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IN THE
COURT OF APPEALS OF INDIANA

TRISHA DAWN HUDSON,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 82A01-1009-DR-545
	)	
JEFFREY MICHAEL HUDSON,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Wayne Trockman, Judge
The Honorable Jill R. Marcrum, Magistrate
Cause No. 82D04-0911-DR-1109

June 30, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Trisha Hudson ("Mother") appeals the trial court's modification of custody and order requiring supervised visitation with respect to her children, A.H. and C.H. We affirm in part and reverse in part.

Issues

Mother raises three issues, which we combine and restate as:

I. whether there was a substantial change in circumstances justifying modification of custody; and

II. whether, following modification of custody, the evidence supported requiring any visitation between Mother and A.H. and C.H. to be supervised.

Facts

Mother was married to Jeffrey Hudson ("Father"). They had two children during the marriage: A.H., born in December 2006, and C.H., born in December 2007. Mother petitioned for divorce in November 2009. At the final dissolution hearing, evidence was presented that Mother has suffered from severe depression, which led to her hospitalization for a few days in late February-early March 2008. Her diagnosis at the time of that hospitalization was "[m]ajor depression, recurrent, moderate severity, with post-partum onset." Ex. P. At the time of the hearing, Mother was on an antidepressant medication—Pristiq—and an attention deficit hyperactivity disorder medication—Adderall. The trial court entered its final dissolution decree on April 7, 2010. In that decree, Mother was granted primary custody of the children, but Father also was granted

substantial parenting time, deviating from the Parenting Time Guidelines, that resulted in an effective 50/50 custody split.

In late April, C.H.'s daycare providers advised Father, when he picked C.H. up from daycare, that he had a mark on his leg that appeared to be a bug bite. Father believed the mark appeared to be a cigarette burn. Mother stated that the mark was caused by a hot night light bulb in a lamp that fell on C.H.'s leg. There is no evidence that any medical attention was sought or needed for this mark.

In May 2010, Mother notified her treating psychiatrist, Dr. Juan Carbera, that she wanted to discontinue taking her medications. On May 16, 2010, while the children were with Father, Mother went to an emergency room after her mental health had deteriorated considerably, resulting her in being unable to sleep and losing her appetite. Mother requested and was prescribed Pristiq again and was released. However, approximately twelve hours later, Mother's mother brought her back to the emergency room, fearful that Mother had left suicidal notes with family members. This time, Mother agreed to be admitted for hospitalization at the urging of Dr. Cabrera.

Dr. Cabrera at this time diagnosed Mother with "[m]ajor depressive disorder, recurrent, severe possibly with psychosis." Ex. 1. Mother's condition appeared to Dr. Cabrera to be worse than it had ever previously been. Mother was exhibiting symptoms of paranoia, such as believing Father had placed a "bug" in her apartment that allowed him to watch her and the children at the apartment. Dr. Cabrera believed Mother's possible psychosis could have been caused either by the severity of the depression or by

misuse of Adderall. Mother stayed in the hospital for three or four days and "improved remarkably" during this time. Tr. p. 16. Dr. Cabrera placed her again on Pristiq and a new drug, Abilify. Mother has responded well to this treatment, with Dr. Cabrera having "no concerns for her safety or the safety of others around her." Id. at 20.

At the time of Mother's May 2010 admittance to the hospital, the emergency room physician who first spoke to her believed she had suicidal ideations. Mother denied having any specific suicidal thoughts, but eventually told the doctor, "I would drive into traffic ultimately." Ex. 1. There is evidence that since the divorce, Mother has been involved in anywhere from one to three traffic accidents, and has received a speeding ticket. There is no documentation as to these accidents or the ticket, with respect to when or how they occurred or their severity.

In early June 2010, C.H. fell down some stairs at Mother's apartment building while he was walking in between Mother and Mother's sister, but with neither holding his hand. C.H. sustained some scrapes and bruises. There is no evidence that this fall necessitated medical attention.

On June 7, 2010, Father filed a petition to modify custody. On July 13, 2010, Father filed a new, "emergency" petition to modify custody.[1] App. p. 20. The trial court conducted a hearing on the petition in August 2010. On August 31, 2010, the trial court entered an order granting Father primary physical custody of the children, with Mother having visitation as delineated by the Parenting Time Guidelines. Furthermore, the trial

[1] There is no evidence of a change in circumstances arising between June 7, 2010, and July 13, 2010.

court ordered that Mother's visitation had to be supervised by either Mother's mother or Mother's aunt. Mother now appeals.

