



James T. Parado (“Father”) appeals the trial court’s order denying his petition to modify custody and granting the petition to modify custody filed by Maria J. (Parado) Mast (“Mother”), claiming that the court’s decision is clearly erroneous. We affirm.

The facts most favorable to the trial court’s order indicate that Father and Mother were married in December 2002. Two children were born to the marriage: Jet.P. in August 2003 and Jer.P. in October 2005. The parties separated and Mother petitioned to dissolve the marriage in July 2006. The parties’ agreed provisional order called for joint custody, with Mother to have the children Monday mornings through Thursday mornings and Father to have the children Thursday mornings through Monday evenings. The dissolution decree, issued in March 2007, also called for joint custody but did not specify a set schedule, with any disputes to be resolved by reference to the Indiana Parenting Time Guidelines. Disputes indeed arose, and the parties filed competing motions to modify custody.

The trial court held hearings in August and October 2009. On November 13, 2009, the trial court issued an order containing detailed factual findings and the relevant conclusions thereon:

2. Indiana law provides that the Court may not modify a child custody order unless (a) it is in the best interest of the child; and (2) there is a substantial change in one (1) or more of the factors which the court may consider under I.C. 31-17-2-8. I.C. 31-17-2-21.

3. Indiana law provides the following as factors to consider in custody determinations.

- a. The age and sex of the child;
- b. The wishes of the child’s parent or parents;

- c. 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;
- d. [T]he interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
- e. [T]he child's adjustment to his home, school, and community;
- f. [T]he mental and physical health of all individuals involved;
- g. [E]vidence of a pattern of domestic violence by either parent;
- h. [E]vidence 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. I.C. 31-17-2-8.

....

6. The court finds and concludes based on all the evidence submitted, the record, and findings above, that it is in [Jet.P.'s] and [Jer.P.'s] best interest that the Decree be modified to provide that their legal and physical custody be awarded to their mother Maria, and that their father James be awarded parenting time with the children per the Indiana Parenting Time Guidelines, with an additional overnight on alternate weekends.

7. The court further finds and concludes that since the Decree awarding shared custody of the children to the parents in 2007, there have occurred substantial changes as noted in the court's findings herein. Since that order [was] entered in March 2007, James ha[s] acted to limit Maria's time and diminish her role as a parent with the children. James has taken advantage of the fact that the court's decree did not specify parenting time so as to limit Maria's time with the children.

[8]. The court finds that there has occurred a substantial and continuing change in circumstances since the Decree of March 2007, with respect to the interaction and interrelationships of the children with each parent. Further, as the children (at least [Jet.P.]) are attending school full-time now, they require

suitable stability with their home and parenting time, so that they regard one home as their primary residence.

[9]. James has shown that he will not compromise or try to resolve issues fairly with Maria, which causes persistent conflict between the parties.

[10]. Between the two parents, Maria is the one who is most likely not to interfere [with] or diminish the non-custodial parent's role with the children.

[11]. Accordingly, the Court finds and concludes that Maria's petition to modify custody should be and is granted, and James' petition to modify custody should be and is denied. Petitioner Maria Mast is awarded physical and legal custody of the children [Jet.P.] and [Jer.P.], effective forthwith.

Appellant's App. at 38-48.

On appeal, Father contends that the trial court erred in denying his petition to modify custody and granting Mother's petition to modify custody. Initially, we note that "our supreme court has expressed a 'preference for granting latitude and deference to our trial judges in family law matters.'" *In re Paternity of J.J.*, 911 N.E.2d 725, 728 (Ind. Ct. App. 2009) (quoting *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). The reason for this deference is that appellate courts

are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence, or that he should have found its preponderance or the inferences therefrom to be different from what he did.

*Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)).

We review custody modifications for an abuse of discretion, and we will not reverse "unless the trial court's decision is against the logic and effect of the facts and circumstances

before it or the reasonable inferences drawn therefrom.” *Webb v. Webb*, 868 N.E.2d 589, 592 (Ind. Ct. App. 2007). Here, the trial court entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A).

In reviewing findings made pursuant to Rule 52, we first determine whether the evidence supports the findings and then whether [the] findings support the judgment. On appeal we “shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Ind. Trial Rule 52(A). A judgment is clearly erroneous when there is no evidence supporting the findings or the findings fail to support the judgment. A judgment is also clearly erroneous when the trial court applies the wrong legal standard to properly found facts.

*K.I. ex rel. J.I. v. J.H.*, 903 N.E.2d 453, 457 (Ind. 2009) (some citations omitted). “We will not substitute our own judgment if any evidence or legitimate inferences support the trial court’s judgment. The concern for finality in custody matters reinforces this doctrine.” *Baxendale v. Raich*, 878 N.E.2d 1252, 1257-58 (Ind. 2008).

As the trial court correctly observed, a court may not modify a child custody order pursuant to Indiana Code Section 31-17-2-21 “unless modification is in the child’s best interests and there is a substantial change in one of several factors that a court may consider in initially determining custody” under Indiana Code Section 31-17-2-8. *Kirk*, 770 N.E.2d at 306-07. “In the initial custody determination, both parents are presumed equally entitled to custody, but a petition seeking subsequent modification bears the burden of demonstrating the existing custody should be altered.” *Id.* at 307.

Specifically, Father takes issue with the trial court’s findings that support its conclusion that he “had acted to limit [Mother’s] time and diminish her role as a parent with

the children.” Appellant’s App. at 47. We agree with Mother that Father is essentially asking us to reweigh the conflicting evidence that the parties presented on this issue and judge the credibility of the witnesses, which we are not at liberty to do.<sup>1</sup> The same holds true for Father’s arguments regarding the trial court’s determination that a substantial and continuing change in circumstances has occurred since the parties’ marriage was dissolved and that awarding custody to Mother is in the children’s best interests. Consequently, we affirm.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.

---

<sup>1</sup> In challenging the trial court’s findings and conclusion, Father relies heavily on text messages between him and Mother, which Mother’s counsel suggested at the custody hearing had been “extracted from [] lengthier conversations[.]” Tr. at 202. We note that Mother presented testimony from several witnesses indicating that Father had limited her parenting time with the children. *See, e.g., id.* at 147-48 (Mother); *id.* at 216 (Alvin Guanco); *id.* at 229 (Michael Mast). The guardian ad litem’s report echoes this sentiment. *See* Appellant’s App. at 35 (“Under current conditions, I believe Mother would face further erosion of her position in the boys’ lives if Father becomes the custodial parent in fact; I cannot see Father voluntarily relinquishing his control of the situation. There is no doubt that Father loves the boys dearly and would do everything in his power to see them grow and thrive; unfortunately, his vision of what is best for the boys would operate to exclude input from Mother and diminish her role in her sons’ lives.”). The trial court was free to credit, weigh, and draw inferences from all the evidence presented as it saw fit.