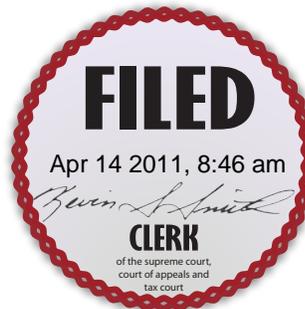


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE PATERNITY OF T.B.)
)
T.B., b/n/f)
C.B.,)
)
Appellant-Respondent,)
)
vs.) No. 56A04-1008-JP-502
)
C.K.,)
)
Appellee-Petitioner.)
)

APPEAL FROM THE NEWTON CIRCUIT COURT
The Honorable Jeryl F. Leach, Judge
Cause No. 56C01-9502-JP-3

April 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

C.B. (“Mother”) appeals the trial court’s order which increased C.K.’s (“Father”) parenting time with then-fifteen-year-old T.B. on a set schedule, culminating in visitation according to the Indiana Parenting Time Guidelines, without imposing any restrictions on that parenting time. Because a noncustodial parent in a paternity action is generally entitled to reasonable parenting rights and Mother has failed to meet her burden of proving that Father’s visitation should be restricted, we affirm the trial court.

Facts and Procedural History

Mother and Father have one child together, T.B., who was born October 11, 1994. In 2009, Father, who had not been involved in T.B.’s life since approximately 1996, sought parenting time with T.B. A hearing was held in November 2009 at which Mother was represented by counsel and Father appeared pro se. The trial court issued an order in January 2010 finding that there was no evidence before the court that Father posed a “physical or mental threat to the child.” Appellant’s App. p. 23. The court did find that because T.B. had some emotional issues as a result of his lack of contact with Father, “some therapeutic visitation [wa]s necessary to help both Father and child understand the issues that exist and to help them learn how to address those issues so that no additional harm is done to the relationship or to the child.” *Id.* at 24. Accordingly, the court ordered the therapeutic visitation between Father and T.B. to continue and phased in non-therapeutic visitation, which was to start within thirty days of the order.

In February 2010, Mother, now pro se, filed a motion requesting a “wellness hearing.” *Id.* at 4 (CCS entry). This hearing was held in March. At the hearing, Mother

testified that there had been only one non-therapeutic visit between Father and T.B. and that T.B. had become overwhelmed by the process, almost to the point of being hospitalized in a psychiatric facility. Mother explained that since T.B. had been seeing Father, he slept all the time, easily became upset, was no longer a social person, and had his medications increased. Dr. Tiffany Simpson, the licensed clinical psychologist who had been seeing T.B. and Father for their therapeutic visits since 2009, recommended that T.B. and Father continue their individual counseling but that the therapeutic visits or any contact between them be suspended until T.B. stabilized. Dr. Simpson explained that T.B. had turned to his X-Box as a coping mechanism as if it were a drug, and he was only getting worse. The trial court ordered one therapeutic visitation between T.B. and Father per month, suspended the non-therapeutic visitation, and set the matter for a review hearing, at which point it would decide whether visitation should increase. *Id.* at 28-29.

At the May 2010 review hearing held two months later, both parties again appeared pro se. Mother testified that T.B. had improved “a little bit,” become “more social,” and started attending Sunday school and youth group. *Id.* at 46. According to Mother, “in the last few weeks things ha[d] really picked up for T.B.” *Id.* Evidence was also presented that Father did not attend some of the sessions because of his unpredictable and somewhat inflexible work schedule. Although Mother had arranged for Dr. Simpson to testify at the review hearing, Dr. Simpson did not appear because of an emergency. Mother then tried to admit a letter from T.B.’s therapist, Janette Williams, but the trial court excluded it on hearsay grounds. *Id.* Mother neither objected to the exclusion of the therapist’s letter nor requested a continuance in order to secure the

presence of either Dr. Simpson or Therapist Williams. In its May 2010 order, the court continued the monthly therapeutic visits and phased in non-therapeutic visitation on a set schedule, culminating in visitation according to the Parenting Time Guidelines in September 2010. *Id.* at 12-13.