Analysis

I. Modification of Custody

We first address Mother's challenge to the trial court's modification of custody. The trial court here sua sponte entered an order that contained a number of findings. The order does not contain any purported conclusions of law. Sua sponte findings control only the issues they cover, and a general judgment standard of review will control as to the issues upon which there are no findings. In re Trust Created Under Last Will & Testament of Mitchell, 788 N.E.2d 433, 435 (Ind. Ct. App. 2003). "A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence." Id. In reviewing a judgment, we will neither reweigh the evidence nor judge the credibility of the witnesses. Id.

We grant latitude and deference to trial courts in family matters. Heagy v. Kean, 864 N.E.2d 383, 388 (Ind. Ct. App. 2007), trans. denied. "Therefore, custody modifications are left to the sound discretion of the trial court, and we may reverse only for an abuse of that discretion." Id. "[I]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal." Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (quoting Brickley v. Brickley, 247 Ind. 201, 210 N.E.2d 850 (1965)).

Modification of custody following dissolution is governed by Indiana Code Section 31-17-2-21, which provides that a child custody order may not be modified unless modification is in the best interests of the child, and there is a substantial change of circumstances in one or more of the factors that a court may consider under Indiana Code Section 31-17-2-8.[2] The factors under that statute are:

> (1) The age and sex of the child.
>
> (2) The wishes of the child's parent or 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 parent or parents;
>
> (B) the child's sibling; and
>
> (C) any other person who may significantly affect the child's best interests.
>
> (5) The child's adjustment to the child's:
>
> (A) home;
>
> (B) school; and
>
> (C) community.
>
> (6) The mental and physical health of all individuals involved.

[2] Modification also may occur if there is a substantial change of circumstances in a factor or factors under Indiana Code Section 31-17-2-8.5, which governs de facto custodians. There are no de facto custodians here.

> (7) Evidence of a pattern of domestic or family violence by either parent.
>
> (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 8.5(b) of this chapter.

We must give trial courts latitude in determining whether a change in circumstances is, or is not, substantial. Heagy, 864 N.E.2d at 389. A parent moving for modification of custody bears the burden of demonstrating a change in circumstances. Id. at 388.

In its written order with findings, the trial court did not expressly indicate which statutory factors regarding custody had substantially changed since the time of the original custody order. That is not fatal to our review of the case, especially given that the findings were made sua sponte. We may affirm a general judgment with findings on any basis supported by the evidence. Mitchell, 788 N.E.2d at 435. We will assess whether there is evidence indicating a substantial change of circumstances with respect to any of the statutory custody factors.

It seems clear from the trial court's findings focusing primarily upon Mother's mental health that it believed there was a substantial change of circumstances in that regard. Mother notes that there was evidence presented at the dissolution hearing regarding her severe depression and hospitalization in 2008, but that the trial court still awarded her primary custody of the children. Mother argues that her mental health deterioration and subsequent hospitalization in May 2010 was not evidence of a change in circumstances, but merely was a continuation of her previous mental health issues that

had been taken into consideration by the trial court when it entered the dissolution order. We do acknowledge that when considering a request to modify child custody, "[t]he court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 . . . ." I.C. § 31-17-2-21(c). Moreover, "the trial court's inquiry is strictly limited to consideration of changes in circumstances which have occurred since the last custody decree." Hanson v. Spolnik, 685 N.E.2d 71, 77 (Ind. Ct. App. 1997), trans. denied.

Nonetheless, and bearing in mind the deference we must give to trial courts in family law matters, we cannot say the trial court abused its discretion in modifying custody in favor of Father, on the basis of a substantial change in Mother's mental health. Our supreme court has held, "There is no question but that a worsening mental condition may constitute a change in circumstances sufficient to necessitate modification of custody." Owen v. Owen, 563 N.E.2d 605, 608-09 (Ind. 1990). In Owen, as here, there was evidence presented during the dissolution proceedings regarding a mother's mental health, including a prior hospitalization for her condition. After the divorce was final, the mother underwent two hospitalizations and there were indications that her mental health was worse than before the divorce was finalized. The trial court modified custody in favor of the father; this court reversed the modification primarily on the basis of a psychologist's statement that the mother had returned to normal functioning after her latest hospitalization and, therefore, mother's mental health was essentially the same as it

was before the divorce. Owen v. Owen, 549 N.E.2d 410, 415 (Ind. Ct. App. 1990). Our supreme court granted transfer and affirmed the trial court, stating that this court had "violated" the deferential standard for reviewing child custody modifications. Owen, 563 N.E.2d at 607.

