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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE PATERNITY OF X.J.M., )  
b/n/f A.D.M., )  
 )  
and )  
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B.L.B., )  
 )  
Appellants-Respondents, )  
 )  
vs. )  
 )  
S.J.M. and S.L.M., )  
 )  
Appellees-Petitioners. )

No. 82A05-0908-JV-467

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APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Brett J. Niemeier, Judge  
The Honorable Renee Allen Ferguson, Magistrate  
Cause No. 82D01-0809-JP-515

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**April 14, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellants-respondents A.M. (Mother) and B.B. (Father) (collectively, the Parents) appeal the trial court's order granting custody of their son, X.J.M., to appellees-intervenors, the maternal grandparents (Grandparents). Specifically, the Parents argue that the trial court abused its discretion in awarding custody to the Grandparents and that the trial court erred in limiting their supervised visitation with X.J.M. to three hours per week.

The Parents also contend that the trial court abused its discretion in excluding evidence of alleged sexual abuse that a relative (Adopted Brother) committed against Mother and three other women at the Grandparents' residence prior to X.J.M.'s birth. Finally, the Parents claim that they were denied due process of law because the delay in bringing the matter to trial following the trial court's entry of an ex parte custody order was unreasonable.

We conclude that the trial court properly awarded custody of X.J.M. to the Grandparents, but we also find that the trial court erred in restricting the Parents' visitation time. Additionally, while we find that the trial court improperly excluded evidence of instances of alleged sexual abuse that occurred at Grandparents' residence, the error was harmless. Finally, we conclude that the Parents were not denied due process of law because they failed to show that any alleged delay in bringing the matter to trial was unreasonable.

Thus, we affirm in part, reverse in part, and remand this cause with instructions that the trial court permit visitation in accordance with the Parenting Time Guidelines or to

express its reasons for restricting visitation time based on the evidence that was presented at trial.

### FACTS

On February 13, 2007, Mother gave birth to X.J.M. in Newburgh. Father was not present at the birth and was not made aware of the birth until Mother contacted him several days later. When X.J.M. was born, Mother was living with “Scott,” her boyfriend. Appellees’ App. p. 27.

Mother experienced complications during X.J.M.’s delivery that resulted in her inability to walk normally for nearly two months. When X.J.M. was only a few days old, Mother noticed that he would not take a bottle. Mother called Grandmother, who was vacationing in Texas, and informed her of the problem. In response, Grandmother called a physician, and one of the nurses contacted Child Protective Services (CPS). Representatives from CPS went to the residence and took Mother and X.J.M. to the doctor’s office. Although CPS did not open a file in the matter, CPS agency representatives observed that Mother’s home was in disarray and there was no “refrigeration or heating facilities for heating food.” Appellant’s App. p. 5-6, 73.

Following an examination, X.J.M. underwent surgery for a congenital stomach problem. Immediately thereafter, Grandmother took X.J.M. to her Vanderburgh County residence and began providing for his daily needs. Mother did not drive and relied on Grandmother to transport her to and from work and parenting visits with X.J.M. Although Mother saw X.J.M. once a week, she stayed overnight with him on only ten occasions during

the first year of his life.

B.B. attempted to see X.J.M. every other weekend. However, Mother would occasionally cancel his visits because Grandmother did not approve of the relationship. Although there was evidence that Father gave Mother some money for X.J.M.'s support, Mother did not use that money for X.J.M.'s benefit.

Father moved to Bloomington in August 2007, to attend Indiana University (I.U.). He continued to visit X.J.M. once a month at Mother's Evansville apartment during the school term and a couple of times over the winter break.

In August 2008, Mother and Father took X.J.M. to visit Father's relatives in Arkansas. After returning from that trip, Mother and Father returned to Bloomington where Father continued to attend I.U. and work as a teacher's assistant. While living together, both Father and Mother cared for X.J.M. Although X.J.M. missed an eighteen-month "well child" doctor's appointment that Grandmother had made, it was rescheduled. At that appointment, the physician's report indicated that X.J.M. was well-nourished, well-developed, and was not in any apparent distress.

