STATE OF INDIANA
COURT OF APPEALS

GRACE SOLLMAN-WEBB Appellant(s), v. TRAVIS WEBB Appellee(s).	Cause No. 24A-DC-00490

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 30th day of October, 2024.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Grace Sollman-Webb,
Appellant-Petitioner

v.

Travis Webb,
Appellee-Respondent

September 3, 2024

Court of Appeals Case No.
24A-DC-490

Appeal from the Putnam Circuit Court

The Honorable Melinda Jackman-Hanlin, Magistrate

Trial Court Cause No.
67C01-2006-DC-70

Memorandum Decision by Judge Vaidik
Judges Weissmann and Foley concur.

Vaidik, Judge.

Case Summary

[1] Grace Sollman-Webb ("Mother") appeals the trial court's order modifying custody of her child with Travis Webb ("Father"). We affirm.

Facts and Procedural History

[2] Mother and Father married in May 2019 and have one child, F.W. ("Child"), who was born that same month. Mother filed for divorce in June 2020, and the trial court issued a decree of dissolution in December 2020. Under the decree, Mother was granted primary physical custody and sole legal custody of Child and Father was granted parenting time. At some point Mother moved to Illinois with Child.

[3] In March 2023, Mother rolled her car into a ditch while driving with Child and was charged with felony driving under the influence. Child wasn't seriously injured but was taken to a hospital and later released to Father. The Illinois Department of Children & Family Services (DCFS) investigated and determined that child neglect was "indicated" (the Illinois equivalent of a substantiation by Indiana's Department of Child Services). As a result, Child remained in Father's care and had limited contact with Mother.

[4] In October, Mother pled guilty to a misdemeanor charge of driving under the influence and was ordered to do therapy and drug counseling. The next month, Mother asked Father to return Child. Father refused, so Mother moved to have

him found in contempt of the December 2020 custody order. Father responded with a petition to modify custody, claiming he still had "serious concerns over the child's safety and well-being while in Mother's care." Appellant's App. Vol. II p. 26.

[5] The trial court held a hearing on Mother's contempt motion in January 2024. After testimony from both parties, the court denied Mother's motion, noting that DCFS had "advised" Mother "she was not to have the child in her care" and that "Mother acquiesced to Father having the child in his physical care from March 1, 2023 until November 2023." *Id.* at 72. The court set Father's modification petition for a hearing in February and ordered that Child would remain in Father's care until then.

[6] At the modification hearing, Mother testified that she had "taken care of everything" she was required to do in her criminal case. Modification Tr. p. 36. She added, "I'm basically on a waiting period until October just not to get in trouble, and it gets taken off of my record. I think I've went -- the judge in Illinois gave me consequences, and I've faced those consequences." *Id.* Under questioning by the court, however, she admitted she "still ha[d] some hours" to complete for drug counseling and she had only been to one therapy session. *Id.* at 52, 53. She eventually acknowledged that she hadn't even started drug counseling, claiming it was "quite expensive" and that her initial evaluation showed she wasn't a "high risk." *Id.* at 54. She also mentioned more than once that her BAC wasn't measured at the time of the accident.

[7] After the hearing, the trial court issued an order granting Father's modification petition. The court found, in part:

> 12. When questioned about her criminal offense, Mother was evasive with her answers and always wanted to deflect about there not being a BAC. However, Mother did plead guilty to the offense of driving while intoxicated. The Court does not believe that Mother plead guilty to an offense that she, in fact, did not commit.
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> 13. In October 2023, Mother was sentenced to therapy and drug counseling as a result of her conviction. Mother has not yet started her drug counseling and has not completed counseling with her therapist. Mother gave excuses as to why these services have not been completed and led the Court to believe these services had been started/completed until she was asked specific questions on cross-examination and by the Court.
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> …
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> 29. There has been a continuous change of circumstances that no longer makes the prior court[]order reasonable.
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> 30. It is in the best interest of the child that custody, parenting time, and child support be modified.
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> …
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> 33. The Court is concerned about Mother's lackadaisical attitude towards her criminal conviction for driving while intoxicated and the completion of her Court Ordered services. Mother does not seem to understand or appreciate the seriousness of the crime she committed, especially the fact that her daughter was with her when it occurred.

> 34. The evidence supports a finding that Mother continuing with reasonable parenting time might endanger the child's physical health and well-being or significantly impair the child's emotional development.

