

STATEMENT OF THE CASE

Appellant-Respondent, Jill Lambert Fox (Mother), appeals the trial court's Findings of Fact, Conclusions of Law and Judgment, finding her in contempt and extending parenting time in favor of Appellee-Petitioner, Jeffrey Lambert (Father).

We affirm.

ISSUES

Mother presents two issues on appeal, which we restate as follows:

- (1) Whether the trial court appropriately increased Father's parenting time when there was some evidence that overnight visits might endanger the children's physical health or emotional development; and
- (2) Whether the trial court properly held Mother in contempt.

FACTS AND PROCEDURAL HISTORY

Father and Mother were married in October 1995. Two children were born as a result of the marriage: C.L., born on November 21, 1997, and D.L., born on May 14, 2002. In 2002, two of Mother's nieces accused Father of molesting them. The couple subsequently separated and filed for divorce. On September 20, 2004, the trial court issued its Dissolution Decree and Judgment, granting Mother sole legal and physical custody of the two minor children. At the time the trial court issued the Dissolution Decree, Father had been convicted and was incarcerated on two counts of improper and inappropriate physical contact with Mother's minor nieces.

Upon completion of his sentence in May of 2008, Father received supervised visitation with his children for five hours every other weekend; this supervised visitation was later extended to four hours during the middle of the week and to seven hours each on Saturday and Sunday on alternating weekends. On June 17, 2008, the trial court appointed Dr. John Ehrmann (Dr. Ehrmann) as the parenting coordinator, to facilitate communication between Father and Mother and to recommend an appropriate parenting schedule.

On March 4, 2010, Dr. Ehrmann filed a recommendation with the trial court to expand Father's parenting time to supervised overnight visits from 10 a.m. Saturday until 4 p.m. Sunday on alternate weekends. Both Father and Mother filed several motions in response to Dr. Ehrmann's recommendation to expand the visitation schedule. On May 6, 2010, Mother filed her response to recommendations/letter of parenting coordinator, objecting to Dr. Ehrmann's proposed expansion in supervised visitation time and requesting the removal of Dr. Ehrmann as the parties' parenting time coordinator. The following day, on May 7, 2010, Father filed a verified petition for modification of parenting time and request for joint legal custody, requesting the trial court to implement Dr. Ehrmann's proposed change in parenting time. In addition, he asked the trial court to hold Mother in contempt for failing to cooperate with Dr. Ehrmann and to notify him of the children's doctor's appointment.

On July 21, 2010, the trial court conducted a hearing on the parties' motions. On September 10, 2010, the trial court issued its Findings of Fact, Conclusions of Law and Judgment, adopting Dr. Ehrmann's recommendation regarding Father's parenting time and finding Mother in contempt. The Order found, in pertinent part, as follows:

8. Dr. Ehrmann does not believe there is any evidence to suggest that there is a threat of abuse or harm to [the children] during Father's parenting time. He does not believe Father is a threat.

9. Dr. Ehrmann does not believe that any further psychological testing on Father is necessary.

10. Father completed a risk assessment prior to the hearing in the summer of 2009.

11. [T]he results indicated that there was very low risk that Father would reoffend. Dr. Ehrmann does not believe that there is any need for further assessment.

12. Dr. Ehrmann receives excellent reports from the supervisors. Each supervisor reports that the parenting time is positive and that the boys enjoy their time with Father. Dr. Ehrmann reports that supervisors have emailed him assuring him that things are going well and that nothing inappropriate has ever occurred during Father's parenting time.

* * *

19. Dr. Ehrmann does not think it is necessary for the parenting time supervisor to stay awake the entire night because he does not think that Father is a risk to his children. If overnights do occur, Dr. Ehrmann suggested that the supervisor set an alarm so that the boys can check their blood sugars as they are both diabetic.

20. Dr. Ehrmann is extremely concerned about the parties' ability to communicate without a parenting coordinator. Dr. Ehrmann believes that the level of cooperation on Mother's behalf increases as a hearing date approaches.

21. Dr. Ehrmann has recently experienced greater levels of cooperation from the parties.

22. On March 10, 2010, this [c]ourt issued an order which allowed Dr. Ehrmann to meet with the children so long as he provided prior notice to the parties.