On September 12, 2008, Grandparents filed an emergency petition for Guardianship, which the trial granted on September 17 following an ex parte hearing. That evening, Bloomington police officers arrived at Father's residence and removed X.J.M.

Two days later, Father signed a paternity affidavit at the Warrick County Health Department and a petition to establish paternity in the Vanderburgh Superior Court. Thereafter, the Grandparents refused Father's request for parenting time. Grandparents did,

however, permit Mother to have supervised visits with X.J.M. at their house.

After Father established paternity, Grandparents allowed both parents to visit X.J.M. for one hour per week. On October 9, 2008, Father filed an emergency petition for parenting time and a motion to set aside the ex parte guardianship order that was set for hearing on November 5.

On December 17, 2008, the trial court heard evidence on the petition for expedited hearing and determined that custody of X.J.M. should continue with Grandparents on an emergency basis, subject to three hours per week supervised parenting time each week by the Parents. On April 8, 2009, the guardianship and paternity matters were consolidated. At hearings that were conducted on May 1 and May 5, 2009, Mother and Father moved for additional parenting time, which the trial court denied. The trial court also denied Mother's request to testify that Adopted Brother—who was still living at the Grandparents' residence—had sexually assaulted her in Grandparents' home at some point prior to X.J.M.'s birth. The trial court also refused counsel's attempt to question Adopted Brother about his conduct in the household. However, the Parents' counsel made an offer of proof indicating that Adopted Brother had allegedly committed acts of sexual misconduct against three of the sisters prior to X.J.M.'s birth.

Following the hearing, the trial court took the matter under advisement, and both parties filed proposed findings of fact and conclusions of law. On July 13, 2009, the trial court entered final judgment in the paternity case and granted custody of X.J.M. to the Grandparents. The Parents were ordered to pay child support retroactive to the filing of the

motion to intervene, and the trial court limited the Parents' supervised visitation time with X.J.M. to three hours per week.

The trial court issued thirty-nine findings of fact and fifteen conclusions of law in support of its judgment. The trial court determined, among other things, that the Parents had not lived with X.J.M. for the first one-and-one-half years of his life and have had "little care or interaction with the child." Appellants' App. p. 14. The trial court also found that Father was not present at X.J.M.'s birth, did not attend to X.J.M.'s medical or dental needs, and that CPS became involved in light of concerns that Mother was neglecting X.J.M. In short, the trial court determined that the Parents permitted Grandparents to raise X.J.M. for their own convenience, and the evidence showed that Grandparents did not take X.J.M. so the Parents could work or attend school.

The trial court also found that while X.J.M. was living with Grandparents, neither Father nor Mother sent necessities, including food or clothing, to the Grandparents for X.J.M.'s benefit. Moreover, it was established that X.J.M. had developed a "close bond" with Grandparents and his aunts and uncles, and they have all assisted in X.J.M.'s care and nurturing while he was living with Grandparents. Id. at 15.

The evidence also showed that Grandparents desired to continue raising X.J.M., and the trial court found that to sever the bond that developed between X.J.M. and Grandparents would jeopardize X.J.M.'s "future mental and physical well being." Id. at 17. Moreover, Mother testified that she would likely not permit Grandparents to see X.J.M. if she was awarded custody.

The trial court also observed that “there is no stability” regarding the Parents’ lifestyles, and it was noted that Father applied for a birth certificate approximately “one and a half years after the child’s birth, the day paternity proceedings were filed, after [Grandparents] had initiated their proceedings.” Id. at 16. The evidence also showed that Mother had engaged in violent behavior toward X.J.M., including

physically tripping him, pushing on his head, holding him over an open staircase in her open hand and threatening to drop him, holding him over the stove in her open hand, striking him with a newspaper and making him stay in a swimming pool when the water frightened him.

