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IN THE COURT OF APPEALS OF INDIANA

AUBREY ANDERSON,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-0707-CV-553
	)	
PATRICIA ANDERSON,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kim D. Mattingly, Temporary Judge
Cause No. 49D13-0405-DR-956

December 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent Aubrey Anderson ("Father") appeals parenting time and child support orders concerning L.A. and B.A., his children with Appellee-Petitioner Patricia Anderson ("Mother"). We affirm.

Issues

Father presents three issues for review:

I. Whether the trial court abused its discretion by ordering that Father have no contact with L.A. pending a psychological evaluation of Father as recommended by the Domestic Relations Counseling Bureau of the Marion County Courts ("the DRCB");

II. Whether the trial court abused its discretion by ordering that Father have only supervised parenting time with B.A. pending the recommended psychological evaluation; and

III. Whether the trial court erroneously included overtime pay in the calculation of Father's gross income for child support.

Facts and Procedural History

The parties were married on July 21, 2001. Two children were born of the marriage, B.A., born April 3, 2001, and L.A., born August 17, 2002. On May 12, 2004, Mother petitioned for dissolution of the marriage. On May 24, 2004, the trial court entered a provisional order that Mother have physical custody of the children.

In April of 2006, L.A. alleged that Father had touched her inappropriately during parenting time. On June 8, 2006, Mother filed a request for a DRCB evaluation. On June 26, 2006, the trial court approved the referral to the DRCB to address custody and parenting time matters.

Mother reported L.A.'s allegations to Child Protective Services ("CPS"), and CPS recommended that Mother take L.A. to a therapist experienced in play therapy. Wendy Curtis ("Curtis"), a therapist at Midtown Mental Health, began to see L.A. on a weekly basis. Because of L.A.'s statements during therapy, Curtis twice reported to CPS her suspicions that Father had sexually abused L.A. On September 18, 2006, the DRCB made the following summary and recommendation:

> It appears to be in [L.A.] and [B.A.]'s best interest to have no contact with their father until a complete investigation is conducted regarding allegations Mr. Anderson sexually abused [L.A.]. Mr. Anderson should complete a psychological assessment as well. Should CPS substantiate the sexual abuse allegations, Mr. Anderson should complete a sex offender's program, and [L.A.]'s counselors should recommend whether [L.A.] should have supervised parenting time with her father. It is not recommended [B.A.] have supervised parenting time with his father until the investigation is completed, and Mr. Anderson completes services should he be found guilty of the offenses. The Court should review the matter prior to Mr. Anderson being considered for unsupervised parenting time. Mr. Anderson admits he was physically abusive to Ms. Anderson and to the children during the marriage. He agrees he did not spend quality time with the family. He agrees he has spent time alone with [L.A.]. [J.B.] and [T.B.][1] described Mr. Anderson's abuse toward them and toward their mother, and [J.B.] described [L.A.]'s account of sexual abuse. [L.A.]'s behavior and statements to her mother and counselor correspond with a child who has been sexually abused. Having supervised parenting time with her father at this time would emotionally re-victimize [L.A.].

(App. 116.) The CPS investigation did not result in criminal charges being brought against Father.

On April 5, 2007, the parties appeared for a final hearing. They advised the trial court that they had divided their personal property and stipulated to Mother's custody of the children; thus, the contested issues before the court were parenting time and child support.

The trial court dissolved the parties' marriage, awarded Mother physical custody of both children, and ordered Father to pay child support of $194.39 weekly. The trial court also ordered that Father have no contact with L.A. and only supervised parenting time with B.A. "until a full CPS investigation is concluded and Father has completed a psychological evaluation as recommended by the DRCB." (App. 120.)

Father now appeals.

Discussion and Decision

I. Parenting Time with L.A.

Indiana has long recognized that the right of parents to visit their children is a sacred and precious privilege that should be enjoyed by non-custodial parents. Farmer v. Farmer, 735 N.E.2d 285, 289 (Ind. Ct. App. 2000). However, this right is subordinated to the best interests of the child. Stewart v. Stewart, 521 N.E.2d 956, 960 (Ind. Ct. App. 1988), trans. denied. Accordingly, Indiana Code Section 31-17-4-2 provides:

> The court may modify an order granting or denying parenting time rights whenever modification would serve the best interests of the child. However, the court shall not restrict a parent's parenting time rights unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.

Here, Father concedes that the trial court made the requisite finding, but contends that the evidence of record does not support the determination that he should have no contact with L.A. until further order of the court. In particular, Father emphasizes the fact that he had not been arrested or charged with molesting L.A.

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[1] J.B. and T.B. are Mother's prior-born children.

On November 28, 2006, Father and Mother entered into the following agreement, which was approved and adopted by the trial court: "There will be no contact between Respondent and daughter [L.A.] until Respondent completes an evaluation acceptable to both parties." (App. 13.) Father provided no evidence at the final hearing that he had complied with the anticipated evaluation. A party may not take advantage of an error that he commits, invites, or which is the natural consequence of his own neglect or misconduct. Batterman v. Bender, 809 N.E.2d 410, 412 (Ind. Ct. App. 2004). Accordingly, invited error is not subject to review by this Court. Id.

