

Appellant-respondent Amanda Thompson appeals the trial court's judgment awarding custody of the parties' minor daughter, P.H.S., to appellee-petitioner Samuel Strange. Specifically, Thompson argues that because Indiana Code section 16-37-2-2.1(g) provides that she is the sole legal and physical custodian of P.H.S. because she and Strange were never married to each other, the evidence failed to demonstrate that the award of custody to Strange was appropriate. Finding that the trial court properly awarded custody of P.H.S. to Strange, we affirm.

FACTS

On February 8, 2001, P.H.S. was born to Thompson and Strange who were not married. On the day of P.H.S.'s birth, Strange executed an affidavit of paternity. After P.H.S.'s birth, all three lived together in Terre Haute for approximately eighteen months. Thereafter, Strange moved to a separate apartment and eventually married someone else. During that marriage, Strange's second child was born.

Although no custody order was in place, Strange and Thompson shared custody of P.H.S.; however, P.H.S. resided with Strange and his family most of the time. Strange enrolled P.H.S. in the Terre Haute school system and was listed as the primary contact parent on the school's records. Strange and his mother, who lived nearby, assumed responsibility for getting P.H.S. to and from school. Strange and his mother were also primarily responsible for P.H.S.'s after-school supervision and care.

Darlene Horne, the daycare provider who had known P.H.S. since she was two years old, testified that Strange and other members of his family were supportive of

P.H.S. and were always “right there” if P.H.S. became ill or needed something. Appellee’s App. p. 5. Horne routinely contacted Strange if a parent was needed because Thompson was “busy a lot.” Id. at 6. Strange or other members of his family picked up P.H.S.’s progress reports and discussed her daycare progress with Horne.

On May 21, 2007, Strange filed a “Petition For Child Custody Determination.” Appellant’s App. p. 1. Strange alleged that he had provided the primary parenting responsibilities for P.H.S. Strange also maintained that Thompson had unilaterally announced that she was relocating to Tennessee because she lost her job in Terre Haute and decided to take P.H.S. with her. Strange also alleged that P.H.S. has no other family members in Tennessee. Thus, Strange requested that the trial court “make an order for the custody, support and parenting time [of P.H.S.]” and enjoin Thompson from leaving with P.H.S. Id. at 2.

During the final hearing that commenced on September 7, 2007, the evidence established that Strange maintained his own residence and was employed at a liquor store earning \$28,000 per year. P.H.S. was also insured under a health plan that Strange maintained. The evidence also showed that P.H.S. performed well in kindergarten at Davis Park Elementary School in Terre Haute during the 2006-07 school year. P.H.S.’s teacher testified that P.H.S. was very cooperative with and respectful of others. When the teacher sent work home with P.H.S., Strange’s mother signed and returned it on most occasions.

Thompson lost her job in Terre Haute and eventually found employment in Knoxville, Tennessee. As a result, P.H.S. and Thompson moved to Tennessee on August 10, 2007, where P.H.S. began attending school.

At some point, Strange discovered that Thompson maintained a “MySpace” website on which she had posted a photograph of P.H.S. and information about the two of them. Appellee’s App. p. 19. Thompson also used profanity on the website, stated that she was going to kill herself, and bragged about being “doped up.” *Id.* at 23-24, 34. Thompson had also begun a relationship with an individual who had a criminal conviction involving drugs. Dr. Kathleen Stienstra, P.H.S.’s family physician, testified that P.H.S. should remain in Indiana because she had spent most of her life with Strange and her family.

At the conclusion of the hearing, the trial court awarded custody of P.H.S. to Strange and ordered Thompson to pay child support. In relevant part, the order provided that

1. This custody determination shall be viewed as a modification of custody as the parties signed a paternity affidavit at the time of the child’s birth and, pursuant to I.C. 16-37-2-2.1, mother is statutorily declared the sole physical custodian of the child. In reality, the parties shared physical custody of the minor child with father actually spending more time with the child than did mother.
2. There has been a substantial change in those factors the court is to consider under I.C. 31-14-13-2, namely; (a) the interaction and interrelationship of the child with her father, sibling, grandparents and all other immediate members of her family and (b) the child’s adjustment to her home, school and community.
3. It is in the child’s best interest to change custody to that of her father effective no later than September 16, 2007. . . .

Appellant's App. p. 17. Thompson now appeals.

DISCUSSION AND DECISION

We initially observe that custody determinations are reviewed for an abuse of discretion “with a preference for granting latitude and deference to our trial judges in family law matters.” Green v. Green, 843 N.E.2d 23, 26 (Ind. Ct. App. 2006). We will not reweigh the evidence or judge the credibility of the witnesses. Id. Rather, we consider only the evidence most favorable to the judgment and any reasonable inferences therefrom. Id. The burden of demonstrating that an existing child custody arrangement should be modified rests with the party who seeks modification. Id. Additionally, the crucial consideration for the trial court in custody determinations is the best interest of the children, not the desires or claims of the parents. Wright v. Wright, 471 N.E.2d 1240, 1242 (Ind. Ct. App. 1984).