Id. at 16. Moreover, the trial court found that Father did not know how to properly care for X.J.M. and his conduct during his visitations were “rough and of poor judgment.” Id. The trial court then determined that the Parents had abandoned X.J.M. and voluntarily relinquished custody of him to the Grandparents. Thus, the trial court found that the Grandparents’ residence is the only place that X.J.M. knew as his home since birth “and to separate him from that home would not be in [X.J.M.’s] best interest.” Id. at 20.

The trial court concluded that there was “clear, convincing, and cogent evidence” sufficient to rebut the presumption that the Parents should have custody of X.J.M. Id. at 20. It was determined that because Grandparents have “nurtured and supported [X.J.M.]” and provided for all of his care since birth, placing him in Grandparents’ custody is in X.J.M.’s best interest. Id. at 21. The Parents now appeal.

## DISCUSSION AND DECISION

### I. Standard of Review

When the trial court enters findings of fact and conclusions of law pursuant to Indiana Trial Rule 52, we apply a two-tiered standard of review. Specifically, we consider whether the evidence supports the findings, and whether the findings support the judgment. Fowler v. Perry, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). The trial court’s findings will be set aside only if they are clearly erroneous, i.e., when the record contains no facts or inferences supporting them. Id. Further, when reviewing findings of fact, we neither reweigh the evidence nor assess the credibility of witnesses, but instead consider only the evidence most favorable to the judgment. Id. Finally, even though the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. McBride v. McBride, 427 N.E.2d 1148, 1151 (Ind. Ct. App. 1981).

## II. The Parents’ Claims

### A. Custody

The Parents argue that the trial court abused its discretion in awarding custody to the Grandparents. Specifically, the Parents argue that the custody order must be set aside because there was no evidence demonstrating that they were unfit and they did not acquiesce to X.J.M.’s living arrangement with Grandparents. Thus, the Parents contend that the Grandparents failed to rebut the presumption that X.J.M.’s interests were best served by allowing custody to remain with them.

We initially observe that parents have a constitutionally protected right to “establish a home and bring up children” pursuant to the Due Process clause of the 14th Amendment to the United States Constitution. Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Parents have

the right to raise their children as they see fit, and a State is not permitted to infringe on the fundamental right of parents to make childrearing decisions simply because a trial judge believes a “better” decision could be made. K.I. ex rel. J.I. v. J.H., 903 N.E.2d 453, 458 (Ind. 2009).

On the other hand, we review custody modifications for an abuse of discretion with a “preference for granting latitude and deference to our trial judges in family law matters.” Id. at 457 (quoting Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002)). Indiana Code section 31-14-13-6 provides in pertinent part that: “The court may not modify a child custody order unless: (1) 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 section 2 and, if applicable, section 2.5 of this chapter.”<sup>1</sup>

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<sup>1</sup> The section 2 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;
  - (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 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.

As noted in K.I., the circumstances under which custody of a child may be placed with a party other than a natural parent were addressed in In re Guardianship of B.H., 770 N.E.2d 283 (Ind. 2002). B.H. involved an initial custody determination between a father and a stepfather, shortly after the death of the children's mother, who had previously been awarded custody of the children. The stepfather sought and obtained an emergency order appointing him temporary guardian of the children immediately after the children's mother died. Id. at 285. Only weeks after the stepfather was appointed guardian, the children's father petitioned to terminate the guardianship and the stepfather cross-petitioned for permanent guardianship. Id.

In upholding the trial court's award of custody to the stepfather, it was observed that

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(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.

I.C. § 31-14-13-2. The factors enumerated in Indiana Code section 31-14-13-2.5 are:

- (1) The wishes of the child's de facto custodian.
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
- (3) The intent of the child's parent in placing the child with the de facto custodian.
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent seeking custody to:
  - (A) seek employment;
  - (B) work; or
  - (C) attend school.