Here, likewise, there is sufficient evidence in the record from which the trial court could have concluded that Mother's mental health worsened after the divorce was finalized. At the time the dissolution was final, Mother appears to have been compliant with her medication that had kept her severe depression under control. Afterwards, Mother made an apparently unilateral decision to stop taking that medication.[3] After doing so, Mother's mental health rapidly and severely deteriorated to the point that she was becoming delusional, believing for example that Father had somehow "bugged" her apartment so that he could spy on her and the children. Dr. Cabrera believed that Mother's condition at the time of the May 2010 hospitalization was worse than it had been at the time of the 2008 hospitalization. There also were some indications that Mother had become suicidal. Although Mother improved with hospitalization and was still functioning well at the time of the August 2010 modification hearing, the trial court did not abuse its discretion in concluding that Mother's "worsening mental condition provided substantial evidence of a change of circumstances which, in the best interest of the children, merited a change of custody." See id. at 609. We do not wish to discourage parents with mental health problems from seeking treatment for fear of losing custody of

[3] Although Mother informed Dr. Cabrera that she intended to stop taking the Pristiq, there is no evidence that Dr. Cabrera approved of this action.

their children. We simply cannot ignore the potential effect that such problems may have on children, and we cannot say that the trial court abused its discretion here. We affirm the trial court's modification of custody in favor of Father.

II. Supervised Visitation

We now address Mother's alternative argument that even if a modification of custody was justified, ordering that her visitation with her children be supervised was not. Indiana Code Section 31-17-4-2 provides that a court "shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development." This court has construed the word "might" in the statute to mean that a court may not restrict parenting time unless it "would" endanger the child's physical health or emotional development. D.B. v. M.B.V., 913 N.E.2d 1271, 1274 (Ind. Ct. App. 2009).

We review and will reverse a trial court's determination of a parenting time issue only for an abuse of discretion. Shady v. Shady, 858 N.E.2d 128, 143 (Ind. Ct. App. 2006), trans. denied. On appeal, we will not reweigh the evidence or judge witness credibility. Id. "In all parenting time controversies, courts are required to give foremost consideration to the best interests of the child." Id.

On this issue, even while keeping in mind our deferential standard of review and even though Mother's visitation was not limited in terms of time, we cannot find evidence that would support requiring Mother's parenting time to be supervised. Although as we have noted there was sufficient evidence of a deterioration in Mother's

mental health after the divorce was finalized, there is no evidence that A.H. and C.H. ever were adversely affected by that deterioration, emotionally or physically. Regarding what Father describes as a "cigarette burn" on C.H.'s leg, the only evidence presented that it was such a burn was his own non-expert opinion. The daycare where C.H. went did not indicate that it was such a burn, nor was any medical treatment for it ever sought by either parent. We also note that the trial court, in its limited findings, gave no indication that it believed the mark was a cigarette burn.

As for C.H.'s fall down a few steps, again, no medical treatment was required for that fall, and it is too onerous a burden upon parents to require that their small children never have accidents and ensure that they never sustain an injury of any kind. Finally, Father implies that Mother's automobile accidents and one speeding ticket after the divorce was finalized are indicative of suicidal intent on her part. There is no documentation in the record regarding these accidents and ticket and, thus, there is no way to gauge their severity or the conditions under which the accidents occurred. Even the actual number of accidents is unclear. To allege that these undocumented events are indicative of suicidal intent is nothing more than mere speculation.

The only expert opinion regarding Mother's ability to be alone around her children came from Dr. Cabrera, who testified that he had "no concerns for her safety or the safety of others around her." Id. at 20. In light of this testimony, and the lack of evidence that either A.H. or C.H. have been subjected to inappropriate harm while in Mother's care, we conclude the trial court abused its discretion in ordering that her parenting time with the

children be supervised. When considering a parent struggling with a long-term mental illness, we believe there is a considerable difference between denying that parent primary custody of the children, which over a period of time could create considerable strain upon the parent and children, versus allowing them to enjoy briefer periods of parenting time with his or her children without supervision. We reverse the trial court's supervised visitation order.

Conclusion

We affirm the trial court's modification of custody in favor of Father, but reverse its order directing that Mother's parenting time with the children be supervised.

Affirmed in part and reversed in part.

RILEY, J., and DARDEN, J., concur.