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IN THE
COURT OF APPEALS OF INDIANA

AMANDA JO ZEIGLER,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 23A01-0810-CV-517
	)	
ALEXANDER S. ZEIGLER,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE FOUNTAIN COURT
The Honorable Susan Orr Henderson, Judge
Cause No. 23C01-0707-DR-249

May 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Amanda Jo Zeigler ("Mother") appeals from the trial court's supplemental decree dissolving her marriage to Alexander S. Zeigler ("Father"). Mother raises the following issues for review:

1. Whether the parenting time schedule ordered in the Findings of Fact, Conclusions of Law and Supplemental Decree ("Supplemental Decree") constitutes an abuse of discretion.

2. Whether the trial court erred by modifying custody or visitation prospectively in the Supplemental Decree.

3. Whether the trial court's findings support the conclusion in the Supplemental Decree as to the value of the former marital residence.

4. Whether the evidence supports the trial court's finding that Mother and Father exhibited "immature" behavior as a basis for the trial court's decision regarding attorney's fees.

We affirm.

FACTS AND PROCEDURAL HISTORY

On March 31, 2007, Mother gave birth to a daughter, H.1.[1] At some point, Father established paternity.[2] Mother and Father married on April 27, 2007, and, on June 25, they purchased a foreclosed home in Fountain County for $95,000. The house was titled solely in Father's name.

On July 17, Mother filed a petition for dissolution, Father filed a cross-petition for dissolution, and both parties filed a motion for provisional order. On August 1, following

[1] The full initials of the parties' children are identical. Thus, for brevity and clarity, we refer to each child by first initial and birth order.

[2] In her brief on appeal, Mother states Father's paternity was "adduced at the untranscribed provisional-order hearing." Appellant's Brief at 3. Mother cites no documentation in her appendix showing that paternity had been established, but Father's paternity is not at issue on appeal.

a hearing, the court entered its provisional order, which, among other things, awarded custody of H.1 to Mother, ordered Father to pay child support, and directed the parties to participate in mediation to resolve any conflicts regarding parenting time. On August 14, Father filed a motion for rule to show cause regarding parenting time. Mother later filed a motion to dismiss Father's August 14 motion. On September 6, Mother filed a motion to modify the August 1 provisional order. On December 28, Mother filed a praecipe for final hearing, a motion to compel discovery responses, and a "Verified Petition to Cite for Contempt[.]" Appellant's App. at 37. And on January 23, 2008, Mother again filed a "verified petition to cite for contempt." Id. at 5.

On January 28, 2008, the court ordered the parties to participate in mediation. On February 5, Mother again filed a "petition to cite for contempt." Appellant's App. at 5. The parties' second child, H.2, was born February 8, 2008. The parties mediated their disputes on February 25, after which each party signed both handwritten and typed copies of the mediation agreement.[3] The mediation agreement provides, in relevant part:

> 1. The Wife shall have custody of the minor children of the parties, namely, [H.1], born March 31, 2007, and [H.2], born February 8, 2008.
>
> 2. The Husband shall have the right of visitation with the minor children pursuant to the Indiana Parenting Time Guidelines. However, for a period of three months, the Husband shall exercise visitation as follows:
>
> a. Each Wednesday from 5:30 p.m. to 7:00 p.m.;

[3] Mother included an undated handwritten executed copy of the mediation agreement in her appendix and an undated typewritten copy of that agreement in the back of her appellant's brief. According to the Chronological Case Summary ("CCS"), the mediator's report was filed on February 27, and, according to the Supplemental Decree, the parties executed the Mediation Agreement on March 17. In this decision, we cite to the copy of the typewritten agreement in Mother's brief.

b. Each Saturday from 3:00 p.m. to 5:00 p.m.; and

c. Each Sunday from 3:00 p.m. to 5:00 p.m.

After a period of three (3) months, the parties will reevaluate the visitation. The parties agree to return to mediation to resolve any visitation disputes they may have at the end of the three[-]month period.

3. The Husband's visitation shall take place at the Wife's house, the Husband's house, or at another location agreed upon by the parties.

* * *

5. The parties agree that the only persons to be present during the Husband's periods of visitation shall be the Wife, the Husband, and the children. However, if the visitation takes place at the Wife's home, the Husband understands that her family may be present but not interacting with the parties at that time.

Appellant's Brief at 24.

