

In the
Indiana Supreme Court

Flavia Rasheed,
Appellant(s),

v.

Rocky Rasheed,
Appellee(s).

Court of Appeals Case No.
19A-DC-01722

Trial Court Case No.
49D13-1712-DC-46216



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 8/7/2020.

FOR THE COURT

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

Massa, J., Slaughter J., and Goff, J., vote to deny transfer.

David, J., dissents from denial of transfer with separate opinion in which Rush, C.J., joins.

David, Justice, dissenting.

I dissent from the denial of transfer because I believe the Court of Appeals reweighed the evidence and did not appropriately defer to the trial court. I would affirm the trial court order granting joint legal custody.

Here, the parties have two young sons and divorced. They were granted joint legal custody with Mother having primary physical custody despite the guardian ad litem (GAL) recommending that Mother receive sole legal and physical custody. Mother appealed and our Court of Appeals reversed, granting Mother sole legal custody. In reaching its decision, the court cited the parties' history of non-cooperation, Mother's order of protection, the GAL's recommendation and report and the fact that the trial court did not enter specific findings or reasons for its order.

In reversing the trial court however, the Court of Appeals did not mention some evidence favorable to Father: that the parents were both involved in and alternated bringing the older child to therapy; that both parents are involved in the kids' school and extracurricular activities, with Father perhaps being more involved; the GAL's testimony that she has no doubts that both parents love the children; and testimony of Father that Mother is trying to get full custody and thus, saying negative things about him and not sharing all the information about the kids with him.

The record also reflects Father's frustration at being kept out of certain school and medical decision making and testimony that the parenting coordinator said that Father is not as bad as Mother makes him out to be. Further, despite problems with communication, the parties' communications improved with the use of the Family Wizard software tool.

Four years ago, the Court wrote *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) and stated:

[T]here is a well-established preference in Indiana "for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind.

1993). 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.” *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)). “On appeal it 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.” *Id.* “Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (citations omitted).

I believe this same case law applies to the present case. If, after reviewing all the evidence, the trial court had given Mother sole legal custody I would have voted to affirm that decision as well. While there is evidence in the record to support either outcome, the standard of review requires us to affirm the trial court. Further, the Court was fully aware of the GAL report and recommendation as well as other evidence of the discord between the parties. Nevertheless, it concluded joint legal custody was appropriate. For these reasons, I respectfully dissent from the denial of transfer.

Rush, C.J., joins.