II. Parenting Time with B.A.

Father also argues that his parenting time with B.A. should not have been restricted to supervised parenting time. In particular, he emphasizes that the allegations of abuse concerned L.A. and not B.A.

We will reverse a trial court's determination upon a visitation issue only when the trial court manifestly abused its discretion. Higginbotham v. Higginbotham, 822 N.E.2d 609, 612 (Ind. Ct. App. 2004). No abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination. Id. at 612-13. We will not reweigh the evidence or judge the credibility of witnesses, but rather we will look only at the facts most favorable to the judgment and the reasonable inferences therefrom. Id. at 613.

Father is correct that Mother testified B.A. had never reported "any type of abuse" from Father. (Tr. 21.) However, the record is replete with evidence of Father's domestic violence history and its impact upon the family unit. DRCB social worker Robin Leffler-Pannell conducted interviews with the parents, their children from other relationships, and

B.A. Leffler-Pannell's report to the trial court states that Father admitted physical abuse against Mother and some of the children.

Mother's older child, T.A., reported that she saw Father attempt to choke Mother, and that he threatened to kill "everyone in the house." (Ex. 2, pg. 8.) She recalled that Father caused bruises on her during spankings and once taped her hands to her older sister J.A.'s hands. J.A. reported that Father would "thump [B.A. and L.A.] and [his older children N.A. and A.A.] on the head." (Ex. 2, pg. 9.) She also claimed that Father entered her bedroom late one night and rubbed her back, causing her to feel uncomfortable. Mother reported that Father physically assaulted his own mother after she tried to defend Mother on one occasion. Father admitted to the interviewer that he "pushed his mother and threw her on the bed" when she intervened between him and Mother. (Ex. 2, pg. 6.)

Curtis testified by deposition. She recalled her intake session with L.A., during which L.A. "went up to the male doll and pulled it down, took its pants off and then was just sitting there playing with its penis." (Ex. 1, pg. 14.) In subsequent sessions, L.A. began to report certain events, including the following:

> Yep, he [my daddy] touched my private parts and there was blood . . . Grandma yelled at Daddy and that he was going to be in trouble.

(Ex. 1, pg. 11-12.) Curtis testified that L.A. recited the foregoing events on three occasions. Additionally, L.A. reported that Father had taken her to McDonald's and "touched her" while in the parking lot and that Father had "touched her booty with his sword." (Ex. 1, pg. 7.) L.A. would engage in angry outbursts and frequently told Curtis "don't look at me." (Ex. 1, pg. 13.) Curtis also noted that L.A. had experienced nightmares and problems at daycare.

Building Blocks Academy teacher Steven Gaither testified that L.A. displayed inappropriate behavior at school. In particular, she had been observed rolling up toilet paper and inserting it into her vagina. This conduct took place several times.

For reasons not specified in the record on appeal, Father has not been charged with any criminal offense relative to domestic abuse or sexual abuse. However, the record contains ample evidence from which the trial court could find that it was in the best interests of B.A. that Father exercise only supervised visitation with him until Father completed an evaluation. We find no abuse of discretion in the trial court's order to restrict Father's parenting time, conditioned upon an evaluation recommended by the DRCB.

III. Inclusion of Overtime Earnings

Finally, Father contends that the trial court erred by including his overtime earnings in his gross income for child support purposes, because the overtime earnings are inconsistent.

When fashioning a child support order, the first task of the trial court is to determine the weekly gross income of each parent. Ratliff v. Ratliff, 804 N.E.2d 237, 245 (Ind. Ct. App. 2004). "Weekly gross income" is broadly defined in the Indiana Child Support Guidelines and may include overtime. Id. However, determining income is fact-sensitive when irregular income, such as bonuses, overtime, or commissions are involved. Id. We review the finding of gross income for clear error. Id. at 246.

Mother's child support worksheet stated Father's income as $629.54 weekly (based upon his 2006 tax return reporting income of $32,736.00 annually). Father did not submit a child support worksheet. He testified as follows:

Question: Mr. Anderson, your 2006 tax return reflected you made

$32,736 is that correct?

Father: Yes.

Question: In that calculation is overtime included in that?

Father: Minimal, yes.

Question: And is that overtime a consistent, a constant need?

Father: No, it is not.

(Tr. 40-41.) Father indicated that his overtime earnings were both sporadic and minimal. Accordingly, the inclusion of such earnings, even if improper, would have minimal impact upon the child support award. We do not find the trial court's calculation of gross income in this instance to be clearly erroneous. See, e.g., In re Marriage of Nienaber, 787 N.E.2d 450, 457 n.6 (Ind. Ct. App. 2003) (finding de minimis mathematical error to be harmless and reversal not warranted).

Conclusion

The trial court did not abuse its discretion in restricting Father's parenting time. The child support order is not clearly erroneous.

Affirmed.

NAJAM, J., and CRONE, J., concur.