On April 14, Mother filed another "verified petition to cite for contempt," and, on April 30, she filed a "verified emergency petition for relief and petition to cite for contempt[.]"[4] Appellant's App. at 6. On June 16, the court held a hearing on pending motions, including the parties' motions to show cause, and then proceeded to hear evidence in the final hearing. At the start of the final hearing, the court acknowledged that "there[had] been a request for special findings of facts and conclusions filed" that day. June 16, 2008, Transcript at 25.[5] The court also heard evidence in the final hearing

[4] The CCS shows that the same pleading was filed again on May 1. Because Mother has included in her appendix only a copy of the petition filed on April 30, we presume that the May 1 CCS entry is a duplicate entry.

[5] Mother filed a one-volume transcript of a hearing held July 31, 2007, and a two-volume transcript of hearings held January 28, June 16, July 23, and August 7, 2008. The two-volume transcript begins with page 1 and is numbered consecutively. Because the two sets of transcripts are not numbered consecutively, for clarity we include the hearing date in citations to the transcript.

on July 23 and August 7. At the conclusion of the hearing on August 7, the court orally granted the parties' dissolution of marriage. And, on August 11, the court entered its written Decree of Dissolution ("Decree"), in relevant part dissolving the parties' marriage and awarding custody of the children to Mother. The court took under advisement the issues of parenting time, child support, and the division of property.

On September 3, 2008, the court entered the Supplemental Decree, which provides in relevant part:

> FINDINGS OF FACT AND CONCLUSIONS OF LAW
>
> 1. The parties entered into a Mediation Agreement on March 17, 2008[,] whereby all issues were settled, except the following:
>
> 1. Parenting time of Husband with the minor children.
>
> 2. The issue of the real estate division.
>
> * * *
>
> 5. On August 7, 2008, this Court ordered the Husband to have supervised visitation with the minor children for a period of thirty (30) days. The Court also ordered that a report be filed with this Court regarding the progress of said visitations. The Court, having received the progress report filed by Families United, finds that Husband shall be entitled to regular parenting time per the Parenting Time Guidelines as adopted by the Indiana Supreme Court. Parents are to cooperate in scheduling the parenting time and due to Husband's current occupation and days off, said parenting time shall be arranged to occur on [Wednesdays], Saturdays and Sundays together with any other available time Husband has to provide day care per his right of first refusal. . . . Parties are encouraged to review the Parenting Time Guidelines, to recognize that those Guidelines are minimum guidelines[,] and any disputes regarding parenting time the parties [sic] shall be directed to be mediated prior to seeking relief from the trial court. Parties shall meet at the Crawfordsville Police Station, located at 311 N. Green Street, in Crawfordsville to the [sic] pick up and delivery of the children in the course of exercising parenting time. Violations of the parenting time

guidelines could result in the Court entering injunctive relief or revisiting the issue of custody.

6. The parties purchased the marital residence located at 277 N. 250 E., Veedersburg, Indiana[,] on or about June 25, 2007. The real estate is an asset of the marriage. The real estate was placed in Husband's sole name for the purpose of closing on the house expeditiously. The Court finds that there is no equity in said real estate. The Husband shall remain the sole owner of said real estate and the Wife shall have no further interest therein. Each of the parties shall be responsible for the costs associated with obtaining appraisals on said real estate.

* * *

9. Parties have incurred extensive attorney's fees in the pursuit of this action. The Court finds that each of the parties [has] engaged in immature actions that resulted in the necessity of the extensive filings and court hearings. [Inasmuch] as the court find[s] that each party has engaged in such behavior the Court finds each party shall be responsible for their [sic] attorney fees incurred. The court further finds due [to] the disparity in earnings and the success of the mediation process the Husband shall be responsible for the costs associated therewith.

SUPPLEMENTAL DECREE OF DISSOLUTION

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Judgment is hereby entered upon as follows:

1. The Mediation Agreement entered into on March 17, 2008[,] whereby those issues that were settled is incorporated herein and made a part hereof.

2. Those issues not settled per the Mediation Agreement . . . and the remaining issues addressed in paragraphs 3, 4, 5, 6, 7, 8 and 9 of the Court's Findings and Conclusions of Law are hereby incorporated herein and judgment is entered hereon.

Appellant's App. at 11-15. The trial court denied Mother's motion to correct error. Mother now appeals.

DISCUSSION AND DECISION

We initially note that Father has filed no appellee's brief in this case. Where the appellee fails to file a brief on appeal, we may, in our discretion, reverse the trial court's decision if the appellant makes a prima facie showing of reversible error. McGill v. McGill, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). In this context, prima facie error is defined as "at first sight, on first appearance, or on the face of it." Orlich v. Orlich, 859 N.E.2d 671, 673 (Ind. Ct. App. 2006). This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. McGill, 801 N.E.2d at 1251. Additionally, the statement of facts contained in appellant's brief is deemed by us to be accurate and sufficient for the disposition of this appeal. Johnson County Rural Elec. Membership Corp. v. Burnell, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985).