Turning to the circumstances here, we note that Indiana Code section 16-37-2-2.1 provides that “if a paternity affidavit is executed under this section, the child’s mother has sole legal custody unless another custody determination is made by a court in a proceeding under IC 31-14.” In light of this provision, Thompson asserts that the issue is whether or not the trial court should have granted custody to Strange when applying the factors set forth in the custody determination statute, Indiana Code section 31-14-13-2.¹

¹ This statute provides that

The court shall determine custody in accordance with the best interests of the child. In determining the child’s best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:

When Strange executed his paternity affidavit after P.H.S.'s birth, he became P.H.S.'s legal parent in accordance with Indiana Code section 16-37-2-2.1(g)(1), and Thompson became the sole legal custodian by operation of that statute. However, Indiana Code section 16-37-2-2.1(g)(2)(b) allows for the modification of custody in such circumstances. In particular, this statute provides that

- (g) A paternity affidavit executed under this section:
 - (1) establishes paternity;
 - (2) gives rise to parental rights and responsibilities of the person described in subsection (e)(2), including:
 - (A) the right of the child's mother or the Title IV-D agency to obtain a child support order against the person, which may include an order requiring the provision of health insurance coverage; and
 - (B) reasonable parenting time rights unless another determination is made by a court in a proceeding under IC 31-14-14; and
 - (3) may be filed with a court by the department of child services.

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- (1) The age and sex of the child.
 - (2) The wishes of the child's 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 parents;
 - (B) the child's siblings; and
 - (C) any other person who may significantly affect the child's best interest.
 - (5) The child's adjustment to home, school, and 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 2.5(b) of this chapter.

31-14-13-2.

(Emphasis added). Moreover, when examining the provisions of Indiana Code section 31-17-2-8, the trial court should enter a child custody order “in accordance with the best interests of the child, . . . [and] there is no presumption favoring either parent.”

Notwithstanding Thompson’s claim that the trial court erred in considering only her change of residence as the reason for awarding custody to Strange, the record reflects that the trial court indeed considered the enumerated factors set forth in Indiana Code section 31-17-2-8 in its custody order. Moreover, our Supreme Court acknowledged in Baxendale v. Raich, 878 N.E.2d 1252 (Ind. 2008), that the factors to be considered in both an initial custody determination and a modification of a custody order are essentially the same. In particular, the Baxendale court observed that:

The general provision governing custody modifications is found in section 31-17-2-21 (“Section 21”). Modifications are permitted only if the modification is in the best interests of the child and there has been “a substantial change” in one or more of the factors identified in Section 8 as considerations in the initial custody determination. These include the wishes of the child and the interrelationship of the child with parents, siblings and others who may significantly affect the child’s best interests.

Id. at 1255.

Although Thompson devotes much of her argument to whether the trial court was considering a change in custody that existed after August 10, 2007, when she moved to Tennessee with P.H.S., the only custody arrangement that existed was in accordance with Indiana Code section 16-37-2-2.1, which provides that Thompson was to have the sole custody of P.H.S. In other words, no court had considered what the custody order should be until Strange petitioned the trial court to make that determination. Therefore, the trial court was considering whether or not the statutory grant of sole custody to Thompson at

the time of birth should be modified when considering the factors enumerated in Indiana Code section 31-14-13-2. And, contrary to Thompson's claim, no statutory presumption of sole custody existed in her favor as a result of Strange's acknowledgment of paternity.

As noted above, the trial court initially found that Strange spent more parenting time with P.H.S. than Thompson did. Indeed, the evidence established that Strange undertook the majority of the parenting responsibilities for P.H.S. over the course of several years. Thompson maintained only sporadic efforts at parenting P.H.S., and she relied on Strange and his family to provide the primary parenting duties.

The trial court then considered the following factors set forth in Indiana Code section 31-14-13-2: (a) P.H.S.'s age and sex; (b) the parents' wishes; (c) the interaction and interrelationship of P.H.S. with both parents; and (d) siblings and other persons who significantly affected P.H.S.'s best interest as well as P.H.S.'s adjustment to her home, school, and community. Appellant's App. p. 17. After considering all of these factors in light of the evidence that was presented at the final hearing, the trial court determined that it was in P.H.S.'s best interests that Strange should be awarded custody.

As discussed above, the evidence demonstrated that Strange had provided the schooling, nurturing, caring and support that P.H.S. required. P.H.S. has her own room, toys, and clothes at Strange's house. Additionally, P.H.S. had a sibling with whom Strange had joint custody, and the evidence showed that their relationship would strengthen significantly if the two remained together.

Jessica Blake—Strange’s former wife—testified that P.H.S. lived with them for nearly four years. She testified that sometimes it would be weeks before P.H.S. ever spent the night at Thompson’s residence. Appellee’s App. p. 31.

The evidence further established that P.H.S. had no relatives in Tennessee and Thompson’s co-workers frequently cared for P.H.S. As discussed above, Strange testified that he became aware of Thompson’s website that contained extremely personal information about P.H.S. and Thompson’s boasts about being under the influence of drugs. Id. at 23-24, 34. Thompson also stated on the website that she might kill herself.

The evidence also showed that P.H.S. performed extremely well in the Terre Haute elementary school while living with Strange. P.H.S. was in accelerated classes, on the honor roll, and was able to read in Kindergarten. Id. at 16-17. Moreover, P.H.S. interacted positively with her stepsister and other family members while living with Strange in Terre Haute. Finally, it was Dr. Stienstra’s opinion that P.H.S. should remain with Strange in Indiana because P.H.S. had spent most of her life with Strange and his family. Id. at 33.

In sum, it is apparent that the trial court properly considered all of the factors set forth in Indiana Code section 31-14-13-2 that were necessary to make a custody determination. In other words, all of the factors that the trial court considered supported the custody award of P.H.S. to Strange. As a result, Thompson has failed to show an abuse of the trial court’s discretion.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.