Mother, represented by new counsel, filed a motion to correct errors alleging that the trial court erred by not allowing her to admit Therapist Williams' letter into evidence (because as a pro se litigant she thought the letter—and not Williams' actual attendance—was good enough) and by failing to have T.B. testify at the hearing and take his wishes into account. Mother attached an affidavit from T.B. setting forth his wishes. Father, still pro se, responded with a “Motion to Object for All Requests Made by Michael Riley, Attorney for [Mother].” One of the sections of Father's motion is entitled “Enforcement of Parenting Time”/“Contempt Sanctions” and alleges, “Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the offender to contempt sanctions.” *Id.* at 30. The court deemed Father's motion to be a rule to show cause/contempt citation.

A hearing on both Mother's and Father's motions was held in July 2010. At the hearing, it was determined that Mother did not request to have T.B.'s wishes heard at the May 2010 status hearing or even the March 2010 “wellness hearing”; rather, Mother had asked for that at a 2009 hearing during which Mother was represented by counsel. Tr. p. 96-99. That is, Mother did not raise this issue at the May 2010 hearing, the relevant hearing. *Id.* at 97. In its July 2010 order, the trial court found that Mother's “inability to secure the testimony of [Therapist Williams], or to request a continuance to allow the

same, was an error in the presentation of the case by Mother. It was not an error of the Court.” Appellant’s App. p. 19. As for the fact that T.B. did not testify at the May 2010 status hearing, the court found that Mother did not ask the trial court to interview T.B. in chambers at the May 2010 hearing but rather at an earlier hearing. *Id.* The court therefore denied Mother’s motion to correct errors. The court then found Mother in contempt and ordered (1) therapeutic sessions between T.B. and Father to be scheduled by Father and the therapist and (2) Mother to produce T.B. for the scheduled sessions. The court specifically advised Mother that “if she fails to abide by this Order and fails to produce the child for the scheduled therapeutic session that she may be held in Contempt of Court and punished accordingly.” *Id.* Finally, the court reset the visitation schedule which it had set out in its May 2010 order, with visitation according to the Parenting Time Guidelines now starting in November 2010. Mother sought a stay of the trial court’s order pending appeal, which the court denied.

Discussion and Decision

Mother contends that the trial court erred in modifying its March 2010 visitation order, which had suspended all non-therapeutic visits between Father and T.B. but continued their monthly therapeutic visits, by ordering in May 2010 that “visitation between Father and [T.B.] increasingly be phased in with no stipulation that Father must attend counseling sessions in order to increase the visitation schedule.” Appellant’s Br. p. 8.

Decisions involving visitation rights under the paternity statutes are committed to the sound discretion of the trial court.¹ *Taylor v. Buehler*, 694 N.E.2d 1156, 1159 (Ind. Ct. App. 1998), *trans. denied*. Thus, reversal is appropriate only upon a showing of abuse of discretion. *Id.*

Indiana has long recognized that the right of parents to visit their children is a precious privilege that should be enjoyed by noncustodial parents. *Lasater v. Lasater*, 809 N.E.2d 380, 400 (Ind. Ct. App. 2004). Accordingly, a noncustodial parent in a paternity action is generally entitled to reasonable parenting time rights. *See* Ind. Code § 31-14-14-1(a). The right of parenting time, however, is subordinated to the best interests of the child. *Lasater*, 809 N.E.2d at 401. Indiana Code section 31-14-14-1, which outlines the visitation rights of a noncustodial parent in a paternity action, provides:

(a) 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.

Indiana Code section 31-14-14-2 provides that “[t]he court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child.”

¹ Even though Mother and Father cite the statutes governing parenting time rights of noncustodial parents, *see* Indiana Code ch. 31-17-4, it appears that this action was originally filed as a paternity action. *See* Appellant's App. p. 1 (first page of CCS labeling case as “In re the Paternity.”). Therefore, the statutes in Indiana Code chapter 31-14-14 apply to this case. *See, e.g., Taylor v. Buehler*, 694 N.E.2d 1156, 1159 & n.6 (Ind. Ct. App. 1998) (“Because Taylor's visitation rights were established through a paternity action, the controlling statute is I.C. 31-6-6.1-12(b) [repealed, see now Indiana Code sections 31-17-4-1 & -2], found under the paternity chapter of Title 31 . . .”). In any event, the controlling provisions in both chapters are nearly identical. *Compare* Ind. Code § 31-17-4-1(a), (b) *with* Ind. Code § 31-14-14-1(a), (b).

