STATE OF INDIANA
COURT OF APPEALS

ALYSSA SVATBA	Appellant(s),	Cause No. 24A-DC-01695
v.		
JUSTIN SVATBA	Appellee(s).	

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 17th day of July, 2025.

Gregory R. Pachmayr,
Clerk of the Supreme Court

MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Alyssa Svatba,
Appellant-Respondent

v.

Justin Svatba,
Appellee-Petitioner

May 21, 2025

Court of Appeals Case No.
24A-DC-1695

Appeal from the Delaware Circuit Court

The Honorable Kimberly Dowling, Judge

Trial Court Cause No.
18C03-2003-DC-123

Memorandum Decision by Judge May
Judges Weissmann and Scheele concur.

May, Judge.

[1] Alyssa Svatba ("Mother") appeals the dissolution court's order granting a motion by Justin Svatba ("Father") to modify child custody, parenting time, and child support of their children – A.S., C.S., and D.S. (collectively, "Children"). Mother presents multiple issues for our review, which we restate as:

1. Whether the dissolution court abused its discretion when it modified physical custody of Children;

2. Whether the dissolution court abused its discretion when it restricted Mother's parenting time with Children without explicitly finding that Mother's unsupervised visitation would endanger their physical health or impair their emotional development; and

3. Whether the dissolution court abused its discretion when it ordered Mother to pay a portion of Father's attorney fees.

We affirm.

Facts and Procedural History

[2] Mother and Father were married in 2010 and have three children: A.S. (born 2010) and twins C.S. and D.S. (born 2012). Following their 2021 divorce, Mother and Father were granted joint legal custody, with Mother having primary physical custody and Father having parenting time by agreement. (App. Vol. II at 79.) Father paid $133 per week in child support.

[3] In September 2022, an incident occurred wherein Mother disciplined A.S. in what the dissolution court described as "such an offensive manner that the court had difficulty watching the video." (*Id.*) The twins recorded this incident on a cell phone. On September 23, 2022, Father filed for emergency custody modification, alleging Mother had "screamed profanities and threats" at A.S. and threatened Father. (*Id.* at 61.) Father reported that Children had begun living with him on September 9, 2022. (*Id.*)

[4] Mother's disciplinary practices included requiring A.S. to do "wall sits," which Father described as making the child "slouch[] down with their knees to a ninety (90) [degree angle] with their arms sticking straight out" for "twenty (20) to thirty (30) minutes." (Supp. Tr. at 23.) Mother confirmed she required A.S. to do wall sits because he did not "bend[] over when asked to do so" to get his "butt whippings" after he "called a teacher a 'bitch.'" (*Id.* at 35, 43.) Mother also put "dishwashing soap... on [her] finger and rub it inside their mouth and they have to hold it in there for however many minutes they are old." (*Id.* at 40.)

[5] When former DCS case manager Susan Brabow confronted Mother with video evidence of her discipline of A.S., suggesting it was on "a very thin line" between "discipline and abuse," Mother "expressed... that she would continue disciplining [Children] the way she had previously." (*Id.* at 9.) Brabow indicated to Mother that she seemed "to be very out of control," to which Mother responded she "was in complete control." (*Id.* at 11.) Brabow found

the allegation of neglect and abuse substantiated and indicated "if [Children] returned to [Mother,] [DCS] would seek detention." (*Id*. at 12.)

[6] On October 19, 2022, the State charged Mother with Level 6 felony neglect of a dependent.[1] The criminal court issued a no-contact order prohibiting Mother from contacting Father or A.S.

[7] In the custody modification case, after multiple continuances of hearings, the dissolution court held a hearing on December 27, 2022, regarding Father's request for child support. On January 24, 2023, it entered an order suspending Father's obligation to pay child support as of September 9, 2022. On November 28, 2023, following a November 20 hearing, the dissolution court awarded Father temporary primary physical custody.

[8] Regarding parenting time, the dissolution court granted Mother "telephone and/or video contact" with Children "twice a week for approximately 5-10 minutes for each child" with "Mother . . . responsible for placing the call." (App. Vol. II at 74.) The contact between Mother and Children could only occur after Children visited with their counselor. The court also allowed Mother supervised parenting time "on Christmas Eve from 12:00PM – 3:00PM" at Mother's house, supervised by Father's brother and/or sister-in-law. (*Id*.)

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[1] Ind. Code § 36-46-1-4(a).

