

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Jacob Johnson (Father),
Appellant-Petitioner

v.

Rachel (Johnson) Davis (Mother),
Appellee-Respondent

June 20, 2025

Court of Appeals Case No.
24A-DR-1958

Appeal from the Madison Circuit Court
The Honorable Angela Warner Sims, Judge
Trial Court Cause No.
48C01-1109-DR-610

Memorandum Decision by Judge May
Judges Weissmann and Scheele concur.

May, Judge.

- [1] Jacob Johnson (“Father”) appeals the trial court’s denial of his motion to modify custody of M.J. (“Child”), who is his child with Rachel (Johnson) Davis (“Mother”). Father makes several arguments, which we consolidate and restate as: Whether the trial court’s findings support its conclusion that there was not a substantial change in circumstances to warrant modification of custody, even though there had been changes in communication that resulted in parenting time issues and a change in Child’s school environment. We affirm.

Facts and Procedural History

- [2] Father and Mother were married until 2013, and Child was born on April 22, 2010. When the parties divorced, Mother received primary physical custody, and the parties shared joint legal custody. During the dissolution proceedings, Mother and Child relocated to Ohio and Father remained in Indiana. The trial court awarded Father parenting time pursuant to the Indiana Parenting Time Guidelines, with additional overnights for a total of 112 overnights per year and ordered Father to pay child support.¹ For nearly a decade following the dissolution, the parties generally co-parented successfully.
- [3] On June 12, 2023, Father filed a motion to modify physical custody and child support that asked the trial court to grant him primary physical custody, award

¹ The initial child support amount is unclear from the record.

Mother parenting time, and require Mother to pay child support. The trial court held multiple hearings on Father's motion to modify custody, during which Father argued that the trial court should modify custody based on:

Mother and Father's communication or lack thereof (which encompasses communication regarding school events, medical appointments, input as to medical decisions, and use of the Family Wizard App, and scheduling of parenting time; Child's schooling (both previous school and current school); communication and access to Child, particularly regarding Mother's purchase of a new phone for Child; and how Father's parenting time is scheduled, especially when conflicts arise due to Child's activities or Father's military training obligations.

(App. Vol. II at 49.) On August 6, 2024, the trial court denied Father's motion to modify custody after concluding that there had not been a substantial change in circumstances to warrant modification and that modification was not in Child's best interests.

Discussion and Decision

[4] Father argues the trial court abused its discretion when it denied his motion to modify custody. When reviewing cases involving the modification of child custody,

[w]e acknowledge the well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. 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. In order to reverse a

trial court's ruling, it is not enough that the evidence might have supported a different conclusion. Rather, the evidence must positively require the conclusion contended for by appellant [before] we may reverse. We may not reweigh the evidence or reassess witness credibility, and the evidence should be viewed in a light most favorable to the judgment. Still, although we must be highly deferential to trial courts in cases such as this, that deference is not absolute.

Montgomery v. Montgomery, 59 N.E.3d 343, 349-50 (Ind. Ct. App. 2016) (internal citations and quotes omitted), *trans. denied*.

[5] To modify a child custody order, the trial court must find modification is in the best interest of the child and there is “a substantial change in one (1) or more of the factors that the court may consider under section 8” Ind. Code § 31-17-2-21. Those factors include:

- (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.

Ind. Code § 31-17-2-8.

[6] The party requesting the custody modification bears the burden of proving the existing custody order should be changed. *Montgomery*, 59 N.E.3d at 350. “Indeed, this ‘more stringent standard’ is required to support a change in custody, as opposed to initial custody determinations where there is no presumption for either parent because ‘permanence and stability are considered best for the welfare and happiness of the child.’” *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *Lamb v. Wenning*, 600 N.E.2d 96, 98 (Ind. 1992)).

When evaluating whether a change of circumstances has occurred that is substantial enough to warrant a modification of custody, the context of the whole environment must be judged, and the effect on the child is what renders a change substantial or inconsequential. Generally, cooperation or lack thereof with custody and parenting time orders is not an appropriate basis for modifying custody. It is improper to utilize a custody modification to punish a parent for noncompliance with a custody order. However, if one parent can demonstrate that the other has committed misconduct so egregious that it places a child’s mental and physical welfare at stake, the trial court may modify the custody order.

Montgomery, 59 N.E.3d at 350-1 (internal citations and quotes omitted).

[7] When, as here, the trial court makes findings and conclusions sua sponte, we apply a two-tiered analysis whereby we first analyze whether the evidence supports the findings and then whether the findings support the trial court's conclusions regarding the issues covered in the findings. *McDaniel v. McDaniel*, 150 N.E.3d 282, 289 (Ind. Ct. App. 2020), *trans. denied*. We review issues not addressed by the trial court with a general judgment standard, under which “the judgment will be affirmed if it can be sustained on any legal theory consistent with the evidence.” *Id.* “It is not necessary that each and every finding be correct, and even if one or more findings are clearly erroneous, we may affirm the judgment if it is supported by other findings or is otherwise supported by the record.” *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013), *aff'd on reh'g by Stone v. Stone*, 4 N.E.3d 666 (Ind. Ct. App. 2013). A trial court's order is clearly erroneous “when the appellate court's review of the evidence most favorable to the trial court's judgment leaves us firmly convinced that a mistake has been made.” *McDaniel*, 150 N.E.3d at 289. We accept unchallenged findings as true. *M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020).