Even though Section 31-14-14-1 uses the term “might,” this Court interprets the statute to mean that a 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. *Walker v. Nelson*, 911 N.E.2d 124, 130 (Ind. Ct. App. 2009). By its plain language, Section 31-14-14-1 requires a court to make a specific finding of physical endangerment or emotional impairment before placing a restriction on the noncustodial parent’s visitation. *Id.* A party who seeks to restrict a parent’s visitation bears the burden of presenting evidence justifying such a restriction. *Farrell v. Littell*, 790 N.E.2d 612, 616 (Ind. Ct. App. 2003). The burden of proof is the preponderance standard. *In re Paternity of P.B.*, 932 N.E.2d 712, 720 (Ind. Ct. App. 2010).

Mother argues that the trial court abused its discretion by increasing Father’s parenting time, eventually giving him parenting time according to the guidelines, without imposing any restrictions on that parenting time. Mother bore the burden of proving that Father’s parenting time should remain restricted. She has not met this burden.

At the May 2010 status hearing, the trial court voiced its concerns over Mother’s and Father’s inability to communicate and work together. The court acknowledged that Father has an unpredictable work schedule and that T.B. was still going to be upset. But as the court noted:

[T]ime is running out quickly and the time in which this Court and anybody has any authority to have T.B. into this situation to see if there’s going to be a relationship. And that’s causing far more harm in my opinion than what contact dad and T.B. may have together. Because although there has been some anger issues and some concerns about not always being on time or being there when he’s scheduled to be there’s nothing indicating to this Court that [Father] poses a physical and mental danger to T.B. Absent what is already there with regard to his concerns his anger, his animosity?

That is not getting any better and it hasn't gotten any better since we started imposing this therapeutic visit.

Tr. p. 88-89. The court therefore ordered therapeutic visits to continue and phased in non-therapeutic visitation. The court explained:

The only way we are going to really get to this is get these two together and see what happens. I have a very very strong belief that once we start getting these two people together that some of these problems are going to go away. They are going to be able to talk, they are going to work at these things and it's going to get better and it's certainly not going to get any worse than it is right now. So, we have tried it the other way it's not working because of various issues so we are going to try it this way now. If that is not working then I am sure we will have another hearing and we will address it then. So, we are going to phase in visitation and we are going to start with a 4 hour period every other weekend.

Id. at 89. Despite this ruling from the bench, Mother persisted that they were moving too fast, especially without requiring more therapeutic visits. The court responded:

If I had the concern that I thought [Father] was going to pose a physical[] threat to [T.B.] I wouldn't have made this Order, okay. I understand you have a lot of concerns about how T.B. will react during this and I understand that. [Father] is a parent that this Court's found he's capable of addressing those types of situations.

Id. at 93.

There is nothing in the record to show that Father poses a threat of physical endangerment or emotional impairment to T.B. In fact, the record shows that T.B. had improved or stabilized by the time of the May 2010 status hearing, thereby making it reasonable to reintroduce more visitation with Father. Dr. Simpson testified at the March 2010 "wellness hearing" that T.B. was overwhelmed by the process, *not* Father. *Id.* at 39. Mother apparently concedes this, arguing instead that the statute does not address "the issue of a father not being involved with their child for fifteen years and then deciding to

be an active parent.” Appellant’s Reply Br. p. 4. Mother therefore claims that it is in T.B.’s best interests “if visitation were phased in at a slower rate, and phased in with connection to therapeutic visitation so that T.B. could address issues that have built up in the past fifteen years concerning T.B.’s lack of a father figure in his life.” *Id.* We find that the trial court adequately addressed T.B.’s best interests at the May 2010 status hearing. That is, the court concluded that therapy was not working and that the best course of action was to get father and son together to work things out. Because Father is entitled to reasonable visitation and Mother has not met her burden of proving that Father’s visitation should remain restricted, we conclude that the trial court did not abuse its discretion in increasing parenting time between Father and T.B., culminating with visitation according to the Parenting Time Guidelines, without imposing any restrictions on that parenting time.

Nevertheless, Mother argues that the trial court should have taken into consideration her pro se status and: (1) interviewed T.B. in chambers to assist the court in determining the child’s perception of whether parenting time with Father might endanger his physical health or significantly impair his emotional development, *see* I.C. § 31-14-14-1(b); (2) continued the hearing sua sponte so that Dr. Simpson or Therapist Williams could testify; and (3) admitted into evidence the hearsay report from Therapist Williams.

