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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE PATERNITY OF N.T.: )  
 )  
D.K., )  
 )  
Appellant-Petitioner, )  
 )  
vs. )  
 )  
B.T., )  
 )  
Appellee-Respondent. )

No. 09A02-0810-JV-883

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APPEAL FROM THE CASS CIRCUIT COURT  
The Honorable Stephen M. Jessup, Special Judge  
Cause No. 09C01-9906-JP-26

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**June 5, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant-Petitioner D.K. (“Mother”) appeals from the denial of her Motion to Modify Contempt Bond Condition. On appeal, Mother claims that the Cass County Circuit Court (“paternity court”) abused its discretion in denying her motion because the paternity court has no jurisdiction to issue any order affecting the visitation of a child, specifically N.T., with his parents while a Child in Need of Services (“CHINS”) case is pending. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Mother and B.T. (“Father”) are the parents of N.T., who was born on July 15, 1999. At some point prior to May 8, 2003, Mother petitioned the paternity court to suspend Father’s visitation with N.T., alleging, among other things, that Father had sexually abused N.T. Father denied these allegations and petitioned the paternity court to find that Mother’s interference with his visitation with N.T. was done in contempt of a court order.

On May 8, 2003, the paternity court found Mother’s allegations against Father to be false and that Mother’s petition was “yet another attempt by [Mother] to frustrate and deny visitation to [Father.]” Appellee’s App. p. 1. The paternity court awarded Father visitation pursuant to the Indiana Parenting Time Guidelines and, “in an attempt to make up lost time,” awarded Father visitation with N.T. from June 13, 2003, at 6:00 p.m. until August 22, 2003, at 6:00 p.m., with Mother having alternate weekend visitation during this period from 6:00 p.m. on Friday until 6:00 p.m. on Sunday. Appellee’s App. p. 2. The paternity court denied Father’s request that Mother be found to be in contempt of court, but cautioned Mother that “should visitation be denied or hampered in any way in the future, the Court [would] not

hesitate to use its contempt power to punish [Mother], and [would] strongly consider a change of custody.” Appellee’s App. p. 2 (emphasis in original).

On July 15, 2003, Father filed a motion seeking custody of N.T., alleging that Mother was in contempt of the paternity court’s May 3, 2003 order because Mother was again hampering his visitation with N.T. Father specifically alleged that Mother, who claimed that “someone [was] touching [N.T.] again,” did not return N.T. to Father at the conclusion of her July 11, 2003-July 13, 2003 weekend visitation. Appellee’s App. p. 7.

On August 28, 2003, the paternity court conducted a hearing on Father’s motion and found that Mother was again attempting to hamper Father’s visitation with N.T. and that Mother was causing “far more emotional harm to [N.T.] than anyone else.” Appellee’s App. p. 47. The paternity court granted temporary custody to Father pending the outcome of a custody hearing. Mother was granted two hours of visitation with N.T. each week at N.T.’s paternal grandparents’ home. The paternity court ordered that Mother relinquish custody of N.T. to Father at 5:00 p.m. that day. Mother did not relinquish custody of N.T. to Father.

On August 29, 2003, Father filed a motion requesting that Mother be found to be in contempt of the paternity court’s July 15, 2003 order and that the paternity court issue an order for the body attachment of Mother. Father alleged that Mother was in contempt of the paternity court’s August 28, 2003 order because she refused to relinquish custody of N.T. to Father. On September 2, 2003, the paternity court directed law enforcement to assist Father in recovering N.T. and to arrest Mother.

After hiding N.T. from Father and the paternity court for approximately four years, Mother was arrested by the Kokomo Police Department on December 3, 2007. At that time, N.T. was taken into protective custody by the Grant County Department of Child Services (“GCDCS”). The next day, the GCDCS filed a petition alleging that N.T. was a CHINS. Father admitted to the allegations that, with respect to him, Mother had alienated N.T. from him and that the State’s services were needed. Mother, however, denied the allegation included in the CHINS petition.

On December 20, 2007, Father filed a motion requesting custody of N.T. and that the paternity court issue an order restricting Mother’s parenting time. On February 18, 2008, the paternity court postponed any custody determination until after the conclusion of the CHINS proceeding in Grant County. The paternity court also admitted Mother to bail with the condition that she have no contact with N.T. until further order of the court. Mother did not challenge the inclusion of this term as a condition of her bail.

On May 15, 2008, following a review hearing, the CHINS court found that it is in N.T.’s best interest to allow Mother supervised visitation with N.T. and that counsel for Mother shall work on a release of the no-contact order from the paternity court and alert the CHINS court if there are any problems. On May 30, 2008, Mother filed a motion requesting the paternity court to modify her contempt bond condition that she have no contact with N.T. to allow Mother to engage in supervised visitation with N.T. pursuant to the order of the CHINS court.

On September 8, 2008, N.T. was found to be a CHINS with respect to Mother. On September 12, 2008, following a hearing on Mother's motion to modify the condition of her bail that she have no contact with N.T., the trial court denied Mother's motion.

### **DISCUSSION AND DECISION**

Mother argues that the paternity court abused its discretion in denying her motion to modify the condition of her bail providing that she have no contact with N.T. The determination for imposing and modifying a condition of bail in a particular case is within the trial court's discretion and is reviewable only for an abuse of that discretion. *Steiner v. State*, 763 N.E.2d 1024, 1027 (Ind. Ct. App. 2002), *trans. denied*. "A trial court abuses its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law." *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 223 (Ind. Ct. App. 2006). On appeal, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.*

On February 18, 2008, the paternity court admitted Mother to bail with the condition that she have no contact with N.T. The conditions that the paternity court could impose when admitting Mother to bail are governed by Indiana Code section 35-33-8-3.2 (2007). *Steiner*, 763 N.E.2d at 1027. Indiana Code section 35-33-8-3.2(a)(4) provides that the paternity court could require that Mother have no direct or indirect contact with N.T.

