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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE PATERNITY OF L.B.)
)
SHELLIE SHAW,)
)
Appellant-Petitioner,)
)
vs.)
)
TONY BAUMGARDNER,)
)
Appellee-Respondent.)

No. 35A04-0707-JV-373

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Thomas M. Hakes, Judge
Cause No. 35C01-9909-JP-64

February 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Shellie Shaw (Mother), appeals the trial court's Order modifying Appellee-Respondent's, Tony Baumgardner (Father), child support obligation and visitation schedule with his minor child, L.B.

We affirm.

ISSUE

Mother raises one issue on appeal which we restate as: Whether the trial court's explanation on the record of its deviation from the Indiana Parenting Time Guidelines was sufficient to justify the deviation without clarifying it in its written Order.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of a minor child, L.B., born August 15, 1999. Paternity was established by stipulated agreement filed in the Huntington Circuit Court on December 17, 1999. The agreement also granted custody of L.B. to Mother, while Father received reasonable visitation rights in accordance with the local Visitation Guidelines. Sometime after L.B.'s birth, Mother moved with the child to Bluffton, Indiana.

Since L.B.'s birth, Father has exercised his visitation rights. During Father's visitation, L.B.'s paternal grandmother (Grandmother) would generally collect the child at Mother's home in Bluffton after getting off work at approximately 3:00 p.m. Grandmother is employed by a company in Bluffton. After picking up her grandson, Grandmother would then make the forty-five minute drive from Bluffton to her home in Huntington, located approximately five minutes from Father's house. Father would pick up L.B. from

Grandmother's after getting off work. This arrangement saved Father, who is employed in Huntington, the drive to and from Bluffton each week.

Sometime in 2007, Father notified Mother that he considered L.B. old enough to spend part of his summer with Father. Accordingly, Father requested his visitation rights over the summer period in accordance with the Indiana Parenting Time Guidelines. Since receiving Father's request, Mother has disallowed Grandmother to pick up L.B., instead insisting on Father collecting his son. With regard to summer visitation, Mother demanded that Father return L.B. to her care every morning before departing for work so she could watch him during the day. As Father has to be at work at 6 a.m., L.B. would have to be awoken at 4 a.m. to make the trip to Bluffton for Father to be at work on time. When Father suggested that Mother pick up L.B. at 5:30 a.m. at his home, Mother refused. Father then recommended that he would leave L.B. with his sister, who lives five minutes from Father, which would enable L.B. to spend time with his cousins.

On May 7, 2007, Father filed a Verified Petition for Modification of Support and for Clarification and/or Modification of the Visitation Orders. On June 5, 2007, the trial court held a hearing on Father's petition. After hearing the evidence, the trial court stated

The Indiana visiting parenting guidelines will be used and I'm going to modify those just a bit. You know summer visitation is, is for father but it's also for relatives. If he lived in Florida the child would go and stay the whole summer. [W]e get into these situations sometimes when the child lives in the same town and sometimes when the child lives forty miles away. So, I'm going to modify it just a bit and it's going to be like this. First of all, let's be realistic. Grandmother is already in Bluffton. She can pick up the child. The nights that she picks up the child, that the guidelines would indicate that the custodial parent would come to Huntington then to end the visitation, we're going to alternate that. And one time, [Mother is] going to come to Huntington to pick

up the child and the next time [Father is] going to take the child back. That way it's a benefit to everybody, Do you understand what I'm saying?

...

[During the summer visitation], I'm going to allow the child to be [at Father's sister's] until noon each day. If you wish ma'am you can pick him up at noon or you can just leave him there if he's playing with his cousins. Grandmother can pick up at three and bring the child back to Huntington.

...

Mother can pick up the child, take the child to swim team and then bring the child back to Huntington at noon and drop the child off at the sister's. I see [no] reason why that child can't be with his aunt, and his cousins, I think that's part of summer visitation so if that's what you want, I'll go with that but the child's going to be at the sister's for a period of time.

(Transcript pp. 45-47).

Two days later, on June 7, 2007, the trial court entered its Order, concluding in pertinent part:

8. The parties shall follow the Indiana Parenting Time Guidelines in regard to visitation with the minor child with the following modifications being made to those guidelines:

A. [Grandmother] shall be allowed to pick up the minor child at the beginning of each visitation period from the Mother at 3:00 p.m.;

B. For the return of the minor child at the end of the visitation, the parties shall alternate providing the transportation for the minor child; and

C. During Father's extended summer vacation with the minor child, if the Father is working, Father's sister shall be allowed to watch the minor child every day until noon[.] Mother shall then be allowed to pick the minor child up at noon and keep the minor child until [Grandmother] picks him back up at 3:00 p.m. If the minor child is involved in summer swimming programs in the morning hours[,] Mother can pick the minor child up from the sister's home prior to the swimming session and shall return him to the sister's home by noon of each day.

(Appellant's App. p. 6).

