

STATEMENT OF THE CASE

Robina N. Mount (“Mother”) appeals from the trial court’s order granting a motion filed by Richard Paul Mount (“Father”) to modify custody of the parties’ minor children, J.M. and D.M. (“the boys” or “the children”). Mother presents a single issue for review, namely, whether the trial court abused its discretion when it granted Father’s motion.

We affirm.

FACTS AND PROCEDURAL HISTORY

Father and Mother were married on April 5, 1997. Two children were born during the marriage: J.M., born September 18, 1997, and D.M., born December 5, 2000. Father filed a petition for dissolution of marriage on November 10, 2004, and the trial court entered a decree dissolving the marriage (“Decree”) on May 26, 2006. In the Decree, the court awarded the parties joint custody of the children, with Mother to have primary physical custody. The Decree also provided that Father’s “‘average overnights’ should be at or near five in a two[-]week period” and set a hearing for August 1, 2006, to address parenting time issues if needed. Appellee’s App. at 11.

On June 19, 2006, the trial court held a conference in chambers with counsel and clarified Father’s overnight parenting time schedule, and it reset the parenting time hearing for August 4. The court then reset the matter for a telephonic conference on August 10, at which time the court ordered the parties to file written notice of all pending issues. Mother filed her amended notice on September 12, and Father filed his notice on September 13.

On November 2, 2006, Father filed a motion for rule to show cause and motion to modify custody. On December 1, 2006, the court held a hearing on Father's motion for rule to show cause, and, as a result, on February 1, 2007, the court issued an order clarifying parenting time issues. On April 24, 2007, the court held an evidentiary hearing on Father's motion to modify custody, and on August 3, 2007, the court, by entry in the Chronological Case Summary, granted that motion:

Findings of Fact and Conclusions of Law to follow but Court rules on outstanding matters under advisement, in part, as follows: 1) Joint Legal Custody shall continue. 2) [Father's] petition to Modify Custody is Granted. 3) [Father] shall have primary physical custody of the children. 4) [Mother] shall have Parenting Time every other week from Thursday night at 6 p.m. to Monday night at 6 p.m. and every other Wednesday overnight [during the week of her non-extended weekend. 5) Otherwise the Indiana Parenting Time Guidelines should apply. 6) The transition of physical custody to occur prior to August 20th. . . .

Appellant's App. at 1. On August 28, the court entered findings of fact and conclusions of law ("modification order"), which provide in relevant part as follows:

5. The parties have been no strangers to the Courtroom since the divorce proceeding began.

6. Communication has been difficult for the parties. There has been lingering hostility between the parties. Some problems have been created by Father. Some by Mother. It is apparent to the Court that despite previous guidance and admonishment that Mother is still struggling more with "getting over the divorce" than Father. Whether she feels he is responsible for the demise of the marriage or that she feels that he should be held accountable for past behavior(s) is unclear except that the children are suffering and their relationship with their Father is in jeopardy. It appears that the children are more influenced by their Mother and if she doesn't like something, and [sic] then neither do they. Simply stated, Father has moved on with his life and Mother has not. She is still fighting the battles that lead [sic] to their divorce and it is adversely affecting the children. It needs to stop now and the Court does not believe that Mother will do what needs to be done if the boys remain in her custody. This is not about punishing a bad parent. Both parents love their children. This is

about the children and insuring that their Father remains involved in their life. This is a critical period. The parties do not have to love each other but Mother's attitude and anger with Father is [sic] being passed to the children. Mother describes her relationship with the boys as "an open relationship[.]" The Court does not think Mother and the boys should be buddies! Mother should not be sharing her frustrations with Father with the boys or be disparaging his character and repeating her side of the story as to why the divorce occurred. Tell a friend. Tell a counselor, not the children.

7. Of particular concern is that it appears that since Father and grandfather were athletes and basketball legends, Mother does not care for basketball and is trying to steer the boys away from basketball. Maybe the boys will not be interested in basketball but there is nothing wrong with exposing and/or encouraging basketball at their age. Mother seems to be focused on steering the boys in any direction other than basketball. Mother seems to be focused in [sic] letting the boys decide what they do or don't do, after she has given them her spin on the activity.

8. Father's work schedule is unconventional and requires a cooperative effort between the parties in order to afford him any real parenting time. Time and time again, there have been disputes and arguments between the parties. Mother loses her temper with Father more so than he loses his temper with Mother.

