MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Zane Dickson,
Appellant-Respondent,

v.

Sarah Ford,
Appellee-Petitioner.

June 9, 2021

Court of Appeals Case No. 20A-DC-1906

Appeal from the Marion Superior Court

The Honorable Christopher Haile, Magistrate

Trial Court Cause No. 49D06-1910-DC-41892

Bradford, Chief Judge.

Case Summary

[1] Zane Dickson ("Father") and Sarah Ford ("Mother") married in 2016 and had three children ("the Children") together. The couple separated in mid-2019, and Mother petitioned for dissolution of their marriage in October of that year. Over the following months, Father paid a disputed amount to Mother for support of the Children. In September of 2020, the trial court held a final hearing on Mother's dissolution petition, after which it ordered Father to pay $398.00 per week in child support and an additional $10.00 per week to pay down an arrearage. The trial court also awarded Mother sole custody of the Children and ordered visitation for Father. Father contends that the trial court abused its discretion in setting his child-support obligation and arrearage payment and in awarding Mother sole custody of the Children. Because we agree that the trial court abused its discretion in setting Father's child-support obligation and arrearage payment but conclude that it did not abuse its discretion in awarding custody to Mother, we affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[2] Father and Mother were married on or about June 1, 2016. There were three children born of the marriage: E.D., three years old at the time of the hearing; L.D., two years old at the time of the hearing; and N.D., one year old at the time of the hearing. The parties separated in around June of 2019, and Mother petitioned for dissolution of their marriage on October 7, 2019. Father provided some financial support for the Children in the months that followed.

[3] The final hearing was held on September 14, 2020. While Mother testified that she had been the primary custodian of the Children since separation, Father claimed that he had acted as primary custodian of the Children in August, September, October, November, and December of 2019, as well as January and February of 2020. Following February of 2020, however, Father had visited with the Children on three occasions. Mother did not offer any exhibits at the final hearing, but she testified that Father had provided approximately $2851.00 in child support during the pendency of the matter. For his part, Father testified that he had provided Mother with approximately $5190.00 in child support during the pendency of the matter and offered Respondent's Exhibit 2 as support for this claim. Mother submitted two child-support calculations, neither of which was admitted into evidence.

[4] The trial court entered its dissolution decree on September 17, 2020. The trial court's decree, in relevant part, provides that "[i]t is in the best interests of the [C]hildren that [Mother] shall have sole custody of them" and ordered that Father pay $398.00 dollars per week to Mother in child support and an additional $10.00 dollars per week against his support arrearage. Appellant's App. Vol. II p. 8.

Discussion and Decision

[5] Where, as happened here, the trial court *sua sponte* enters specific findings of fact and conclusions, we review its findings and conclusions to determine whether the evidence supports the findings, and whether the findings support the judgment. *Fowler v. Perry*, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). We

will set aside the trial court's findings and conclusions only if they are clearly erroneous. *Id*. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake was made. *Id*. We neither reweigh the evidence nor assess the witnesses' credibility, and consider only the evidence most favorable to the judgment. *Id*. Further, "findings made *sua sponte* control only … the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence." *Id*.

I. Child Support

[6] Father contends that the trial court clearly erred in ordering him to pay $398.00 per week in child support plus an additional $10.00 per week to satisfy his arrearage.

> On review, "[a] trial court's calculation of child support is presumptively valid." *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008) (citing *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 949 (Ind. Ct. App. 2006)). "[R]eversal of a trial court's child support order deviating from the appropriate guideline amount is merited only where the trial court's determination is clearly against the logic and effect of the facts and circumstances before the trial court." *Kinsey v. Kinsey*, 640 N.E.2d 42, 43 (Ind. 1994) (citing *Humphrey v. Woods*, 583 N.E.2d 133, 134 (Ind. 1991)). Upon the review of a modification order, "only evidence and reasonable inferences favorable to the judgment are considered." *Kinsey*, 640 N.E.2d at 44 (string citation omitted). The order will only be set aside if clearly erroneous. *Id.*

Bogner v. Bogner, 29 N.E.3d 733, 738 (Ind. 2015).