It is well settled that pro se litigants are held to the same standard as licensed attorneys. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). Thus, a litigant who chooses to proceed pro se must, like trained legal counsel, be prepared to accept the consequences of her actions if she fails to adhere to procedural and evidentiary

rules. *See Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). Thus, Mother is not entitled to special treatment because of her pro se status. *See id.* (“Moreover, Shepherd cannot take refuge in the sanctuary of his amateur status.”).

Here, the record shows that Mother did not ask the trial court to interview T.B. in chambers at the May 2010 status hearing or even the March 2010 “wellness hearing.” Indiana Code section 31-14-14-1(b) provides that the court “may” interview the child in chambers. This language is permissive and not mandatory. Because Mother did not request the court to interview T.B. in chambers at the March or May 2010 hearings and because Mother cites no authority that a court is required to interview a child in chambers, Mother has waived this issue for failing to request such a hearing below. In addition, because Mother is bound by procedural and evidentiary rules, the trial court properly excluded Therapist Williams’ letter as hearsay (in fact, Mother did not even object) and properly proceeded with the May 2010 status hearing in the absence of a request from Mother to continue the hearing so that she could secure Dr. Simpson’s or Therapist Williams’ presence.

Mother still argues that the trial court still should have given her special consideration as a pro se litigant because the court helped Father, and “[i]n equity, it is not fair to the Mother, Father, or child, to help one pro se party more than the other pro se party.” Appellant’s Br. p. 12. Specifically, Mother argues that the trial court turned Father’s pro se motion into a rule to show cause/contempt citation even though she was not given proper notice and the motion was not duly verified by oath or affirmation as

required by Indiana Code section 34-37-3-5. Notably, Mother does *not* challenge the trial court's actual contempt finding against her.

At the hearing on Mother's motion to correct errors and Father's contempt citation, Mother objected to proceeding on Father's contempt citation because she did not have proper notice and the motion was not duly verified. Tr. p. 99-100. The trial court overruled Mother's objection, stating:

The Court finds that the pleadings submitted by [Father] on July 15, sets out the date of the hearing and order that requested certain things be done by Mother and it is set out in specifics what it is that he felt were the problems; the contemptuous behavior of Mother. And with regard to [the] verification issue, the petition was signed, the [proponent] of the motion is here and he has indicated he is going to testify under oath to the issues here before us. And so I think that would cur[e] [the] defect, I think the Mother was on full and ample notice of what we were going to litigate today. So we will proceed with the rule to show cause hearing.

Id. at 100.

Our analysis begins with Father's motion, which provides in pertinent part:

6. Enforcement of Parenting Time.

A. Contempt Sanctions. Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the offender to contempt sanctions. These sanctions may include fine, imprisonment, and/or community service.

Appellant's App. p. 30. Thus, it is clear that Father's motion was indeed a contempt petition, which Mother had notice of—before the hearing—through her attorney. As for the lack of oath, we find it inconsequential because Father testified at the hearing. Although the trial court renamed this particular motion for Father, the court did strike two of his other motions. Moreover, there is evidence in the record that the trial court also assisted Mother when she was acting pro se. For example, when the trial court became

frustrated with Mother’s cross-examination of Father, the trial court allowed Mother to reopen her own testimony in order to get her point across better. Tr. p. 27. Thus, the trial court assisted both parties. We point out that deciding how much help to give pro se litigants is a constant problem for our trial courts. But here, we find that the court struck an acceptable balance between helping Mother and Father. Moreover, there is no indication that the trial court was partial or that Mother requested the trial court judge to recuse himself. We therefore affirm the trial court in all respects.²

Affirmed.

BAKER, J., and BARNES, J., concur.

² In a two-sentence request that neither cites legal authority nor provides any analysis, Father alleges that Mother’s appeal is frivolous and therefore asks us to award him attorney’s fees for having to respond to it. Indiana Appellate Rule 66(E) provides in pertinent part, “The Court may assess damages if an appeal . . . is frivolous or in bad faith. Damages shall be in the Court’s discretion and may include attorneys’ fees.” We use extreme restraint in awarding appellate damages because of the potential chilling effect upon the exercise of the right to appeal. *In re Estate of Carnes*, 866 N.E.2d 260, 267 (Ind. Ct. App. 2007). A strong showing is required to justify an award of appellate damages, and the sanction is not imposed to punish mere lack of merit, but something more egregious. *Id.* We cannot say that Mother’s appeal is frivolous and therefore decline to award Father appellate attorney’s fees.