9. Father remarried in April of 2007. He resides with his wife, Cecily, in a subdivision in Lebanon. Mrs. Mount has two children. Mrs. Mount's two children are interacting appropriately with Father's children. The boys share a bedroom at their Father's home.

10. Mrs. Mount and Mother have also had their difficulties in getting along. Again, the Court concludes that Mother has been primarily responsible for their "problems[.]"

11. Mother is now pregnant and she testified that she is due in August of 2007. The father of the unborn child is going through a divorce. He has evidently not been introduced, as of the date of the hearing, to J.M. and D.M. She has no present plans to marry.

* * *

13. The Court finds that there have been substantial changes in one or more of the factors under Indiana Code [Section] 31-17-2-21. The Court also finds that a modification of physical custody is in the children's best interest.

14. The Court is concerned that Mother continues to confide much too much in [J.M.] and is treating him more like a buddy or confidant than a son.

15. The children are both boys. They are older than they were when the Divorce was granted. The interactions between Father and the boys are at risk. Mother has had primary physical custody and yet there still is conflict between her and Father. The Court determines that this conflict is adversely affecting the children. The Court finds that Father should be given the opportunity to lessen the conflict. Mother has not done all that she could have done to “put this matter behind her[.]” The children are at significant risk for losing the Father-son relationship. The Court does not believe Father will behave in a manner so as to cause harm to the Mother-son relationship. The Court also finds that Father’s significant other is a positive influence on Father and a positive influence on the children, and if Mother would not fight it, a positive influence on Mother’s and Father’s relationship. The Court also finds that the mental health of the children will be enhanced by the modification of physical custody once Mother and the children work through the adjustments. Obviously Mother still exercises tremendous influence over [J.M. and D.M.] and Father may have a short [-]term challenge in regards to helping work through the transition, particularly if Mother confides too much in the children, as she has in the past, or otherwise disparages Father or Mrs. Mount.

16. The parties shall share Joint Legal Custody but Father is granted primary legal custody of [J.M. and D.M.]

Appellant’s App. at 10-11. Mother now appeals.¹

DISCUSSION AND DECISION

Mother contends that the trial court abused its discretion when it granted Father’s motion to modify custody. We review custody modifications for an abuse of discretion, with a “preference for granting latitude and deference to our trial judges in family law matters.” Apter v. Ross, 781 N.E.2d 744, 757 (Ind. Ct. App. 2003) (quoting Kirk v. Kirk,

¹ Mother filed a notice of appeal from the order memorialized in the August 3, 2007, CCS entry, and she filed another notice of appeal from the August 28, 2007, findings of fact and conclusions of law. Mother filed a motion to consolidate and join the appeals. We granted her motion in part, ordering that the appeals shall remain consolidated.

770 N.E.2d 304, 307 (Ind. 2002)), trans. denied. We will not reweigh the evidence or judge the credibility of the witnesses. Leisure v. Wheeler, 828 N.E.2d 409, 414 (Ind. Ct. App. 2005). Rather, we consider only the evidence most favorable to the judgment and any reasonable inferences from that evidence. Id.

In Spoor v. Spoor, 641 N.E.2d 1282, 1284-85 (Ind. Ct. App. 1994), this court further detailed our standard of review:

Upon an initial custody determination, the trial court presumes that both parents are equally entitled to custody. However, in a petition to modify custody, the petitioner must demonstrate the existence of changed circumstances so substantial and continuing as to make the existing custody order unreasonable. The standard is in place to avoid the disruptive effect of moving children back and forth between divorced parents and to dissuade former spouses from using custody proceedings as vehicles for revenge. Accordingly, it has long been recognized that the welfare of the children is paramount and is promoted by affording them permanent residence rather than the insecurity and instability that follow changes in custody. This is so even though at any given point in time the noncustodial parent may appear capable of offering “better” surroundings, either emotional or physical.

The standard, however, does not require a trial court to find that the present custodial parent is unfit prior to granting a change. The changes asserted in the petition are to be judged in the context of the whole environment. A trial court’s inquiry in proceedings to modify a custody decree is strictly limited to consideration of changes in circumstances which have occurred since the last custody decree.

(Citations omitted, emphases added).