23. Even after the [c]ourt issued the March 10th order, Mother refused to bring the children to Dr. Ehrmann stating in an April 11, 2010 email "*I have*

sole legal custody and you have no court order granting you authority to interview without my consent and I am not giving you that consent.”

24. On May 11, 2010, two months after the court issued an order, Dr. Ehrmann had an opportunity to meet with [the children].

25. Dr. Ehrmann reported the boys were not anxious, sullen nor were they depressed. The boys did not report any inappropriate behavior on Father’s part to Dr. Ehrmann, nor have they made any allegations of inappropriate behavior to any supervisor or to their counselor.

26. After meeting with the boys, Dr. Ehrmann believes that additional time with Father is in the boys’ best interests.

27. [D.L.] was excited with the possibility of overnights at Father’s house. [C.L.] was uncomfortable, but reported to Dr. Ehrmann that he did not know why.

28. Dr. Ehrmann suggested to [C.L.] that he might be uncomfortable simply because this had not occurred in a long time. [C.L.] agreed that that might be it.

29. Dr. Ehrmann suspects that [C.L.] has his finger on the ‘emotional pulse’ of Mother and knows that she does not feel comfortable with expanding the current parenting time.

* * *

33. Professional supervisor, Steve Van Cleave, a Marion County Probation Officer, continues to supervise Father’s parenting time occasionally when family members and/or friends are not available to do the same. Van Cleave has no concerns about Father during his parenting time with the children. Van Cleave testified that Father has always acted appropriately with the boys. He has supervised approximately thirty (30) visits without incident.

34. Van Cleave further testified that Father knows what he should and should not do when he is with the boys. According to Van Cleave, the boys seem to really enjoy their time with Father, the three of them like to joke around together, and neither boy has expressed concerns about Father.

35. Van Cleave is willing to supervise Father’s parenting time overnight. During overnight parenting time, Van Cleave would sleep in a bed at the top of

the stairs, between Father's room (downstairs) and where the children would be sleeping (upstairs).

* * *

37. Paul Moran (hereinafter Moran), an IT consultant, has supervised approximately ten visits since December of 2009. Moran is sure to always have his eyes on Father during the parenting time.

38. Moran attended the diabetic training class with Father in the [s]pring of 2008.

39. Moran testified that Father always behaves appropriately during his parenting time with the children. The children do not seem fearful of Father, instead they seem to really enjoy their time with Father, according to Moran.

* * *

44. Suzanne Moffet (hereinafter Moffet) has supervised Father's parenting time twice in the past six months. She has, on other occasions, spent time with Father and the boys while not acting as the official supervisor.

* * *

46. The boys have a blast when they are with Father, according to Moffet. Moffet believes their relationship has grown immensely over the past couple of years as Father's time with the children increases. Father simply adores the children.

* * *

48. James Rosebrough (hereinafter Rosebrough) is a realtor. Rosebrough has supervised 15-20 visits over the past nine months. He is responsible for supervising 8 hours, every week.

* * *

52. The children appear to be comfortable when they begin their parenting time and upon their return to Mother at the end of their parenting time.

53. Rosebrough, Moran, Moffett and Van Cleave have witnessed the boys with Father on multiple occasions, over several months, Van Cleave – several

years. Not once has a visit been terminated. Not once have any of the supervisors been forced to remove the children from Father due to inappropriate behavior.

54. The supervisors each described the activities the children are involved in during Father's parenting time. According to the supervisors, the children often watch television, play video games, play on the computer and attend the movies while they are with Father. In addition, Father and the children play outside – games of soccer and Frisbee. They are also currently building a tree house. Father has also taken the children to the lake and to the Children's Museum.

* * *

64. Gloria Hood (hereinafter Hood) is the children's therapist. She has worked for the Indianapolis Institute for Families for twenty-one years, as a licensed [] social worker and a licensed Marriage and Family Therapist.

65. Hood began counseling [the children] in February of 2010. Mother did not inform Father that the children were seeing a therapist until the middle of April.

66. Neither child has expressed to Hood that Father is inappropriate during his parenting time.

67. Both have indicated to Hood that they enjoy their time with Father and that they have fun while they are with him.

68. [D.L.] does not have any concerns about staying the night at Father's home.

69. [C.L.], on the other hand, had told Hood he would not be comfortable with staying the night at Father's. [C.L.] told Hood that he is aware of his Father's convictions and that he would be nervous to stay the night at his Father's because he would have to close his eyes.