[9] The court ordered Mother to engage in individual therapy and "review the videos showing her discipline with her therapist and discuss them as part of her therapy." (*Id*. at 73.) Mother was required to schedule therapy when Children were not present at the office, and "[a]ny joint therapy sessions with [Children] and [Mother] should not take place until the therapist for [Children] would recommend." (*Id*.)

[10] The criminal charges against Mother were dismissed in February 2024. During the pendency of the custody case, the children received therapy. Their therapists testified that the children did not wish to live with or speak to Mother and that they were traumatized by Mother's disciplinary practices. The therapists diagnosed the children with adjustment disorder and recommended continued therapy before any therapeutic sessions with Mother. One therapist testified C.S. and D.S. were not at "a point where they're willing to accept" therapy with Mother because "they don't even have enough trust to even venture into that." (Tr. Vol. II at 27-28.)

[11] In its final order in July 2024, the dissolution court found that Mother "has not accepted her role in this situation at all" and had caused trauma to Children. (App. Vol. II at 79.) The court concluded "[Children] need additional therapy before any therapeutic sessions can begin with Mother." (*Id*.) It granted Father sole physical and legal custody, restricting Mother's parenting time to continued phone/video calls and instructing the parties to "work with [Children's] therapists to advance to therapeutic sessions once [Children] are

ready to do so." (*Id*. at 80.) The court also ordered Mother to pay 64% of the parties' combined attorney fees, or $4,553.60 of Father's attorney fees.

Discussion and Decision

[12] When reviewing family law matters, we grant substantial deference to trial court decisions. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). As our Indiana Supreme Court noted, appellate courts are "in a poor position to look at a cold transcript" and determine that a trial judge who directly observed witnesses "did not properly understand the significance of the evidence."

[13] When, as here, the trial court enters findings and conclusions sua sponte, we apply a two-tiered review: first analyzing whether evidence supports the findings, then whether findings support the conclusions on issues covered by those findings. *McDaniel v. McDaniel*, 150 N.E.3d 282, 289 (Ind. Ct. App. 2020). For issues not addressed by the findings, we apply the general judgment standard, affirming if the judgment is sustainable "on any legal theory consistent with the evidence." *Id*. A judgment is clearly erroneous when our review of the evidence most favorable to the judgment leaves us "firmly convinced that a mistake has been made." *Id*.

1. Modification of Physical Custody

[14] Mother first argues the dissolution court abused its discretion when it modified physical custody of Children. To modify custody, a trial court must find both "a substantial change" in circumstances and that "modification is in the best interests of the child." Ind. Code § 31-17-2-21(a). The circumstances the trial

court was to consider herein included the child's age and sex, the parents' wishes, the child's wishes, the relationships amongst the family members, the child's adjustment to the circumstances, the health of those involved, including mental health, and any domestic or family violence. Ind. Code § 31-17-2-8. Mother argues the dissolution court abused its discretion by basing its decision on "an anomaly." (Mother's Br. at 16.) The evidence contradicts her characterization.

[15] Several substantial changes in circumstances support the dissolution court's decision. First, Children have experienced ongoing trauma from Mother's disciplinary practices. Second, they have been diagnosed with adjustment disorder requiring therapy. Third, their relationship with Mother has significantly deteriorated, with all three expressing they did not wish to live with or even speak to her. Fourth, Mother has demonstrated an unwillingness to acknowledge her harmful behavior or modify her parenting approach, telling DCS she "would continue disciplining [Children] the way she had previously" despite being warned her methods bordered on abuse. (Supp. Tr. at 9.) Fifth, a DCS investigation substantiated neglect allegations so serious that Brabow testified DCS "would seek detention" if Children returned to Mother's care. (*Id*. at 12.)

[16] The record demonstrates these changes through evidence of Mother's ongoing disciplinary practices including "wall sits," spanking, and soap in Children's mouths. When A.S.'s therapist asked about Mother blaming him for the custody dispute, A.S. reported Mother had told him: "If you had just tooken

(sic) the whooping, we wouldn't be in this situation." (Tr. Vol. II at 14.) Mother refused to review the disciplinary videos with her therapist despite the court's order, and she dismissed her September 2022 discipline as merely "a little excessive." (*Id*. at 131.)