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

DISCUSSION AND DECISION

Mother contends that the trial court erred by failing to include the reason for deviating from the Indiana Parental Guidelines in its written Order, as required by the Guidelines' preamble. Alternatively, if this verbal deviation is allowed under the Guidelines, Mother argues that the trial court abused its discretion by improperly awarding visitation time to third parties, *i.e.*, Grandmother and Father's sister.

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 their 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), *aff'd* 840 N.E.2d 835 (Ind. 2006) (*citing MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005)). Even so, our supreme court has recognized that “the Legislature and this [c]ourt have promulgated a series of statutes, rules and guidelines—standards that bring consistency and predictability to the many family law decisions.” *MacLafferty*, 829 N.E.2d at 941. The Indiana Parenting Time Guidelines, developed by the Domestic Relations Committee of the Judicial Conference of Indiana, are counted among them.

Although substantial weight is accorded to the trial court's factual conclusions and credibility determinations, “to the extent a ruling is based on an error of law or is not supported by the evidence, it is reversible, and the trial court has no discretion to reach the

wrong result.” *Id.* We do not defer to the trial court’s conclusions of law. *Shelton*, 835 N.E.2d at 516.

Here, all parties, including the trial court’s Order, concede that the visitation scheme represents a deviation from the Parenting Time Guidelines. The Indiana Parenting Time Guidelines are based on the premise that it is usually in a child’s best interest to have frequent, meaningful and continuing contact with each parent. *See* Parenting Time G., preamble. While they provide courts with specific parenting times for a child of a given age, the Guidelines themselves clearly advise that adjustments based upon unique circumstances can be made; however, “any deviation from these guidelines by either the parties or the court must be accompanied by a written explanation including why the deviation is necessary or appropriate in the case.” *Id.*, Scope of Application, 2. Clearly, the requirement for a written deviation rests upon the concept of appellate review. By requiring the trial court to proffer an explanation for its departure from the Guidelines, we not only force the trial court to reflect upon the possible consequences of its change from the normal parenting time, we also enable the appellate court to thoroughly and appropriately review the trial court’s deviation and the reasons behind it.

While the trial court in the instant case did not offer a written explanation for its deviation, we find no reversible error because its reasons are apparent from the record. As we mentioned above, during the hearing, the trial court elaborated and clarified its thought process for imposing a parenting time different from the Guidelines thereby enabling appellate review of its Order. Although we caution trial courts to comply with the Parenting Time Guidelines, here, we encountered harmless error.

Disputing the trial court's deviation, Mother contends that the Order in essence grants parenting time to Grandmother and Father's sister whereas the Guidelines are premised on the concept that a child benefits most from spending time with a parent. *See Parenting Time G., Preamble.* We disagree.

First, we conclude that the trial court's arrangement whereby Grandmother collects L.B. from Mother and drives him to Huntington to commence visitation with Father falls squarely within the Parenting Time Guidelines. Section III of the Guidelines specify that in the event of a geographical distance between the parents, the trial court should consider, among other factors, the costs and time of traveling when scheduling parenting time. Here, strict enforcement of the Guidelines would require Father to drive forty-five minutes after work to pick up L.B. in order to commence visitation with his son. As the Guidelines' preamble focuses on meaningful and continuing contact with each parent, allowing Grandmother to collect L.B. in Bluffton on her way home to Huntington would ensure a maximum of quality time between Father and son.

With regard to summer visitation, the trial court ordered L.B. to spend the mornings with Father's sister while Father would be at work. Section I(C)(3) of the Parenting Time Guidelines stipulates that "[w]hen it becomes necessary that a child be cared for by a person other than a parent or a family member, the parent needing the child care shall first offer the other parent the opportunity for additional parenting time." In *Shelton*, 835 N.E.2d at 517, we defined "family member" as limited to a person within the same household as the parent with the physical custody. Here, the record establishes that sister did not live in the same household as Father.

However, during the hearing, Father testified that he had suggested to Mother that she would pick up L.B. at Father's house at 5:30 a.m. so L.B. would not have to get up at 4 a.m. to make the drive from Huntington to Bluffton with Father. Mother refused. Accordingly, as Father offered Mother an opportunity for additional parenting time, which she declined, the trial court properly sought and found an alternative by allowing L.B. to spend time with Father's family.

Mindful of the Guidelines' adaptive nature to the unique circumstances at hand, the trial court properly evaluated the parties' situation and imposed a visitation schedule within the parameters of the Guidelines. Even though we affirm the trial court's Order, we caution Father and Mother to heed the trial court's statement, "[t]he problem is each of you want to win and you're forgetting that you're using the child as the tool. . . . Why don't the two of you step back and say what's best for this child and how can he win?" (Tr. p. 47).

CONCLUSION

Based on the foregoing, we conclude that the trial court committed harmless error by failing to explain its reasons for the deviation from the Parenting Time Guidelines in its

written Order. Furthermore, we find that the trial court's visitation schedule conforms with the Guidelines.

Affirmed.

KIRSCH, J., and MAY, J., concur.