

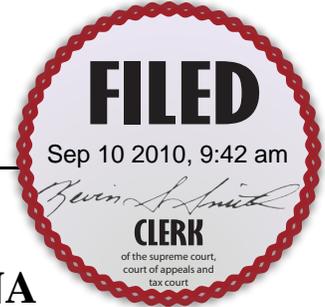
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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MARRIAGE of)
)
D.L.S.,)
)
Appellant-Respondent,)
)
vs.)
)
J.S.,)
)
Appellee-Petitioner.)

No. 85A02-0910-CV-985

APPEAL FROM THE WABASH SUPERIOR COURT
The Honorable Christopher M. Goff, Judge
Cause No. 85D01-0706-DR-207

September 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

D.S. (“Father”) appeals the trial court’s order granting physical custody of his two children to J.H.¹ (“Mother”). He presents one issue for our review: whether the trial court abused its discretion in awarding custody of their minor children to Mother. Concluding the trial court did not abuse its discretion, we affirm.

Facts and Procedural History

Mother and Father were married in September 1999, and during their marriage had two children: A.S., born May 29, 2000, and L.S., born February 12, 2005. Mother and Father separated upon Mother’s filing a petition for dissolution of marriage in June 2007.

Throughout the separation period Mother and Father agreed with the trial court’s approval that Father would have provisional physical custody of the children and Mother would have parenting time because Mother was working toward financial stability and a new career. When the children were with Father, they resided with him and his mother (the children’s paternal grandmother) in her home. Upon separation from Father, Mother resided in several locations in Indiana, Illinois, and the Philippines, where she had lived prior to marrying Father in 1999. Beginning in September 2008, Mother began residing in North Carolina with R.H., who was Mother’s boyfriend until April 21, 2009, the date the trial court dissolved Mother and Father’s marriage. Mother married R.H. later that same day.

¹ The caption of this opinion and the trial court refer to Mother as J.S., under her former married name. This opinion refers to her as J.H., her current initials.

For assistance in determining custody, the trial court appointed a guardian ad litem (“GAL”) and, per the GAL’s recommendation, ordered psychological testing and custody evaluations of Mother and Father by Dr. Thomas Murray.

The reports and recommendations of the GAL and Dr. Murray included the following relevant facts: Father is “controlling” and has questionable “mental stability,” Appellee’s Appendix at 9; Father “has not put his children’s needs first,” *id.*; Father’s psychological testing revealed his view of himself “may lead to the development of psychological symptoms when stress is present,” *id.* at 105; Dr. Murray expressed “concern that [Father] may not be financially capable of providing for the needs of his children,” *id.* at 115; Dr. Murray’s “concern for the parenting style of [Father],” *id.*; the children’s behavior was more controlled when with Mother than when with Father; the children were more comfortable when together than apart from each other; and A.S had been having difficulty with academics and classmates, which the GAL attributed not only to the custody battle but especially to Father’s parenting and influence. The GAL stated that R.H. has had a positive influence on the children and his educational and professional background bodes well for the stability and future of the children coupled with family counseling among him, Mother, and the children. Dr. Murray stated “there is a favorable impression/observation of the relationship between [Mother] and [R.H.], as well as between the children and [R.H.]” *Id.* at 114. Both the GAL and Dr. Murray recommended Mother have sole physical custody of both children.

On August 7, 2009, after a three-day hearing, the trial court entered a written order granting sole physical custody of both children to Mother. Father now appeals.

Discussion and Decision

I. Standard of Review

“An award of child custody will not be reversed unless a manifest abuse of discretion is shown.” D.H. v. J.H., 418 N.E.2d 286, 296 (Ind. Ct. App. 1981). An abuse of discretion occurs only where the trial court’s decision is “clearly against the logic and effect of the facts and circumstances before the court.” Id. “It is likewise clear that on an appeal from a custody award we will not reweigh the evidence or substitute our judgment for that of the trial court.” Id. As an appellate court, “[i]t is our duty . . . to affirm the judgment of the trial court if it can be sustained on any legal basis which the evidence supports.” Id.

II. Custody of the Children

Father argues the trial court abused its discretion by not considering the statutory factors for determining the best interests of the children. A child custody order is determined in accordance with the best interests of the children, requiring the trial court to consider “all relevant factors” including the non-exhaustive list in Indiana Code section 31-17-2-8.²

² These factors 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.
- (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

Contrary to Father's assertion, however, trial courts are not required to make specific findings of fact unless requested by a party. Ind. Trial Rule 52(A); In re Marriage of Ford, 470 N.E.2d 357, 363 (Ind. Ct. App. 1984).

The trial court had a wealth of information before it as to which parent's physical custody would better serve the best interests of the children. It had the benefit of a thorough GAL report, psychological and custodial evaluations, numerous witnesses' testimony, items of evidence, and arguments heard over three days. In Father's appellate brief, he provides a lengthy nineteen-page statement of facts that might have weighed in his favor. However, we may not reweigh the evidence or merely substitute our own judgment for that of the trial court. See D.H., 418 N.E.2d at 296.

Evidence presented to the trial court reveals that Father's mental and financial instability contrasts with Mother's emotional and financial stability and the prospect of a well-adjusted life for the children in North Carolina. The reports, recommendations, and other testimony and evidence submitted to the trial court provide sufficient bases to conclude – when considering all relevant factors as required – Mother's sole physical custody of both children is in their best interests.

Conclusion

The trial court's custody decision was not against the logic and effect of the facts and

circumstances before the trial court. Concluding the trial court did not abuse its discretion when it granted sole physical custody of the children to Mother, we affirm.

Affirmed.

MAY, J., and VAIDIK, J., concur.