70. [C.L.] is not nervous about his day visits with Father.

71. Hood believes that [C.L.'s] opinions about overnight parenting time are his own and not his Mother's. However, she believes that [C.L.] is aware that Mother is anxious about extending Father's parenting time.

72. Hood admitted that it is natural for children in divorce situations to feel nervous when times are expanded or custody arrangements are changed.

73. Hood also recognized that the child does not have the ultimate say in the amount of time he spends with a parent.

74. Father requested a session with [C.L.] and Hood to discuss overnights.

75. Hood needed Mother's permission as she has legal custody of the boys. Mother did not approve the meeting.

76. Father has yet to meet with [C.L.] and Hood. Hood did not believe that [C.L.] was ready for the meeting. After questions from the [c]ourt, Hood was agreeable to meeting with the two.

* * *

79. [In] Hood's opinion, even though the boys enjoy the parenting time with Father, the number of hours should not be extended. She says the boys are fine with the amount of time they have with Father.

80. Hood has no current cases the same as or similar to the case at hand. Typically in her practice, when dealing with persons convicted of child molest, a child of the marriage or a related person is the victim, according to Hood.

81. In this case, the victims of the two cases Father was convicted of molesting were nieces of Mother's and unrelated to Father. The children of the marriage were not the victims.

82. Hood believes that a safety plan needs to be developed if overnights get approved.

83. Dr. Ehrmann testified that [C.L.] seems uncomfortable with the idea of staying the night at his Father's, but that it is normal for children to feel that way in this type of contentious situation.

* * *

87. Mother is willing to allow Father additional parenting time, so long as it is supervised and there are no overnights. Mother has already allowed Father additional parenting time on multiple occasions.

* * *

89. Mother is concerned that Father will not be able to properly check the boys' blood sugar in the middle of the night. Mother is concerned for the boys' safety if Father parents overnights.

90. Mother's account with Dr. Ehrmann has been suspended due to failure to pay the parenting coordinator fees.

* * *

92. Mother did not agree with Dr. Ehrmann's billing methods and so she refused to pay the bill.

* * *

95. Mother failed to inform Father 24 hours in advance of the children's doctor's appointment scheduled on April 9, 2010. Mother provided a date, but not a time until the night before the appointment. Father relied on Mother to inform him of the appointment time and was unable to attend because of the late notice.

96. Currently, the parties share equally the costs associated with the parenting time coordinator. Both Father and Dr. Ehrmann are requesting that Dr. Ehrmann be able to charge one parent a higher percentage of the fee if he determines that the parent is driving the services.

97. Dr. Ehrmann has been forced to suspend Mother's services as she refused to pay. Father paid the entire cost of the boys' meeting with Dr. Ehrmann as a result.

(Appellant's App. pp. 14-23).

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Parenting Time

Mother contends that the trial court manifestly abused its discretion by adopting Dr. Ehrmann's parenting time recommendations in favor of Father. Specifically, Mother asserts that the trial court's finding that there is "no evidence to suggest that an increase in parenting time will endanger the children's physical health or significantly impair their emotional development" is incorrect as Hood, the children's therapist, explicitly testified otherwise. As such, Mother claims that the trial court did not consider all the evidence of emotional impairment that properly came before it. Mother requests us to vacate the trial court's order and remand to issue new findings appropriately considering the evidence before the court.

In all parenting time controversies, courts are required to give foremost consideration to the best interests of the child. *A.G.R. ex rel. Conflenti v. Huff*, 815 N.E.2d 120, 125 (Ind. Ct. App. 2004), *trans. denied*. When reviewing the trial court's resolution of a parenting time issue, we reverse only when the trial court manifestly abused its discretion. *Id.* We will not reweigh evidence or reassess the credibility of witnesses. *Id.* Rather, we view the record in the light most favorable to the trial court's decision to determine whether the evidence and reasonable inferences therefrom support the trial court's decision. *See id.* If the record reveals a rational basis for supporting the trial court's determination, no abuse of discretion occurred. *Id.* We generally give "considerable deference to the findings of the trial court in family law matters" as a reflection that the trial court is in the best position to judge the facts, to get a sense of the parents and their relationship with the children—the kind of qualities

that appellate courts would be in a difficult position to assess. *Shelton v. Shelton*, 835 N.E.2d 513, 516 (Ind. Ct. App. 2005).