The facts of the instant matter establish that Mother refused to relinquish custody of N.T. and actively hid N.T. from Father for approximately four years. In describing his nearly four years spent in hiding at Step-father's home, N.T. described secret compartments under

the living room floor and in one of the walls where he hid when the police searched the home or when visitors approached the home. N.T. expressed concern that Father's family was somehow monitoring and listening in on what was going on in Step-father's house through the television or through the telephone. N.T. stated that he was only allowed to come out of the house at night, if at all, and that when in public, Mother made him answer to an alias and dress as a girl to escape recognition. N.T. also stated that when he, Mother, and Step-father would take trips, he "was asked to stay in the back of the van and was asked be prepared to go underneath a cardboard box in order to hide himself from anyone that may approach the van and notice that he was there." Appellee's App. p. 70. N.T. indicated that he was excited to get out of the house because he could get some fresh air.

In addition to hiding N.T. from Father for approximately four years, Mother convinced N.T. that he had been sexually molested by Father and his paternal grandfather and referred to Father's family as "child molesters." Appellee's App. p. 69. In fact, a search of Mother and Step-father's home revealed a "prayer" that was hung in Mother's bathroom and read as follows: "God will remove every hindering obstacle to fulfill His plan and will for mine and [N.T.'s] life. [Father's family] have been exposed for the child molesters they are and the child porn of [N.T. and T.T. and other boys] has been found and turned into the FBI." Appellant's App. p. 108. A note was found next to this "prayer" with instructions that this "prayer" be repeated several times each day.

The record also establishes that the CHINS court, in granting Mother supervised visitation, acknowledged the existence of the conflicting no-contact order previously entered

by the paternity court and ordered that Mother's counsel "shall work on a release of the no-contact order from Cass County and alert the Court if there are any problems." Appellant's App. p. 27. The CHINS court's acknowledgment of the no-contact order and specific provision that Mother's counsel "alert the Court if there [were] any problems" indicates the CHINS court's recognition that Mother's participation in supervised visitation with N.T. was contingent upon the paternity court's modification of the no-contact order and its contemplation that such modification might not occur.

Mother does not dispute the facts surrounding her hiding of N.T., but claims that, regardless of these facts, the paternity court abused its discretion in refusing to modify the previously set conditions of bail to allow her to have contact with N.T. because the paternity court's refusal to do so conflicts with the CHINS court's subsequent order providing that Mother could engage in supervised visitation with N.T. Our review of the record indicates that the two orders do not conflict: the CHINS court's visitation order was fully cognizant of the existing no-contact order and made provision for its possible release. This suggests that the CHINS order, by its own terms, was contingent upon the release of the no-contact order. To the extent that the orders are arguably in conflict, Mother has provided no authority suggesting that a paternity court abuses its discretion by refusing to modify a previously set condition of bail merely because a different court, considering a different matter, issues an order that is in conflict with the individual's condition of bail, and we are unable to find any such authority. In light of what we consider to be egregious actions on behalf of Mother and the CHINS court's acknowledgement that the paternity court might not modify the conditions

of Mother's bail, we cannot say that the paternity court abused its discretion in denying Mother's request to remove the condition of Mother's bail that she have no contact with N.T.

To the extent that Mother additionally claims that the paternity court did not have the authority to make a custody determination during the pendency of the CHINS proceedings, Mother relies on *Reynolds v. Dewees*, 797 N.E.2d 798 (Ind. Ct. App. 2003), which provides that any custody modification made by a court, other than the CHINS court, during the pendency of a CHINS proceeding, only becomes effective after the conclusion of the CHINS proceeding. *Id.* at 802. Father does not dispute that any custody decision made by the paternity court would not become effective until the conclusion of the CHINS proceeding, but calls attention to the fact that here, the paternity court did not make a custody determination, but rather merely refused to modify Mother's conditions of bail. In fact, the paternity court, acknowledging that any custody determination it might make could not become effective during the pendency of the CHINS proceeding, postponed any custody determination until after the conclusion of the CHINS proceeding. Because the paternity court did not make a custody determination in the instant matter, Mother's reliance on *Reynolds* is misplaced.

Furthermore, to the extent that Mother claims that the paternity court abused its discretion in adding the additional bail condition that, in light of Step-father's active participation in Mother's actions in contempt of the prior court order, Step-father have no contact with N.T. until further order of the paternity court, we observe that "[o]ne not a party who has knowledge of a court order but nevertheless aids, conspires with, and abets a party

to an action in violating a court order entered therein, may be punished for contempt.” *Owen v. Vaughn*, 479 N.E.2d 83, 86 (Ind. Ct. App. 1985). The evidence clearly establishes that Step-father was aware of the paternity court’s order that Mother relinquish custody of N.T. to Father and actively participated in hiding N.T. from Father and the paternity court for approximately four years. In light of these facts, we conclude that the paternity court did not abuse its discretion in extending to Step-father the no-contact order issued as a condition to Mother’s bail for her contempt of the court’s order.

In sum, concluding that the paternity court did not abuse its discretion in denying Mother’s request to modify her conditions of bail, that the paternity court did not issue a custody determination during the pendency of the CHINS proceedings, and that the paternity court did not abuse its discretion in extending the no-contact order to Step-father, we affirm the judgment of the paternity court.

The judgment of the paternity court is affirmed.

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