Issue One: Parenting Time Schedule

Mother contends that the parenting time schedule in the Supplemental Decree constitutes an abuse its discretion. In particular, Mother argues that the court's parenting time schedule fails to take into account that the distance between the parties' homes is a "major factor[.]" Appellant's Brief at 10. Mother further asserts that the schedule of three visitations per week results in too much time on the road and less than adequate opportunity for Mother to bond with the children. She also contends that the court's choice of meeting place for visitation unnecessarily increases the distance the parties have to drive for each visitation. But Mother has not supported any of these contentions with citations to the appendix or to the parts of the record on which she relies. As a

consequence, we cannot determine whether the facts she cites, such as distance of travel, were before the trial court or even whether she made an argument to the trial court regarding distance. Therefore, Mother has waived these arguments for review. See Ind. Appellate Rule 46(A)(8)(a).

Mother also contends that the trial court's visitation schedule is an abuse of discretion because it deviates from the Indiana Parenting Time Guideline II.A.3. by setting visitation for consecutive, as opposed to non-consecutive, days and because the court made clear its intent to accommodate Father's work schedule but did not consider Mother's work schedule. Again, Mother has not supported her argument with any citations to the appendix or the record on appeal. As such, the argument is waived.[6] See id.

Issue Two: Prospective Modification

Mother next contends that the trial court erred by providing for prospective modification of custody or visitation in the Supplemental Decree. Specifically, Mother argues that the court did not have authority to order that "[v]iolations of the parenting time guidelines could result in the Court entering injunctive relief or revisiting the issue of custody." Appellant's App. at 13. We cannot agree.

In Bojrab v. Bojrab, 810 N.E.2d 1008 (Ind. 2004), our supreme court described the difference between a prospective order that automatically changes custody and a present

[6] We observe that Mother challenges only the number of days of visitation. Regarding the number and length of visitations, the order in the Supplemental Decree comports with both the Indiana Parenting Time Guidelines and the schedule agreed to by the parties in the Mediation Agreement. Thus, even if Mother had not waived these issues for review, they are without merit.

award of custody conditioned upon certain circumstances. In that case, the trial court's dissolution decree provided, in relevant part:

> [The wife] is granted the custody of the parties' minor children . . . . The best interests of the children are served by requiring that they remain in the Allen County, Indiana community. Accordingly, the grant of custody of the parties' minor children is subject to maintaining their residence in Allen County, Indiana. In the event the [wife] decides to relocate outside Allen County, Indiana, without the agreement of the [husband] or further order of this court, custody of the children shall be granted to the [husband]. . . . The [husband] is granted parenting time with his children . . . . In the event the [wife] foregoes custody and moves to Livonia, Michigan, then the Indiana Parenting Time [Guidelines] will be applicable to her.

Id. at 1011 (citations omitted, some alterations original).

Considering that language, the supreme court held:

> [A] trial court may not prospectively order an automatic change of custody in the event of any significant future relocation by the wife. The decree does contain language ordering that, in the event the wife unilaterally decides to relocate outside Allen County, Indiana, "custody of the children shall be granted to the [husband]." This language is inconsistent with the requirements of the custody modification statute, Indiana Code [Section] 31-17-2-21.[] Immediately preceding such language declaring a conditional future change of custody, however, the decree states: "the grant of custody of the parties' minor children is subject to maintaining their residence in Allen County, Indiana." There is a significant difference between the two phrases. One purports to automatically change custody upon the happening of a future event; the other declares that the present award of custody is conditioned upon the continuation of the children's place of residence. While the automatic future custody modification violates the custody modification statute, the conditional determination of present custody does not. The latter is a determination of present custody under carefully designated conditions. Upon a violation of said conditions by the wife as custodial parent, the basis for the custody order is undermined, and the husband may seek a change in custody pursuant to the custody modification statute. This is consistent with the operation of Indiana Code [Section] 31-17-2-23, which establishes procedures that apply when a person who has been awarded child custody intends to relocate outside Indiana or more than 100 miles from the existing residence. . . . Construed in this manner, the trial court's custody order is not improper.

Id. at 1012-13 (citations omitted, some alterations original).