[8] Father argues the trial court's findings do not support its conclusion that there had not been a substantial change in circumstances. Specifically, he contends the trial court's findings regarding the lack of communication between the parties and deviations in parenting time, as well as his concerns regarding Child's schooling, are substantial changes that should have prompted the trial court to modify custody. We address each of Father's arguments separately.

1. Communication and Parenting Time

[9] Father first argues the trial court should have concluded a substantial change in circumstances existed based on its findings regarding Mother's facilitation of his parenting time and the communication breakdowns between the parties.

Regarding these factors, the trial court found:

31. The scheduling of Father's parenting time to ensure he receives his 112 overnights has increasingly gotten more difficult given Child's age (14), her increased extracurricular activities and Father's mandatory military obligations. Significant evidence was presented on how the calendar is created, and when conflicts arise how they are resolved or not resolved. The court finds that given the calendar demands of Child and the respective parties as well as the distance in households, that Father's frustrations are understandable when he periodically cannot get his parenting time as originally scheduled. However, the court does not find Mother's attempts to find make up time or alternatives to be wholly unreasonable. Mother has never not offered alternatives or options[.] [W]hile Father may not find some of the options ideal or may create some inconvenience or interfere with some other plans he has already made, [that] does not automatically make the offers unreasonable or with intent to deprive him of time. In fact, Mother cited there have been occasions that Child has missed her activities to fulfill Father's parenting time. The court further finds that while Father may prefer to have all his parenting time in Indiana, he continues to have the ability and availability to travel to Ohio more frequently, if he so chooses, to see Child and her activities. The court is unaware that he has ever been denied that opportunity.

* * * * *

34. The court received considerable testimony regarding Child's phone and now 2 phones given that both parties purchased her a new phone and both remaining adamant that they did not know the other parent was getting a new phone or that they told the other one in advance. The court is unable to reconcile the two versions provided, other than confusion as to the sequence of events or the timing of each parties' [sic] communication was overlapped. Father has historically been the provider of Child's phone. If Father insists that Child communicate with him on the phone he has provided then that shall be the phone for that communication purpose. However, the court is not ordering that Mother make sure that Child carries 2 phones at all times.

35. Father testified that Mother often would place participation in activities that weren't agreed upon before Father's parenting time. According to Father, Mother would often without communication from Father sign up [Child] or facilitate participation in activities that would interfere with Father's parenting time for example permitting [Child] to play in a second soccer league or participate in "varsity" basketball and that these instances coupled with other activities would lead Mother to propose unrealistic offers to exercise overnight parenting time where Father would be expected to drive five or six hours and have limited time with [Child] in Indiana before returning [Child] to Ohio. Father generally supported participation in some of these activities until it created times that interfered with his parenting time. The court finds that this is a common dispute amongst parents when children participate in an activity that creates either conflict or detracts from one parent's parenting time. The right balance should be obtained by allowing a child to actively participate in activities that are physically, socially and mentally good for a child, without a parent being accused of over scheduling versus a parent always withholding consent, so the activities never create a conflict. Here, the court finds that the activities Father now complains about were appropriate for

Mother to engage [Child] in given her interests and desire to socially be with friends in her school and community.

36. Another example that Father cited that Mother failed to accommodate Father's request for additional parenting time due to Child's participation in an activity was regarding band camp; indicating that if she missed, she would be demoted. However, Child was able to miss to attend bible camp during Mother's parenting time apparently without consequence. Mother explained that the difference was that the week Father requested was the week Child's instrument was being instructed and she would have been demoted. That was not the case during the week of bible camp.

* * * * *

40. Father believes Mother often makes healthcare decisions unilaterally and only includes him after the decision for treatment or care is made even though they share joint custody. Mother denied said allegation. Although there were a couple of examples where Mother's communication could have been timelier, the court is without sufficient evidence to find that this is a consistent issue or that Mother did so with any intent to purposely keep Father out of the loop. In fact, Mother testified that she prefers to involve Father in medical decisions and values his opinions given his background.

(App. Vol. II at 50-3.)

