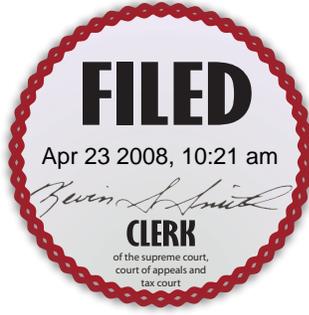


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHELLE L. WOOD n/k/a Michelle L. Mulhern,)

Appellant-Petitioner,)

vs.)

No. 46A03-0709-CV-436

TERRY L. WOOD, JR.,)

Appellee-Respondent.)

APPEAL FROM THE LAPORTE CIRCUIT COURT
The Honorable Thomas Alevizos, Judge
The Honorable Thomas G. Pawloski, Magistrate
Cause No. 46C01-0509-DR-208

April 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Michelle L. Wood (n/k/a Mulhern) appeals the order dissolving her marriage to Terry L. Wood. She asserts error in the admission of evidence, determination of custody, and assignment of income to her for child support purposes. We affirm.

FACTS AND PROCEDURAL HISTORY

Michelle and Terry were married on October 15, 1997. Their marriage produced four children. They began a hauling business, Double O Trucking, Inc., for which Terry was a driver and Michelle was the office manager. In early 2005, one of their children was diagnosed with cancer and the business began to have problems.

Michelle filed for divorce on September 7, 2005. Pursuant to a provisional order, Michelle was given custody of the children and Terry was ordered to pay child support. The court ordered the parties to undergo a custody evaluation and ordered the evaluator to submit a written report. The court heard evidence on March 22, 2007, and entered a final order on June 6, 2007. That order gave Terry sole custody of the children, with Michelle to have parenting time in accordance with the Guidelines and pay \$96 in support each week.

DISCUSSION AND DECISION

1. Admission of Evidence

Michelle argues the court abused its discretion when it admitted a report from the court-appointed custody evaluator without motion from one of the parties. However, she did not object to the admission of the report at trial.¹ Neither has she cited any authority

¹ At trial, after confirming the parties had received a copy of the report submitted by the custody evaluator, the court announced, “over an objection that anybody may have, the Court is going to introduce

on appeal to support her assertion the court could not admit that report “without formal offer on the part of either party.” (Appellant’s Br. at 7.) Accordingly, she waived this allegation of error at trial and on appeal. Ind. Evid. Rule 103(a)(1) (“Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and” the party objects.); Ind. Appellate Rule 46(A)(8)(a) (“The argument . . . must be supported by citations to the authorities . . .”).

2. Custody

One of the court’s findings was: “The wife has indicated to the Court that she desires to return to New York State where her parents live when the former marital home is sold. The custody evaluator indicated that relocating would not be good for the children or in their best interest.” (App. at 7.) Michelle claims that finding is erroneous because no such testimony was presented at the final hearing. That she did not so testify at the final hearing does not control. The custody evaluation states: “Michelle would like to leave the area and relocate in New York where her parents live. She feels that she cannot properly support the children in this area.” (*Id.* at 240.) There is evidence in the record to support the court’s finding and it is not clearly erroneous.

She also asserts transfer of custody to Terry is erroneous because this finding was “central” to the court’s decision. (Appellant’s Br. at 8.) We disagree with her characterization of that finding. The court found Terry implemented behavioral

that as its own Exhibit in this matter . . .” (App. at 12.) Michelle alleges “the trial court did not give . . . Wife a chance to state objections and be heard thereon.” (Appellant’s Br. at 7.) We disagree. The court’s statement did not prohibit either party from offering an objection, and immediately after making that statement, the court asked Michelle’s counsel if he was ready to proceed and gave him the floor. If counsel had wished to object, he had an opportunity to preserve any allegation of error.

management techniques offered by the custody evaluator, while Michelle had not; this left the children “out of control” in her care. (App. at 7.) In addition, the court considered “the statutory requirements” prior to making its decision. (*Id.*) Accordingly we find no error.²

Michelle also asserts the court awarded custody to Terry without considering all the statutory factors required by Ind. Code § 31-17-2-8. She is wrong. The court explicitly stated it considered those factors. (*Id.* at 7) (“After examining the statutory requirements to determine the best interest of the children, it is found that the husband shall be the sole custodial parent of the parties’ four minor children.”). To the extent Michelle is arguing the court was obliged to enter a finding on each of those factors, her argument fails because she did not request specific findings of fact. *See Hegerfeld v. Hegerfeld*, 555 N.E.2d 853, 856 (Ind. Ct. App. 1990) (“The statute does not require the trial court to make specific findings unless specific findings are requested pursuant to Trial Rule 52(A).”) (discussing predecessor statute, I.C. § 31-1-11.5-21(a)).

Michelle next claims the evidence does not support the award of custody to Terry. Where, as here, specific findings were not requested, we reverse only if the court’s decision was “clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences to be drawn therefrom.” *Id.* Michelle directs us to evidence that would support an award of custody to her, and she ignores evidence that supports an award of custody to Terry. We cannot reweigh the evidence or reassess the

² Michelle asserts: “nowhere in the trial court’s order does the trial court find that mother is unfit to have custody of her children.” (Appellant’s Br. at 9.) Because she does not explain the legal import of the absence of such a finding, any argument related thereto is waived.

credibility of the witnesses. *Dewbrew v. Dewbrew*, 849 N.E.2d 636, 640 (Ind. Ct. App. 2006). The evidence is sufficient to support the award of custody to Terry.

3. Income

Finally, Michelle asserts the court erroneously imputed income to her without first explicitly finding she was “voluntarily unemployed or underemployed.” (Appellant’s Br. at 14.) Trial courts have broad discretion to impute income for child support purposes “to ensure the obligor does not evade his or her support obligation.” *Thompson v. Thompson*, 868 N.E.2d 862, 869 (Ind. Ct. App. 2007). Nevertheless, imputed income may come only from voluntary under-employment or an intentional act divesting one of income. *Id.*

The court found: “Although unemployed, the wife testified she is capable of earning a gross weekly wage of \$385.00.” (App. at 7.) Michelle admits:

At trial, Wife testified that she did not work due to her son’s doctor appointments, her daughter’s half-day of school, and daycare costs for the twins. (App. 51). If Wife did not have to take her son to the doctor, her daughter to half-day of school, and find daycare for the twins, at trial she testified that she thought she could be capable of getting a \$20,000.00 a year job. (App. 51).

(Appellant’s Br. at 14.)³

Based on her explanation for why she was not working, the court may not have believed Michelle was “voluntarily” unemployed at the time of the final hearing. However, when the court assigned custody of the children to Terry, Michelle no longer had the obligations she claimed were keeping her from working. Accordingly, we cannot find the court abused its discretion in assigning to Michelle the amount of money she

³ A yearly income of \$20,000 equals a weekly income of \$384.62, or \$385.

claimed she could earn if she did not have to care for the children without finding she was voluntarily unemployed at the time of the hearing.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.