

**STATE OF INDIANA
COURT OF APPEALS**



ASHLEY EILENE FRANKLIN
Appellant(s),
v.
BRENT ASHTON FIFER, II
Appellee(s).

Cause No. 23A-JP-02416

CERTIFICATION

STATE OF INDIANA)
) SS:
Court of Appeals)

I, Gregory R. Pachmayr, Clerk of the Supreme Court, Court of Appeals and Tax Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the Opinion of said Court in the above entitled case.

IN WITNESS WHEREOF, I hereto set my hand and affix the seal of THE CLERK of said Court, at the City of Indianapolis, this on this the 1st day of October, 2024.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Ashley Eilene Franklin,
Appellant-Petitioner

v.

Brent Ashton Fifer II,
Appellee-Respondent

April 22, 2024

Court of Appeals Case No.
23A-JP-2416

Appeal from the Elkhart Superior Court
The Honorable David C. Bonfiglio, Judge

Trial Court Cause No.
20D06-2301-JP-1

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

- [1] During a paternity action over B.F. (Child), Ashley Franklin (Mother) failed to complete court ordered drug tests and a psychological assessment. In response, the trial court granted Brent Fifer (Father) sole custody and restricted Mother to supervised visits with Child. Mother challenges the trial court's order that she only be allowed supervised visits with Child. Finding no abuse of the trial court's discretion, we affirm.

Facts

- [2] In January 2023, Father petitioned to establish paternity rights to Child. Within a month, on February 16, the trial court ordered, temporarily, joint legal custody for Mother and Father and primary physical custody for Mother. The trial court also ordered each party to undergo drug tests. Mother did not comply with this requirement and was eventually found to be in contempt. In response, the trial court ordered Mother to complete a psychological assessment by a psychologist recommended by the assigned guardian ad litem (GAL).
- [3] Mother failed to complete the psychological assessment. After a hearing to discuss the GAL's report that summer, the trial court granted Father primary physical and legal custody over Child and restricted Mother to supervised visits only. In explaining its reasoning, the trial court noted:

Mother has failed to follow the court order of February 16, 2023, failed to timely attain [a] hair follicle drug screen, failed to be assessed by [the psychologist], continues to have erratic

behaviors, appears to be self medicating with illegal drugs, [and the] court determines child is not safe in her care.

App. Vol. II, p. 47.

- [4] That fall, Mother moved for the trial court to reconsider its order and suspend the requirement that she complete a psychological evaluation and only have supervised visits with Child. *Id.* at 61. The trial court quickly reaffirmed the order “until the Court receives a competent [psychological] assessment that the Court has approved for the Mother.” *Id.* at 63. Mother appealed.¹

Discussion and Decision

- [5] “‘Indiana has long recognized that the right of parents to visit their children is a precious privilege that should be enjoyed by noncustodial parents,’ and thus a noncustodial parent is ‘generally entitled to reasonable visitation rights.’”

Perkinson v. Perkinson, 989 N.E.2d 758, 762 (Ind. 2013) (quoting *Duncan v.*

Duncan, 843 N.E.2d 966, 969 (Ind. Ct. App. 2006). By statute,

A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

¹ As a preliminary matter, we reject Father’s threshold argument that Mother’s appeal is not based on a final order and thus not properly before this Court. *See* Ind. Appellate Rule 2(H)(1).

Indiana Code § 31-17-4-1(a). On top of these requirements, the trial court's order granting or denying parenting time rights may be modified only when "modification would serve the best interests of the child." Ind. Code § 31-17-4-2.

- [6] Thus, review of a visitation order requires appellate courts to "give foremost consideration to the best interests of the child." *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 760 (Ind. Ct. App. 2013) (quoting *Marlow v. Marlow*, 702 N.E.2d 733, 735 (Ind.Ct.App.1998)). Parenting time decisions are reviewed for an abuse of discretion. *Id.* "A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law." *Id.*
- [7] The trial court did not abuse its discretion here. First, we start with the trial court's explicit finding that "child [is] not safe in [Mother's] care." Appellant's App. Vol. II p. 47. Mother's argument that no evidence supports this conclusion simply ignores the record. To wit, Mother disobeyed the trial court's ordered drug screen and refused to complete the ordered psychological assessment. And from the GAL's report to the trial court, "Mother continues to behave erratically and her communications with Father border on harassment." Appellee's App. Vol. II, p. 3 (cleaned up). The GAL also reported that Mother appeared to be self-medicating with illegal drugs and Mother did not seem to understand "the reality of her situation." *Id.* at 3-4. In short, the GAL expressed that she was "very concerned about [Mother's] mental health." *Id.* The trial court's finding is sufficient under Indiana Code § 31-17-4-1(a).

- [8] Accordingly, we affirm the trial court's order requiring Mother to have supervised visits with Child pending her required psychological assessment and any resulting orders from the trial court.

Mathias, J., and Tavitas, J., concur.

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