Where, as here, the trial court’s order contains special findings, we apply a two-tiered standard of review. Vega v. Allen County Dep’t of Family & Children (In re J.V.), 875 N.E.2d 395, 402 (Ind. Ct. App. 2007), trans. denied. We may not set aside the findings or judgment unless they are clearly erroneous. Ind. Trial R. 52(A); Perrine v. Marion County Office of Child Servs., 866 N.E.2d 269, 273 (Ind. Ct. App. 2007). In our

review, we first consider whether the evidence supports the factual findings. Perrine, 866 N.E.2d at 273. Second, we consider whether the findings support the judgment. Id. “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” Id.; Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

Indiana Code Section 31-17-2-21 provides in relevant part:

- (a) The court may not modify a child custody order unless:
 - (1) the modification is in the best interests of the child; and
 - (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter [regarding de facto custodians].
- (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

And Indiana Code Section 31-17-2-8 provides:

The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (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.
- (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.

Mother contends that the trial court’s custody modification order “seem[s] to indicate that the factor or factors under Indiana Code [Section] 31-17-2-21 in which there has been a substantial change in circumstances are factor (4) the interaction and relationship of [J.M and D.M.] with [Father] and factor (6) the mental health of the children.” Appellant’s Brief at 12. Mother challenges the trial court’s order by paragraph, and we will address her arguments in turn.²

Mother first argues that “[t]here is nothing in the record to support that the children are suffering.” Id. In support, she cites to parts of the record to show that the children are “doing well in school” and “involved in various extra-curricular activities[.]” Id. She also cites to parts of the record referring to her testimony about the activities in which the children participate. Mother makes these arguments in challenging paragraph

² Mother has included a complete copy of the transcript in her three-volume appendix. This practice not only violates Indiana Appellate Rule 50(A)(g), which instructs appellants to include “brief portions of the Transcript . . . that are important to a consideration of the issues raised on appeal,” but results in an unwieldy file. (Emphasis added.) We urge Mother’s counsel to abide by this important rule in the future.

6 of the trial court's order, which addresses communication and hostility between the parties, the finding that Father has "moved on" and Mother is "still fighting the battles that lead [sic] to their divorce and it is adversely affecting the children. . . . This is about the children and insuring that their Father remains involved in their life." Appellant's App. at 10.

We note initially that many of Mother's citations to the Appellant's Appendix are in error. In some instances, the corresponding page numbers in the transcript, not the Appellant's Appendix, support the contention for that particular citation. In other instances, the pages cited did not provide support for the contention in either the Appellant's Appendix or the transcript. We remind counsel that the appellant's contentions regarding reversible error must be supported by accurate citations to the record. See Ind. Appellate Rule 46(A)(8)(a). The court on review is not required to review the entire record or search for correct supporting citations. See C.M.L. v. Republic Servs., 800 N.E.2d 200, 207 n.3 (Ind. Ct. App. 2003), trans. denied. Thus, to the extent Mother's citations to the record do not support her arguments on appeal, those contentions are waived.

Mother also contends that the boys are "responding well to counseling to help them with the emotional issues of the breakdown of their parents' marriage." Id. But in support Mother cites to the deposition of the children's counselor in its entirety, which consisted of forty-six pages. Again, we will not search the authorities cited by a party in order to find legal support for her position. See C.M.L., 800 N.E.2d at 207 n.3. Thus, to

the extent Mother relies on the counselor's entire deposition testimony, her argument is waived.

Mother has supported some of her contentions regarding paragraph 6 with accurate citations to her testimony from the custody modification hearing. But much of the supporting citations are inaccurate, even if we look to the same pages in other record sources, and some lack necessary pinpoint citations. "It is a cardinal rule of appellate review that the appellant bears the burden of showing reversible error by the record, as all presumptions are in favor of the trial court's judgment." Marion-Adams Sch. Corp. v. Boone, 840 N.E.2d 462, 468 (Ind. Ct. App. 2006) (citing Martin v. Martin, 771 N.E.2d 650, 655 (Ind. Ct. App. 2002)). We conclude that Mother has not met her burden of showing reversible error regarding paragraph 6 of the custody modification order.

Mother next challenges paragraph 7 of the custody modification order, in which the trial court found that Mother "does not care for basketball and is trying to steer the boys away from basketball." Appellant's App. at 10. Mother observes that Father testified that he has never discussed with Mother the boys' playing basketball and that she has taken the boys to Pacers games. But Mother makes no further argument regarding the court's finding in paragraph 7. As a result, her challenge is a request that we reweigh the evidence, which we cannot do. See Leisure, 828 N.E.2d at 414. Thus, Mother has not demonstrated reversible error regarding paragraph 7 in the order.