A. Child Support

[7] Father first argues that the trial court abused its discretion in ordering child support because Mother did not properly submit child-support worksheets and the trial court made no findings supporting its order. "As a general matter, child support awards comporting with the Indiana Child Support Guidelines ["the Guidelines"] bear a rebuttable presumption of correctness." *Quinn v. Threlkel*, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006) (citing *In re Paternity of C.R.R.*, 752 N.E.2d 58, 61 (Ind. Ct. App. 2001)). "If the trial court finds that the Guidelines are unjust or inappropriate in a particular case, the court may enter a support award that is deemed appropriate." *Id.* "A deviation must be supported by proper written findings justifying the deviation." *Id.*; *see also Cobb v. Cobb*, 588 N.E.2d 571, 574 (Ind. Ct. App. 1992) (quoting Ind. Child Support Rule 3) ("However, when the trial court deviates from the presumptive amount, it must 'enter a written finding articulating the factual circumstances supporting that conclusion.'").

[8] Here, there is simply no way to review the trial court's support order for compliance with the Guidelines and other law. Because neither of the child-support worksheets prepared by Mother was offered into or admitted as evidence, we cannot tell if the support order comports with the Guidelines or deviates from them, much less whether any deviation is justified. Under the circumstances of this case, we conclude that the trial court's support order is clearly erroneous. *See Pryor v. Bostwick*, 818 N.E.2d 6, 12 (Ind. Ct. App. 2004) (reversing support order where neither party submitted a child support

worksheet to the trial court and the trial court did not enter findings or complete its own child support worksheet to justify its order).

B. Arrearage

[9] As mentioned, the trial court ordered Father to pay an additional $10.00 per week against his arrearage. The record, however, contains no evidence of a provisional order providing that Father pay child support during the pendency of the case, much less an amount supported by a child-support worksheet, nor does the dissolution order contain a retroactive order for child support. Moreover, the trial court, despite hearing conflicting evidence regarding how much Father had paid to Mother prior to the final hearing, made no finding regarding the amount paid or the remaining balance of the arrearage. Even if we assume that there is an arrearage, without a finding regarding the balance there is no way for Father to know when that arrearage will be retired. The trial court abused its discretion in failing to make specific findings regarding the existence or amount of any arrearage Father may be required to retire.

II. Custody

[10] Father also contends that the trial court abused its discretion in awarding sole custody of the Children to Mother.

> A child custody determination falls within the sound discretion of the trial court, and its determination will not be disturbed on appeal absent a showing of abuse of discretion. *In Re Guardianship of R.B.*, 619 N.E.2d 952, 955 (Ind. Ct. App. 1993). We are reluctant to reverse a trial court's determination concerning child custody unless the determination is clearly erroneous and contrary to the logic and effect of the evidence. *Id.* We do not reweigh

> evidence nor reassess witness credibility, and we consider only the evidence which supports the trial court's decision. *Wallin v. Wallin*, 668 N.E.2d 259, 261 (Ind. Ct. App. 1996).

Spencer v. Spencer, 684 N.E.2d 500, 501 (Ind. Ct. App. 1997).

[11] Indiana Code section 31-17-2-8 provides, in part, as follows:

> The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:
>
> (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.
> (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

"In the initial custody determination, both parents are presumed equally entitled to custody[.]" *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1256 (Ind. Ct. App. 2010). "Joint legal custody" […] means that the persons awarded joint

custody will share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training[,]" Ind. Code § 31-9-2-67, while "'[p]hysical custody'" means the physical care and supervision of a child." Ind. Code § 31-21-2-16.