[17] These ongoing issues, Children's continuing trauma, and their therapists' recommendations constitute substantial evidence supporting both a change in circumstances and that modification was in Children's best interests. Mother's arguments are an invitation to reweigh evidence and make credibility determinations, which we will not do. *See Montgomery*, 59 N.E.3d at 50 (appellate court cannot reweigh evidence or judge the credibility of witnesses). We conclude the dissolution court did not abuse its discretion when it modified physical custody of Children.[2]

2. Restriction of Parenting Time

[18] Second, Mother argues the dissolution court abused its discretion when it restricted her parenting time with Children. Indiana Code section 31-17-4-2 states that parenting time shall not be restricted "unless the court finds that the parenting time might endanger the child's physical health or significantly

[2] Mother also challenges the dissolution court's modification of child support obligations. However, Father assumed custody of Children immediately following the September 2022 incident and filed his motion for modification of child custody, parenting time, and child support on September 23, 2022. Under well-established Indiana law, the dissolution court was fully within its authority to order mother to pay child support as of the date Father filed his petition. *See*, *Becker v. Becker*, 902 N.E.2d 818, 820 (Ind. 2009) ("A trial court has discretion to make a modification of child support relate back to the date the petition to modify is filed, or any date thereafter.").

impair the child's emotional development." This statute is written in the disjunctive, requiring a finding of either physical endangerment or emotional impairment, not necessarily both. *See Roper v. Roper*, 223 N.E.3d 732, 737 (Ind. Ct. App. 2023) (restriction of parenting time must "be justified by a finding of endangerment or impairment").

[19] Mother argues the dissolution court abused its discretion when it restricted her parenting time "without finding that she endangered Children's physical health." (Mother's Br. at 21.) However, the court made several findings that satisfy the statutory alternative of emotional impairment. It found Mother "has caused trauma" to Children, that A.S. "has suffered emotional and physical abuse by [Mother]," and that "[Children] need additional therapy before any therapeutic sessions can begin with [Mother]." (App. Vol. II at 79.)

[20] These findings, supported by therapist testimony about Children's trauma, adjustment disorder diagnoses, and reluctance to see Mother, adequately establish that unrestricted parenting time would significantly impair Children's emotional development. The therapist for C.S. and D.S. specifically testified they lacked "enough trust to even venture into" therapy with Mother. (Tr. Vol. II at 27-28.) The dissolution court's findings sufficiently demonstrate parenting time would impair Children's emotional development. *See J.M. v. N.M.*, 844 N.E.2d 590, 600 (Ind. Ct. App. 2006) (express finding unnecessary when evidence supports conclusion).

3. Attorney Fees

[21] Finally, Mother challenges the dissolution court's order that she pay part of Father's attorney fees. When awarding attorney fees in family law cases, trial courts have broad discretion. *R.L. Turner Corp. v. Wressell*, 44 N.E.3d 26, 38 (Ind. Ct. App. 2015). We reverse only when an abuse of discretion is "apparent on the face of the record." *Id*.

[22] In its order, the dissolution court specifically addressed the attorney fee issue:

> Father has requested his attorney fees be paid and Mother has requested that she be reimbursed for defending this action. The Court finds that it is reasonable to order the total fees be divided pursuant to their percentages of income. Mother has incurred fees of $4000 and Father has incurred fees of $9365. The Court finds that both attorney's [sic] bills are reasonable. The total fees are $13,365 and Mother shall pay 64% of the total or $8553.60. She has paid her attorney $4,000 and therefore owes [Father's attorney] the sum of $4553.60[.]

(App. Vol. II at 81.)

[23] The dissolution court considered both parties' financial circumstances, including Mother's weekly income of $961 versus Father's $540, and determined that allocation based on income percentages was fair. The court evaluated the reasonableness of both attorneys' bills and recognized Mother had already paid her own attorney. This proportional approach based on the parties' respective incomes is well-established in family law and was well within the court's discretion. *See Montgomery v. Montgomery*, 59 N.E.3d 343, 354 (Ind.

Ct. App. 2016) (considering parties' respective resources, economic condition, and ability to work as appropriate factors).

Conclusion

[24] The dissolution court did not abuse its discretion when it modified child custody because there was a substantial change in circumstances and modification was in Children's best interests. Additionally, the dissolution court made sufficient findings supported by the evidence to support its decision to restrict Mother's parenting time based on her endangerment of Children. Finally, Mother has not demonstrated the dissolution court abused its discretion when it ordered Mother to pay a portion of Father's attorney fees. Accordingly, we affirm.

[25] Affirmed.

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

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