, [Father] has maintained the same residence for several years, by his account four and a half years. Not only has he maintained a steady home, but he has also maintained steady employment for several years. His work schedule is also conducive to being available during after school hours. This evaluator believes [Father] has been involved in [R.C.]'s life and they do clearly have an emotional bond between them. [Father] does not have any health concerns or significant mental health clinical syndrome that would prevent him from effectively parenting his daughter.
>
> [Mother] also does not have health problems or a major mental health clinical syndrome that would prevent her from parenting her daughter. On the other hand [Mother] has moved multiple times since 2003. Though there was a discrepancy in the number of times she has moved . . . there is no doubt that it has been at least on four different occasions. [Mother] did report having a stable job, yet her work hours do vary, making after school availability more difficult. [Mother] has also struggled with relationships in her life. During the course of the first custody evaluation, she was married; yet, soon after, divorced. She then developed a relationship with her boyfriend, Paul. They lived together, broke up, and later [she was] back with [Father] until they broke up. Soon after, she developed her current relationship with [Todd]. [Mother] has shown a pattern of difficulty in relationships and this type of instability is not positive for [R.C.].

(App. at 40.)

Mother also argues the trial court should have considered the level of animosity and hostility directed toward her by Father and his mother. Mother's Statement of the Evidence includes numerous references to the negative attitude displayed by Father and his mother. (*See, e.g.*, App. at 48, Para. 57 ("Both the father and the paternal grandmother testified they have to have the minor child in their custody as much as

possible to 'undo' or mitigate the mother's family's influence on the child when they have her") and Para. 58 ("The father testified that there are no benefits to the child spending time with the mother. The father conceded that maybe the mother could teach the child how to do back flips on the trampoline.")). As the trial court approved Mother's Statement of Evidence, it presumably was aware of this issue when it made its decision. Further analysis of this issue would require us to judge the credibility of witnesses or reweigh the evidence, which we cannot do. *Walker*, 911 N.E.2d at 129 (Ind. Ct. App. 2009) (appellate court cannot reweigh evidence or judge witness credibility when reviewing custody determination).

The record supports the conclusion there has been a substantial change in circumstances and R.C.'s best interests are served by awarding primary physical custody to Father. Accordingly, we affirm.

Affirmed.

CRONE, J., and BROWN, J., concur.