A. Legal Custody

[12] Father contends that the trial court abused its discretion in failing to make a determination regarding legal custody, while Mother argues that the trial court awarded her sole legal and physical custody of the Children. We agree with Father that the trial court's order seems to address physical custody only. While the trial court's order makes no distinction between physical and legal custody, it addresses visitation (which affects physical custody) but not decision-making (which does not). We infer from this that the trial court only intended to grant Mother sole physical custody.

[13] This particular omission, however, does not require our intervention. As a general rule, in "a custody dispute between two parents[], each parent has an equal right to custody and there is no presumption favoring either parent." *Teegarden v. Teegarden*, 642 N.E.2d 1007, 1009 (Ind. Ct. App. 1994). In the absence of any specific findings or conclusions addressing legal custody, we shall presume that the trial court intended to award joint legal custody to Mother and Father.

B. Physical Custody

[14] Father contends that the trial court abused its discretion in awarding Mother sole physical custody of Children with visitation for Father. Keeping in mind

our "preference for granting latitude and deference to our trial judges in family law matters," *Werner v. Werner*, 946 N.E.2d 1233,1244 (Ind. Ct. App. 2011), *trans. denied*; our recognition that "it is the trial court that observes the parties' conduct and demeanor and hears their testimony firsthand[,]" *In re Paternity of C.S.*, 964 N.E.2d 879, 883 (Ind. Ct. App. 2012), *trans. denied*; and that "[w]e will not reweigh the evidence or judge the credibility of the witnesses," *id.*, we reject Father's argument.

[15] The record indicates that joint physical custody would present logistical problems (for which Father seemingly had no practical solutions) and that there are legitimate concerns with Father's situation and parenting. Father testified that the parties live one hour apart. The Children in this matter are very young, with the oldest being only three years old at the time of the final hearing. Father was asked if he felt that it was in the Children's best interests to have shared custody with an hour's drive between the two residences, and his response was simply, "I will make all transportation myself." Tr. Vol. II p. 26. Father did not mention the travel time and the possible strain on the Children that could result from the frequent trips involved in a shared schedule. When asked, Father offered no plan or schedule for the joint physical custody of the Children. Father also could not answer in any detail how he would arrange pickups and drop offs if he were to become employed, merely responding, "At the times I need to pick them up, I'll be there to pick them up." Tr. Vol. II p. 26. Finally, there is evidence that joint physical custody had already been tried and was not a success. Mother testified that they had "tried to do a 50/50

custody arrangement in the very beginning and it was not feasible and our children are far too young." Tr. Vol. II p .5

[16] The trial court also heard evidence that Father has a somewhat unstable lifestyle and that he had been, at times, uncooperative, difficult, and/or unreliable. Mother testified that she was concerned about Father's drinking, whether he could properly care for the Children, and two alcohol-related arrests of which she had been made aware. Father himself testified that he was not employed, lived with a roommate who paid for him to take a vacation, and lives in a house to which he does not contribute financially. Mother also testified that there had been occasions when Father had not returned the Children on time. Mother testified as to an altercation during which Father "ripped the door open [and] removed [her] daughter from the car[.]" Tr. Vol. II p. 5. Mother testified that she had received a text message on another occasion from Father stating that he would return their son to Mother's care, but not their daughter. Finally, when Mother was asked, "Are the two of you able to talk and reach agreement pretty easily or is there typically an argument?", her response was "There is most definitely an argument." Tr. Vol. II p. 7. Father points to evidence that the charges associated with his two arrests had been dropped and characterizes Mother's allegation that he drinks during parenting time as baseless. This, however, is nothing more than an invitation to reweigh the evidence, which we will not do. *See In re Paternity of C.S.*, 964 N.E.2d at 883.

Conclusion

[17] We conclude that the trial court abused its discretion in setting Father's child-support obligation and the weekly payment against his arrearage. We remand for an additional hearing on those matters. We also conclude, however, that the trial court did not abuse its discretion in ordering that Mother receive sole physical custody of the Children.

[18] We affirm in part, reverse in part, and remand for further proceedings consistent with this memorandum decision.

Vaidik, J., and Brown, J., concur.