

IN THE INDIANA COURT OF APPEALS

Case No. [REDACTED]

[REDACTED], ) Appeal from [REDACTED]  
Appellant, )  
v. ) Trial Ct Case No. [REDACTED]  
)  
[REDACTED], ) Hon. [REDACTED]  
Appellee. )

**APPELLANT’S MOTION FOR ORAL ARGUMENT**

Appellant, [REDACTED], by Counsel, Bryan Ciyou and Alexander Moseley, pursuant to Indiana Rule of Appellate Procedure 52(A), respectfully moves this Court to hear oral argument in this appeal, and in support thereof, would show the Court as follows:

1. This is an appeal from a trial court’s special findings made pursuant to Trial Rule 52 modifying physical custody of a minor child following nine (9) days of hearings.
2. The question on appeal turns on whether the trial court’s modification of physical custody was clearly erroneous. Specifically, the question on appeal examines: the appropriate definition of the clearly erroneous standard of review to apply to the special findings made pursuant to Trial Rule 52; and the sufficiency of special findings made pursuant to Trial Rule 52 in a child custody modification proceeding.
3. Appellant and Appellee submitted substantial appellate briefs. Appellant’s Br. p. [REDACTED] Appellee’s Br. p. [REDACTED] Appellant’s Reply Br. p. [REDACTED] The Parties disagree on at least two (2) fundamental areas of child custody modification and requirements of Trial Rule 52. First, the Parties disagree as to appropriate definition of the clearly erroneous standard of review to be applied in this matter. *Compare* Appellant’s Reply Br. p. [REDACTED] (“findings are clearly erroneous if they are not supported by substantial evidence of

- probative value.”), *with* Appellee’s Br. p. ■ (“[f]indings are clearly erroneous only when the record contains no factors to support them either directly or by inference.”).
4. Moreover, the Parties disagree as to the sufficiency of special findings made pursuant to Trial Rule 52 in a child custody modification proceeding. *Compare* Appellant’s Br. p. ■ (trial court is required to make specific findings detailing which of the relevant statutory factors had a substantial change in circumstances in order to support modification of custody), Appellant’s Reply Br. p. ■ (same), *with* Appellee’s Br. p. ■ (there is no mandate in Trial Rule 52 requiring a trial court to state how or why it found and concluded as it did).
  5. The issue on appeal also highlights one of the greatest obligations our legal system has, that being, the promotion of the welfare and best interests of children. Specifically, this current matter illustrates what may be a growing trend in custody modification proceedings, one that is in contradiction the “best interests of the child” standard. That is, custody modification proceedings appear to have become more focused on the contentions of the individual parties and their feelings, rather than the child’s best interests. The nine (9) days of hearing in this matter encapsulate this proposition. Tr. Vol. I, pp. \_\_\_\_; Tr. Vol. II, pp. \_\_\_\_; Tr. Vol. III, pp. \_\_\_\_; Tr. Vol. IV, pp. \_\_\_\_.
  6. Appellant’s counsel believes oral argument will greatly assist this Court to resolve the difficult legal questions presented in this appeal.

**WHEREFORE**, Appellant, ■, by Counsel, respectfully requests that this Court grant this motion and set this appeal for oral argument.

Respectfully submitted,

/s/ Bryan L. Ciyou

Bryan L. Ciyou

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/s/ Alexander N. Moseley

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**ATTORNEYS FOR APPELLANT**

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing was served upon the following this

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*/s/ Alexander N. Moseley* \_\_\_\_\_  
Alexander N. Moseley