[B]efore placing a child in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement. The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child. The presumption will not be overcome merely because “a third party could provide the better things in life for the child.” In a proceeding to determine whether to place a child with a person other than the natural parent, evidence establishing the natural parent’s unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would of course be important, but the trial court is not limited to these criteria. The issue is not merely the “fault” of the natural parent. Rather, it is whether the important and strong presumption that a child’s interests are best served by placement with the natural parent is clearly and convincingly overcome by evidence proving that the child’s best interests are substantially and significantly served by placement with another person.

Id. at 287 (citations omitted).

Commenting on the circumstances in B.I., the court in K.I. observed that even in those instances where a parent initiates an action to reobtain custody of a child that has been in the custody of another, the burden of proof does not shift to the parent. Rather, “the burden of proof is always on the third party.” Id. at 460 (quoting In re Guardianship of J.K., 862 N.E.2d 686, 692 (Ind. Ct. App. 2007)). The K.I. court also acknowledged that Father was not seeking to reobtain custody because he never had custody in the first place. However, it was determined that Father “is K.I.’s natural parent and the underlying rationale is the same.”

Id. at 460. Finally, the K.I. court observed that

the third party must prove by clear and convincing evidence “that the child’s best interests are substantially and significantly served by placement with another person.” B.H., 770 N.E.2d at 287. If the third party carries this burden, then custody of the child remains in the third party. Otherwise, custody must be modified in favor of the child’s natural parent.

Id. at 461.

As noted above, the Parents challenge the trial court's findings regarding their "unfitness," claiming that there "is absolutely no evidence of unfitness on the part of either parent." Appellants' Br. p. 13. With regard to Mother, the trial court heard evidence that on at least one occasion, Mother held X.J.M. over the stove near the pilot light and told him to touch it. Appellees' App. p. 22. Grandmother testified that she saw Mother hold X.J.M. over an open stairwell and "smack" and "flip him." Id. at 37-38. Grandfather and Adopted Brother both testified that they observed Mother shake X.J.M. and push his head back to make him stop crying. Id. at 41.

The undisputed evidence also that there was no set schedule for Mother's visits, and it was demonstrated that Mother did not take an active interest in X.J.M. during the visitation periods. Grandmother testified that Mother did not spend much time with X.J.M. and would talk on the phone, text, or visit with friends while she was at Grandparents' house. Id. at 15.

As for Father, the trial court heard evidence that he "plays rough" with X.J.M. and has picked him up by his wrists and forearms on occasion. Id. at 34, 70. There was also an incident where Father permitted X.J.M. to approach a stranger's dog while playing at the park. Id. at 10-11, 65, 71. No evidence was presented that X.J.M. was ever injured while he was in Father's care.

Even though Father was not present at X.J.M.'s birth, the evidence showed that Mother allowed Father to believe that X.J.M. was in her care because Grandmother did not approve of Father. Appellants' App. p. 115-17. In fact, Mother hid from Grandmother the

fact that Father was visiting with X.J.M., and she would also tell Father that X.J.M. spent the night with Grandparents after work. Id. at 116-15, 183. Mother never told Father that X.J.M. was living with Grandparents and Grandmother testified that she had never met Father and did not know that he was visiting X.J.M. Id. at 41, 44, 97.

Father also made efforts to visit X.J.M. at Mother's Evansville apartment at least once a month and during the winter break after moving to Bloomington to attend I.U. Appellants' App. p. 171-72. Father purchased clothes for X.J.M. and gave Mother money every month for X.J.M.'s support. However, Mother did not forward any of those funds to Grandmother. Id. at 113-14. Instead, Mother used the money to pay her rent and occasionally buy toys for X.J.M. Id. at 115.

In August 2008, Mother and Father co-parented X.J.M. while Father attended I.U. and worked as a teacher's assistant. Id. at 168. During this period, X.J.M. underwent a "well child checkup," and the doctor's report indicated that he was "nourished and well developed" and under "no apparent stress." Id. at 101.