Paragraph 8 of the modification order discusses the "cooperative effort" required to afford Father "any real parenting time" in light of his unconventional work schedule. Appellant's App. at 10. In that context, the trial court found that "Mother loses her

temper with Father more so than he loses his temper with Mother.” Id. Mother mentions that the evidence does not support that conclusion. However, in support Mother cites to 283 pages of her appendix, without any analysis or pinpoint citation. Again, we will not search the record in order to find legal support for Mother’s position. See C.M.L., 800 N.E.2d at 207 n.3. As such, any argument regarding paragraph 8 of the modification order is waived.

Mother next challenges the trial court’s conclusion in paragraph 10 that there have been “difficulties” between Mother and Mrs. Mount and that Mother “has been primarily responsible for their ‘problems.’” Appellant’s App. at 11. In that regard, Mother points out that she had “extended olive branches to Mrs. Mount. This includes sending flowers when her sister died and extending an invitation to Mrs. Mount for a Mother’s Day Dinner with [Mother and the children], which she accepted.” Appellant’s Brief at 14-15. The supporting testimony Mother cites refers to “olive branches” extended by Mother to Father’s mother. But the modification order refers to Father’s current wife, not his mother, as “Mrs. Mount.” As such, Mother has not shown that the trial court’s finding regarding “difficulties” between Mother and Father’s current wife is not supported by the record.

Mother further maintains that the evidence does not support the court’s findings in paragraph 11 of the modification order. There the trial court observed that Mother was pregnant, that the father of the unborn child was going through a divorce, that Mother has not introduced J.M. and D.M. to the unborn child’s father, and that she has no present plans to marry. Mother does not challenge the accuracy of any of these findings.

Instead, she refers to additional evidence, but she does not provide citations showing where we might review that additional evidence. Nor does she explain how such evidence should have impacted the trial court's findings or conclusions. As such, Mother's argument regarding paragraph 11 is waived. See App. R. 46(A)(8)(a).

Mother also challenges the trial court's conclusion in paragraph 15 that she is primarily responsible for the continued conflict between the parties. That paragraph provides, in relevant part:

The children are both boys. They are older than they were when the Divorce was granted. The interactions between Father and the boys are at risk. Mother has had primary physical custody and yet there still is conflict between her and Father. The Court determines that this conflict is adversely affecting the children. The Court finds that Father should be given the opportunity to lessen the conflict. Mother has not done all that she could have done to "put this matter behind her[.]" The children are at significant risk for losing the Father-son relationship. The Court does not believe Father will behave in a manner so as to cause harm to the Mother-son relationship. The Court also finds that Father's significant other is a positive influence on Father and a positive influence on the children, and if Mother would not fight it, a positive influence on Mother's and Father's relationship. The Court also finds that the mental health of the children will be enhanced by the modification of physical custody once Mother and the children work through the adjustments. Obviously Mother still exercises tremendous influence over [J.M. and D.M.] and Father may have a short [-]term challenge in regards to helping work through the transition, particularly if Mother confides too much in the children, as she has in the past, or otherwise disparages Father or Mrs. Mount.

Appellant's App. at 11 (emphases added). Mother's challenge to the conclusions in this paragraph include no citations to supporting authority and, therefore, are waived. See App. R. 46(A)(8)(a). Waiver notwithstanding, Mother challenges the conclusions that she is primarily at fault for the continuing conflict between the parties, that Father will not behave in a manner to harm the children's relationship with Mother, and that the

mental health of the children will be enhanced by a change in physical custody. But in those challenges, Mother merely requests that we reweigh the evidence, which we cannot do. See Leisure, 828 N.E.2d at 414. Mother has not met her burden to show reversible error regarding the findings and conclusions in paragraph 15.

Finally, Mother argues that the evidence does not support the finding in Paragraph 14 of the modification order. There the trial court observed: “The Court is concerned that Mother continues to confide much too much in [J.M.] and is treating him more like a buddy or confidant than a son.” Appellant’s App. at 11. In support of her contention, Mother points to her testimony that she has an open relationship with the children and that they can come to her “with anything regardless of the subject.” Transcript at 83. In his brief, Father does not point to any evidence supporting paragraph 14 in the modification order, nor is that order, as worded, clearly a finding or conclusion.

But to decide this appeal, we need not determine whether the evidence supports the finding in paragraph 14. Even if we were to determine that paragraph 14 is not supported by the evidence, we have found that Mother has not met her burden of showing reversible error regarding the remainder of the modification order. An error, if any, in paragraph 14, without more, is insufficient to reverse the order modifying custody. Thus, Mother has not shown that the modification order is clearly erroneous.

Affirmed.

DARDEN, J, and BROWN, J., concur.