Here, the Supplemental Decree provides that "[v]iolations of the parenting time guidelines could result in the Court entering injunctive relief or revisiting the issue of custody." Appellant's App. at 13. That statement does not provide for an automatic change of custody. Instead, it merely apprises the parties generally that the present award of custody and visitation is subject to modification if either party does not comply with the Parenting Time Guidelines. Such is an accurate statement of the law. See Ind. Code § 31-17-2-21; Hanson v. Spolnik, 685 N.E.2d 71, 78 (Ind. Ct. App. 1997) (holding egregious violation of custody order which places child's welfare at stake can support modification of custody), trans. denied. Because the statement complained of in the Supplemental Decree does not provide for an automatic change of custody, Mother's argument must fail.

Issue Three: Marital Residence

Mother next contends that the trial court's "findings do not support its conclusion that there was no divisible equity in the marital home." Appellant's Brief at 12. In particular, she argues that the parties had requested special findings, but the court "offered only a conclusory statement that there was no equity to divide . . . ." Id. at 13. Special findings are those which contain all facts necessary for recovery by a party in whose favor conclusions of law are found. Bowman v. Bowman, 686 N.E.2d 921, 925 (Ind. Ct. App. 1997). The findings are adequate if they are sufficient to support a valid legal basis for the result reached by the trial court. Id. The purpose of special findings of fact is to provide reviewing courts with the theory upon which the judge decided the case,

so they should contain a statement of the ultimate facts from which the trial court determines the legal rights of the parties. Id. (emphasis added).

Here, the court made the following findings regarding the value of the former marital residence:

> 6. The parties purchased the marital residence located at 277 N. 250 E., Veedersburg, Indiana on or about June 25, 2007. The real estate is an asset of the marriage. The real estate was placed in the Husband's sole name for the purpose of closing on the house expeditiously. The Court finds that there is no equity in said real estate. The Husband shall remain the sole owner of said real estate and the Wife shall have no further interest therein. . . .

Appellant's App. at 13-14. In other words, the court found that the parties had no equity in the former marital residence and, based on that finding, awarded the home to Father.

Mother states that the parties offered conflicting evidence regarding the value of the former marital residence and that the different appraised values offered into evidence were based on many of the same comparables. She then argues that the court should have resolved the resulting conflict in the evidence and that the finding that the parties had no equity in the former marital residence is inadequate because the court "made no findings about the marital home's true market value[.]"[7] Appellant's Brief at 13. We cannot agree.

[7] We observe that Mother does not provide any citations in the argument section of her brief to portions of the record that might include testimony and other evidence regarding the value of the former marital residence. The "argument must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." App. R. 46(A)(8)(a) (emphasis added). Without such citations in the argument, we must search the brief, the record, or both to adequately consider the issue raised on appeal. Because the missing citations were readily found in the facts section of Mother's brief for this issue, we consider the merits of her argument. But we remind counsel to comply with the requirements of Appellate Rule 46(A)(8)(a) in the future.

The evidence shows that Mother's expert appraised the former marital residence to have a value of $123,000; Father's expert appraised the home to have a value of $95,000; and the mortgage balance was $95,000.[8] Based on that evidence, the trial court found that the parties had no equity in the house. That finding is supported by the appraisal Father offered into evidence at the final hearing.

The value of the home is a question of fact that directly impacts whether the parties have any equity in the home, which is another question of fact. A finding by the trial court regarding the actual value of the former marital residence would have made the court's decision clearer. But from the court's finding that there is no equity we can infer that the court found the value to be $95,000 or less. Again, there is evidence in the record to support a finding that the home's value was $95,000 and that the mortgage balance was the same. The finding that the parties have no equity in the home supplies the ultimate fact from which the trial court determined the legal rights of the parties, namely, their respective interests in the former marital residence. We cannot say that the trial court's findings are inadequate.

Mother also contends that the findings are inadequate for review of whether the allocation of the former marital residence to Father is just and reasonable. But Mother relies on that contention to speak for itself, and she does not support that contention with any argument or cogent reasoning. As a result, that argument is waived. See App. R. 46(A)(8)(a).

[8] Wife erroneously cites Petitioner's Exhibit 5 as evidence of the loan balance. In our review of the exhibits, we found that Petitioner's Exhibit 6 is a copy of a mortgage payment schedule calculated for an initial loan balance of $95,600.

Issue Four: Attorney's Fees

Mother contends that the trial court should have awarded her attorney's fees under Indiana Code Section 31-15-10-1. Specifically, Mother argues that the court abused its discretion by finding that the parties' respective "immature" behavior to be the reason for ordering them to pay their own attorney's fees. Again, Mother has not provided citations to the appendix or the record on appeal in support of her contention that the parties' conduct in the dissolution proceedings was not immature. Without such citations, we cannot adequately review her claim. As such, the issue is waived. See App. R. 46(A)(8)(a).

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.