In reviewing the trial court's findings and judgment, it is apparent that the evidence supports the conclusion that Mother permitted Grandparents to raise X.J.M. solely for her convenience, failed to adequately provide for his necessities, and engaged in violent behavior toward X.J.M. during periods of visitation. Moreover, the evidence demonstrated that Grandparents have provided X.J.M. with the necessary financial support and nurturing for nearly one and one-half years of his life. The evidence also established that X.J.M. has developed a close bond with Grandparents and they want to continue to raise him. Thus, the

trial court properly concluded that the Grandparents sufficiently rebutted the presumption that it is in X.J.M.'s best interests to be in Mother's custody.

On the other hand, we cannot say the same with regard to Father. More particularly, the evidence failed to establish that Father had abandoned X.J.M., did not support him, acquiesced in allowing Grandparents to raise X.J.M., exhibited violent conduct toward X.J.M., or failed to lead a stable lifestyle. As a result, Grandparents have failed to rebut the presumption that it is in X.J.M.'s best interests to be in Father's custody.

However, we also note that it is apparently the Parents' proposal for Mother to have the primary caretaking responsibility of X.J.M. while Father pursues his studies at I.U. and continues to work as a teacher's assistant. Thus, when examining the totality of the evidence and these circumstances, and considering the Parents' desire to remain together and co-parent X.J.M., we defer to the trial court's decision to place X.J.M. with Grandparents. As a result, we decline to set aside the custody order.

#### B. Parenting Time

The Parents next claim that the trial court abused its discretion in limiting their parenting time with X.J.M. to three hours per week of supervised visitation. Specifically, the parents argue that the restriction was unreasonable because there was no evidence that they injured X.J.M. or endangered his physical health or well-being.

Decisions regarding child visitation are generally committed to the trial court's sound discretion and should be reversed only upon a showing of a manifest abuse of discretion. Walker v. Nelson, 911 N.E.2d 124, 130 (Ind. Ct. App. 2009). When reviewing the trial

court's decision, we neither reweigh the evidence nor reexamine the credibility of the witnesses. Id. Rather, we view the record in the light most favorable to the trial court's decision to determine whether the evidence and reasonable inferences therefrom support the trial court's decision. Id. An abuse of discretion has occurred if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

Indiana Code section 31-14-14-1, which outlines the visitation rights of a noncustodial parent in a paternity action, provides that “[a] noncustodial parent is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time might: (1) endanger the child’s physical health and well-being; or (2) significantly impair the child’s emotional development.”

A companion statute, Indiana Code § 31-14-14-2, states that “[t]he court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child.” Moreover, “even though section 31-14-14-1 uses the term ‘might,’ this court has interpreted the statute to mean that a trial court may not restrict visitation unless that visitation would endanger the child’s physical health or well-being or significantly impair the child’s emotional development.” Farrell v. Littell, 790 N.E.2d 612, 616 (Ind. Ct. App. 2003). “By ‘its plain language,’ Indiana Code section 31-14-14-1 requires a court to make a specific finding ‘of physical endangerment or emotional impairment prior to placing a restriction on the noncustodial parent’s visitation.’” Id. (quoting In re Paternity of V.A.M.C., 768 N.E.2d 990, 1001 (Ind. Ct. App. 2002)).

In this case, the trial court made no specific findings in either the order entered on December 17, 2008, or the current custody order that would support its decision to restrict parenting time. In fact, as discussed above, the evidence with regard to Father simply does not support a finding of physical endangerment or emotional impairment to X.J.M. As a result, we must conclude that the trial court erred in placing restrictions on the Parents' visitation times with X.J.M. Thus, we reverse the order with regard to the restricted parenting time and remand this cause with instructions that the trial court either: (1) enter an order containing findings sufficient to support a visitation restriction under Indiana Code section 31-14-14-1 based on the evidence already on the record as it relates to Mother; or (2) enter an order in accordance with the Parenting Time Guidelines that contains no visitation restrictions. Walker, 911 N.E.2d at 130.