Appellant's App. Vol. II pp. 75-77. The court ruled that Father will have primary physical custody, the parties will have joint legal custody, and Mother will have supervised parenting time every other Saturday from 12:00 p.m. to 6:00 p.m. The court added, "Upon Mother completing her Court Ordered therapy and drug counseling, Mother may petition the Court to determine if unsupervised visitation would then be appropriate." *Id.* at 77.

[8] Mother now appeals.

Discussion and Decision

[9] Mother contends the trial court erred by granting Father's petition to modify custody. In the alternative, she argues that the court shouldn't have ordered her parenting time to be supervised. Trial courts have broad discretion in making custody and parenting-time decisions, so we review only for an abuse of discretion. *Hurst v. Smith*, 192 N.E.3d 233, 243 (Ind. Ct. App. 2022) (custody); *id.* at 245 (parenting time). As our Supreme Court has explained:

> There is a 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. 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. Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.

Steele-Giri v. Steele, 51 N.E.3d 119, 124 (Ind. 2016) (cleaned up).

I. The trial court didn't abuse its discretion by modifying custody

[10] A court may not modify a child-custody order unless the moving party shows that (1) the modification is in the best interests of the child and (2) there is a substantial change in one or more of the factors that the court may consider under Indiana Code section 31-17-2-8 (and Section 31-17-2-8.5, which is inapplicable here). Ind. Code § 31-17-2-21(a). As relevant here, those factors include the child's "interaction and interrelationship" with the parents and others, the child's adjustment to their home, school, and community, and the mental and physical health of all involved. I.C. § 31-17-2-8. Mother argues that Father failed to show either a substantial change in these factors or that modification is in Child's best interests. We disagree.

[11] We first note Mother's reliance on our statement in *Swonder v. Swonder*, 642 N.E.2d 1376, 1380 (Ind. Ct. App. 1994), that the party seeking modification must "make a showing of a decisive change of conditions in the custodial home or a change in the treatment of the children in the custodial home which necessitates removal." *Swonder* was decided in 1994 under a prior, more restrictive version of the custody-modification statute. *See Julie C. v. Andrew C.*,

924 N.E.2d 1249, 1258 (Ind. Ct. App. 2010). The change required under the current version of Section 31-17-2-21 "need not be so decisive in nature as to make a change in custody necessary for the welfare of the child." *Id.*

[12] Under the current, more permissive standard, several facts highlighted by the trial court amply support its decision to modify custody. First, Mother drove under the influence with Child in the car and rolled into a ditch. Second, as part of her guilty plea, Mother was required to complete therapy and drug counseling, but by the time of the modification hearing four months later, she had not even started her drug counseling and had been to only one therapy session. Third, in her testimony at the modification hearing, she lied about this lack of progress. Fourth, by the time of the modification hearing, Child had been in Father's care—in a different state, town, and home—for over eleven months. Taken together, these facts show substantial changes both in Mother's ability and/or willingness to safely care for Child and in Child's adjustment to her home and community. In turn, these changes support the finding that Father having primary custody is in Child's best interests. Therefore, the trial court didn't abuse its discretion in granting Father's petition to modify.

II. The trial court didn't abuse its discretion by ordering that Mother's parenting time be supervised

[13] For the same reasons we affirm the modification of custody, we affirm the supervision requirement for Mother's parenting time. A trial court may restrict a noncustodial parent's parenting time if it finds that unrestricted parenting time would endanger the child's physical health or emotional development. I.C. §

31-17-4-1(a); *Hatmaker v. Hatmaker*, 998 N.E.2d 758, 761 (Ind. Ct. App. 2013). In ordering supervision, the trial court explained:

> The Court is concerned about Mother's lackadaisical attitude towards her criminal conviction for driving while intoxicated and the completion of her Court Ordered services. Mother does not seem to understand or appreciate the seriousness of the crime she committed, especially the fact that her daughter was with her when it occurred.

The evidence supports these findings, and the findings support the conclusion that Mother having unrestricted parenting time would—for the time being—endanger Child's physical health or emotional development. The trial court did not abuse its discretion by ordering supervised parenting time, at least until Mother completes her court-ordered therapy and drug counseling.

[14] Affirmed.

Weissmann, J., and Foley, J., concur.

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