Here, while deciding whether the trial court abused its discretion, we must also determine, according to the standard of review when a party requests findings under Trial Rule 52, whether the trial court's judgment is supported by the conclusions and whether those conclusions are supported by the findings. *In re Paternity of V.A.M.C.*, 768 N.E.2d 990, 100-01 (Ind. Ct. App. 2002), *reh'g granted*, 773 N.E.2d 359 (Ind. Ct. App. 2002). We may affirm the trial court's judgment on any theory supported by the findings. *Id.*

Ind. Code § 31-14-14-1 provides that a non-custodial parent is entitled to reasonable parenting time unless the court finds, after a hearing, that parenting time might endanger the child's physical health and well-being or significantly impair the child's emotional development. Even though I.C. § 31-14-14-1 uses the term "might," this court interprets the statute to mean that a court may not restrict visitation unless that visitation *would* endanger the child's physical health or well-being or significantly impair the child's emotional development. *Farrell v. Littell*, 790 N.E.2d 612, 614 (Ind. Ct. App. 2003).

It is undeniable that the trial court in its Order focused on the testimony of Dr. Ehrmann which recognized the very low risk that Father would reoffend and which provided an endorsement to expand Father's supervised visitation; the trial court explained Dr. Ehrmann's investigation in detail. In addition, the trial court received testimony from the supervisors about their experiences during the children's visits with Father. Despite Mother's allegation, the trial court incorporated Hood's testimony into its Findings. The trial

court acknowledged her therapy sessions with the boys and her concerns that if supervised overnight visits are granted, “a safety plan needs to be developed.” (Appellant’s App. p. 21).

Although the trial court did not explicitly mention that it placed less weight on Hood’s testimony than on the testimony of Dr. Ehrmann’s and the visitation supervisors, it derives from the trial court’s conclusion that the latter testimony was found to be more decisive. In its detailed Order, the trial court appropriately balanced all the facts and took all evidence into account to arrive at its conclusion that supervised overnight visits would not endanger the children’s physical health or significantly impair their emotional development. *See* I.C. § 31-14-14-1. Therefore, we find that the trial court did not manifestly abuse its discretion when it granted Father an expansion of his supervised visitation time.

II. *Contempt*

Next, Mother asserts that the trial court abused its discretion when it found her in contempt. A determination of whether a party is in contempt of court is a matter within the trial court’s sound discretion and we reverse only where there has been an abuse of that discretion. *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1259 (Ind. Ct. App. 2010). Our review is limited to considering the evidence and reasonable inferences drawn therefrom that support the trial court’s judgment. *Id.*

Here, the trial court found Mother in contempt because she failed to pay Dr. Ehrmann in a timely manner. Additionally, the trial court found her in contempt for failing to notify Father of the children’s doctor’s appointment in a timely manner. Contempt of court “involves disobedience of a court which undermines the court’s authority, justice and

dignity.” *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 223 (Ind. Ct. App. 2006). To hold a party in contempt for violation of a court order, the trial court must find that the party acted with willful disobedience. *Julie C.*, 924 N.E.2d at 1259.

Pursuant to the trial court’s order dated July 1, 2009, “Mother shall provide Father with twenty-four (24) hours notice in advance of any doctor’s appointments or school conferences” and “[b]oth parties shall cooperate with Dr. Ehrmann in scheduling appointments and in meeting with him.” (Appellant’s App. p. 89). In its earlier order of June 17, 2008, the trial court determined that “Father and Mother are to each pay 50% of costs to Dr. Ehrmann until further order of the court.”

During her testimony, Mother admitted to not having paid Dr. Ehrmann’s bill that resulted in a temporary suspension of services. In addition, Father testified that Mother only provided him with thirteen hours notice for a doctor appointment on April 9, 2010. Although Mother had informed Father of the April 9, 2010 appointment on April 3, 2010, she failed to apprise him of the exact time. Mother admits that she only gave thirteen hour notice to

Father of the time of the appointment. Based on the evidence before us, we cannot say that the trial court abused its discretion by finding Mother in contempt.

CONCLUSION

Based on the foregoing, we conclude that (1) the trial court appropriately increased Father's parenting time to supervised overnight visits and (2) the trial court properly held Mother in contempt.

Affirmed.

DARDEN, J., and BARNES, J., concur.