### C. Evidence of Alleged Sexual Abuse

The Parents next contend that the trial court abused its discretion in excluding evidence of alleged sexual abuse against Mother and her sisters that occurred in Grandparents' home. In particular, the Parents contend that the trial court erred in not permitting Mother to testify that she had been the victim of sexual misconduct by Adopted Brother even though Grandmother was aware of the incident.

In resolving this issue, we initially observe that the decision to admit or exclude evidence is reviewed for an abuse of discretion. Cain v. Back, 889 N.E.2d 1253, 1256 (Ind. Ct. App. 2008), trans. denied. An abuse of discretion occurs if the trial court's decision is

clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. at 1257.

In weighing the best interests of the child in accordance with Indiana Code section 31-14-13-2, evidence relating to the individuals who reside in the prospective home of the child—particularly with regard to the safety and the child’s well-being—is certainly relevant. Additionally, testimony as to how the prospective custodian of the child handled the alleged situation is relevant to show how similar incidents might be addressed in the future.

As discussed above, the evidence demonstrated that Adopted Brother was still living in Grandparents’ home and is one of the individuals who were permitted to be present during parenting time. In light of these circumstances, we conclude that the trial court erred in excluding evidence of Adopted Brother’s alleged sexual misconduct.

Nonetheless, Parents are not entitled to a reversal unless they can demonstrate that the erroneous exclusion of the evidence affected their substantial rights. Cain, 889 N.E.2d at 1256. Interestingly, even though Mother alleged that certain acts of sexual misconduct occurred, Mother left X.J.M. at Grandparents’ home knowing that Adopted Brother was still living there. Moreover, Mother does not contend that she removed X.J.M. from the house for concerns about his safety and well-being. In fact, Mother admitted at trial that Grandparents could provide a safe home for X.J.M. Therefore, even though the trial court should have admitted the testimony regarding Adopted Brother’s alleged misconduct, we cannot say that the improper exclusion of that evidence warrants reversal. Indeed, the trial court heard

extensive evidence regarding the stability of the Grandparents' home in comparison to the conditions of the Parents' residence. For these reasons, we conclude that the Parents have failed to show that the improper exclusion of the evidence regarding Adopted Brother's alleged sexual misconduct amounted to reversible error.

#### D. Due Process Concerns

The Parents next argue that the custody order must be set aside because they were denied the right to procedural due process. Specifically, the Parents maintain that this case "is replete with procedural irregularities, misinformation and reflects a blatant disregard for the[ir] fundamental rights . . . to raise their child." Appellants' Br. p. 23.

As this court observed in Brown v. Brown:

Because child custody proceedings implicate the fundamental relationship between parent and child, Indiana courts recognize that procedural due process must be provided to protect the substantive rights of the parties. The Indiana legislature has provided a fairly detailed list of procedural requirements for courts to follow in custody and modification cases.

463 N.E.2d 310, 313 (Ind. Ct. App. 1984) (citations omitted); see also Wilcox v. Wilcox, 635 N.E.2d 1131, 1136 (Ind. Ct. App. 1994).

In this case, the record demonstrates that on September 12, 2008, Grandparents filed their verified petition for guardianship and a request for an expedited hearing. The trial court conducted an ex parte hearing on September 17, and X.J.M. was removed from Parents' residence that same day. The Parents filed their initial petitions with the trial court on October 8 and 9, and a hearing was set for November 12, 2008. Over the Parents' objection, the hearing was continued to December 17, 2008.

Following that hearing, the trial court determined that the temporary guardianship should continue, and the matter was set for a two-day trial on May 4, 2009. In the interim, the trial court held additional hearings, including the Parents' supervised visitation arrangement and their right to have access to X.J.M.'s medical records. Appellants' App. p 3.