[10] Father likens his situation to that in *In re Paternity of J.T.*, where we held that “evidence Mother routinely denied [Father] the parenting time to which he was entitled . . . establishes a substantial change in the interrelationship of the parties.” 988 N.E.2d 398, 401 (Ind. Ct. App. 2013). In that case, the mother

had permitted the father to exercise parenting time with his three children only three times in approximately six months – a six-minute phone call on Christmas, an eight-minute visit outside mother’s home on one child’s birthday, and a six-minute visit outside mother’s home during another child’s birthday. *Id.* at 400-1. This amounted to mother denying father his parenting time with his children thirty-one times during that time period. *Id.* at 401. In addition, the trial court noted that mother “so despises and distrusts” father that she acted in complete disregard of the trial court’s custody order and “[h]er repetitive failure to permit visitation is the product of a mindset not likely to change[.]” *Id.* Based on those findings, the trial court determined modification was in the children’s best interests because mother’s behavior “denied [the children] a meaningful relationship with their father.” *Id.*

[11] The facts in *J.T.* are not at all analogous to what is happening herein. The trial court explicitly found Mother offered alternative arrangements for Father to make up his parenting time. The trial court also found many of the parenting time changes were based on Child’s schedule or Father’s military schedule, and not because Mother was attempting to thwart his parenting time. The trial court noted Father’s role in the exercise of his parenting time, indicating he chose not to take advantage of alternative arrangements to see Child.

[12] Nor does Child’s increased participation in extracurricular activities constitute a substantial change in circumstances that could warrant modification of custody. As the Indiana Parenting Time Guidelines acknowledge, “[i]n exercising parenting time with a teenager, the noncustodial parent shall make reasonable

efforts to accommodate a teenager's participation in his or her regular academic, extracurricular and social activities.” Ind. Parenting Time Guidelines II(E)(2). The trial court did not abuse its discretion in denying a change of custody based on Child's increased activities. *See, e.g., Matter of Paternity of J.K.*, 184 N.E.3d 658, 669 (Ind. Ct. App. 2022) (no substantial change in circumstances based on child's participation in basketball).

[13] Next, the trial court's finding that Child was able to communicate with Father supports its conclusion that there had not been a substantial change in circumstances that would warrant a change in custody. Father had traditionally provided a cell phone for Child, and, despite the fact that both parents purchased Child a new cell phone around the same time, the trial court found Child could communicate with Father via the cell phone he provided, if he so desired, but that Mother was not required to make Child carry two cell phones at all times.

[14] Finally, Father asserts that the trial court's finding that Mother sometimes is not timely with her communication regarding Child's medical care constituted a substantial change in circumstances because the finding illustrates Mother's desire to curtail his relationship with Child. However, the trial court did not find Mother's lack of communication was a “consistent issue or that Mother [had] intent to purposely keep Father out of the loop.” (App. Vol. II at 53.) Thus, the trial court's findings did not require the trial court to reach a different conclusion.

2. Child's Schooling

[15] Father next contends that Child's current school has significant academic and safety deficiencies that constitute a substantial change in circumstances.

Regarding this issue, the trial court found:

32. Father testified that Child had been the subject matter of 2 bullying incidents in the previous school year. Mother disagreed with that characterization. The decision was made for Child to change schools, which Father supported and did not object to Child's new school, even though he now expresses a multitude of concerns. Father visited the school in advance and signed the enrollment paperwork. Father contends that the school where Child would attend in Indiana would be better and addressed his concerns regarding the current school. Despite Father's concerns, Child has adjusted well to her new school, makes good grades, has friends and is involved in school related activities, including playing basketball.

33. Father has never been denied access to school information when he has called and has access to Child's grades.

(App. Vol. II at 50.)

[16] Father contends the trial court's school-related findings do not support its conclusion that there had not been a substantial change in circumstances. Father supports his argument with *Webb v. Webb*, in which we upheld a custody modification where the child was experiencing academic failures and behavioral problems, as well as demonstrating poor adjustment to the educational environment. 868 N.E.2d 589, 593 (Ind. Ct. App. 2007). Here, by contrast, the trial court found Child had adjusted well to her current school and

was performing successfully both academically and socially. Father was involved in the selection of the school and did not voice any concerns during enrollment. For these reasons, *Webb* is inapposite. Thus, we conclude the trial court's school-related findings support its conclusion that there was not a substantial change in circumstances to warrant a modification of custody.

[17] Because both of Father's arguments regarding a change of circumstances fail,² we hold the trial court did not abuse its discretion when it denied Father's motion for modification of custody. *See, e.g., Easterday v. Everhart*, 201 N.E.3d 264, 269 (Ind. Ct. App. 2023) (denial of motion to modify custody affirmed because father did not prove a substantial change in circumstances required for modification).

Conclusion

[18] The trial court's findings supported its conclusion that there had not been a substantial change in circumstances to warrant a modification of custody. Based thereon, the trial court did not abuse its discretion when it denied Father's motion to modify custody of Child. Accordingly, we affirm the trial court's decision.

[19] Affirmed.

² Father also argues the trial court's denial of his motion to modify custody was not in Child's best interests. As we have concluded the trial court's findings supported its conclusion that there had not been a substantial change in circumstances, we need not consider whether modification of custody would have been in Child's best interests.

Weissmann, J., and Scheele, J., concur.

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