Between October 8, 2008, which was the first appearance in court by either Parent, and December 17, 2008, just over two months had elapsed. The trial court heard evidence on the emergency order and the temporary guardianship remained in place. Because the Parents have pointed to no procedural errors that allegedly occurred during the pendency of the proceedings, we cannot say that a hearing conducted within two months of the ex parte order deprived the Parents of their right to due process. See Wilcox, 635 N.E.2d at 1137 (observing that the result reached in Brown does not stand for the proposition that a passage of two months until the commencement of the final hearing is, standing alone, sufficient to require reversal). As a result, the Parents' claim fails with regard to this issue.

The judgment of the trial court is affirmed in part, reversed in part, and remanded in accordance with the instructions set forth above.

DARDEN, J., concurs.

CRONE, J., concurs in part and dissents in part, with opinion

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**CRONE, Judge, concurring in part and dissenting in part**

I agree with the majority that the trial court properly awarded custody of X.J.M. to Grandparents. I also agree with the majority that the trial court did not commit reversible error in excluding evidence regarding Adopted Brother’s alleged sexual misconduct and did not deprive the Parents of their right to due process. I respectfully disagree, however, with the majority’s determination that the trial court abused its discretion in restricting the Parents’ visitation with X.J.M. I do so for two reasons.

First, I believe that the trial court was not required to enter any findings pursuant to Indiana Code Section 31-14-14-1 before it could restrict the Parents' visitation. To reiterate, that statute provides, "A noncustodial parent is entitled to *reasonable* parenting time rights unless the court finds, after a hearing, that parenting time might: (1) endanger the child's physical health and well-being; or (2) significantly impair the child's emotional development." Ind. Code § 31-14-14-1(a) (emphasis added). As I stated in my separate opinion in *Walker*,

The plain language of the statute requires the trial court to enter findings only when it denies *any* parenting time to the noncustodial parent. That was the situation in *Farrell*, on which the majority relies. To the extent that *Farrell* may be interpreted as holding that findings are required if the trial court grants parenting time that deviates, no matter how slightly, from the Parenting Time Guidelines, I would respectfully disagree with that interpretation as contrary to both the letter and the spirit of Indiana Code Section 31-14-14-1(a) and the Parenting Time Guidelines. *See* Ind. Parenting Time Guidelines, Preamble ("The purpose of these guidelines is to provide a model which may be adjusted depending upon the unique needs and circumstances of each family.") . . . . To equate reasonable parenting time with the full panoply of visitation rights pursuant to the Parenting Time Guidelines and to allow a deviation therefrom only in situations where there is child endangerment would severely limit a

trial court's ability to fashion a visitation schedule that best suits the situation of the parents involved. Such a result would be ill advised.

911 N.E.2d at 131 (Crone, J., dissenting in part).

Second, even assuming that such findings are required, I believe that the trial court's findings (and the evidence supporting the findings) are clearly sufficient to support its decision to restrict both Mother's and Father's visitation rights. Among other things, the trial court found that both Mother and Father "have had little care or interaction with [X.J.M.]"; that they "show minimal interest in meeting [X.J.M.'s] basic needs when they currently visit with [him]"; that "there is no stability regarding either parent"; that Mother "has engaged in violent behavior toward [X.J.M.] including physically tripping him, pushing on his head, holding him over an open staircase in her open hand and threatening to drop him, holding him over the stove in her open hand, striking him with a newspaper and making him stay in a swimming pool when the water frightened him"; and that Father "does not have the requisite understanding of how to properly care for the child and play with the child and his conduct during his visitations would be considered rough and of poor judgment." Appellant's Br. at 30-31, 32 (findings 5, 14, 19, 22, and 23). Even though these findings do not echo the statutory language of Indiana Code Section 31-14-14-1, I believe that they are sufficient to establish that unrestricted visitation with the Parents would endanger X.J.M.'s physical health and well-being or significantly impair his emotional development. As such, I would affirm the trial court in all respects.

