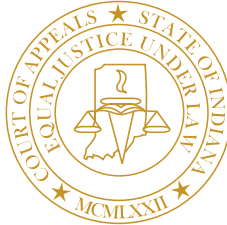


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



# IN THE Court of Appeals of Indiana

Jason V. Wells,  
*Appellant-Respondent*

v.

Monica E. Wells,  
*Appellee-Petitioner*



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December 30, 2024

Court of Appeals Case No.  
24A-DC-1129

Appeal from the Marion Superior Court  
The Honorable Rosanne T. Ang, Magistrate  
Trial Court Cause No.  
49D09-2301-DC-122

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**Memorandum Decision by Judge Foley**

Judges Bailey and Bradford concur.

**Foley, Judge.**

- [1] Jason V. Wells (“Father”) appeals following the dissolution of his marriage to Monica E. Wells (“Mother”), focusing on the trial court’s decision to grant Mother sole legal custody of their minor children. Father contends that the trial court should have instead awarded the parties joint legal custody. We affirm.

**Facts and Procedural History**

- [2] Father is a Bahamian citizen, and Mother is a United States citizen. In 2011, Mother and Father married in the Bahamas. The couple lived in the Bahamas until Mother at some point moved to Indiana, where the couple’s goal was for Mother to secure employment in Indiana before a deadline of August 2019. Father periodically visited Mother. At some point, the couple learned Mother was pregnant with twin girls (“the Children”), who were born in Indiana in September 2021. Mother and Father planned for Mother to give birth in Indiana but anticipated that, before long, Mother and the Children would relocate to the Bahamas. To prepare for the move, Mother asked Father to complete certain tasks, such as obtaining health insurance and installing smoke detectors. At some point, Father said he had not completed the tasks, but “he’s going to.” Tr. Vol. 2 p. 49. Mother ultimately chose to stay in Indiana with the

Children and initiated dissolution proceedings in Marion County in January 2023. Father has remained in the Bahamas, working for his father's business.

[3] In August 2023, the parties reached a partial settlement agreement, resolving all pending issues except legal custody and whether Father could obtain Bahamian passports for the Children. Under the partial settlement agreement, Mother had sole physical custody of the Children, and Father had specified opportunities to exercise parenting time. The trial court approved the parties' partial settlement agreement in August 2023 and issued a dissolution decree at that time, while reserving the issues regarding passports and legal custody of the Children. The trial court held hearings on those issues in December 2023 and January 2024. As to the issue of legal custody, Father testified in favor of joint legal custody, while Mother opposed joint legal custody and instead sought sole legal custody.

[4] On April 25, 2024, the trial court issued a final order in the dissolution matter. In the trial court's written order, which contained sua sponte findings, the court authorized Father to obtain the Bahamian passports. The court also awarded Mother sole legal custody of the Children, noting that it was "unable to find that . . . joint legal custody [was] in the [C]hildren's best interests." Appellant's App. Vol. 2 p. 15. The court found that, although Mother and Father were "fit and suitable" and "willing to communicate regarding the [C]hildren's welfare," the court was ultimately "unable to find that the parties can cooperate in advancing the [C]hildren's welfare currently." *Id.* The court specifically

referred to Mother’s concerns regarding “Father’s previous delay in planning for the [C]hildren’s relocation to the Bahamas” and “current level of involvement,” finding Mother had “reasonable causes for concern.” *Id.* As to Father’s current level of involvement, the court noted that Father had “limited contact with the [C]hildren,” which “create[d] a situation where the [c]ourt [was] unable to find that he has a close relationship with the [C]hildren[.]” *Id.* The court added that, although “[t]echnology greatly reduces the challenges of distance” between households, and Father “could attend [the Children’s] physician appointments via video chat,” there was “no indication . . . [he] ha[d] attempted th[o]se avenues” to better stay involved. *Id.* Father now appeals.

## Discussion and Decision

- [5] Father challenges the trial court’s decision to grant Mother sole legal custody of the Children, arguing that the court should have instead granted the parties joint legal custody. Because the trial court was making an initial custody determination, both Mother and Father were presumed equally entitled to legal custody. *See In re Paternity of B.Y.*, 159 N.E.3d 575, 578 (Ind. 2020).
- [6] In general, we review custody decisions for an abuse of discretion, *Kakollu v. Vadlamudi*, 175 N.E.3d 287, 299 (Ind. Ct. App. 2021), granting latitude and deference to the trial court in matters of family law, *id.* at 295. A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances, or the court misapplies the law. *Id.* at 299. In

conducting our review, we do not reweigh the evidence presented. *Id.* Rather, our role is to view the evidence in a light most favorable to the judgment. *Id.*

[7] Where—as here—the trial court’s judgment included sua sponte findings and conclusions, “the findings shall control . . . as to the issues they cover[.]” Ind. Trial Rule 52(C). We look to whether the evidence supported the findings and the findings supported the judgment. *In re Paternity of W.M.T.*, 180 N.E.3d 290, 296 (Ind. Ct. App. 2021), *trans. denied*. Pursuant to Trial Rule 52(A), we “shall not set aside the findings or judgment unless clearly erroneous,” and “shall give . . . due regard to the opportunity of the trial court to judge the credibility of the witnesses.” A finding is clearly erroneous if there is no evidence supporting the finding. *Montgomery v. Montgomery*, 59 N.E.3d 343, 349 (Ind. Ct. App. 2016). Moreover, a judgment is clearly erroneous if the court applied the wrong legal standard to properly found facts. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). Under this standard, we will reverse the trial court’s judgment only if we are left with a definite and firm conviction that a mistake has been made. *Id.*

[8] In making a custody decision, the trial court must prioritize the best interests of the child. Ind. Code §§ 31-17-2-8, -13, -15. Indeed, the trial court may award joint legal custody only “if the court finds that an award of joint legal custody would be in the best interest of the child.” I.C. § 31-17-2-13. Legal custody decisions are governed by Indiana Code section 31-17-2-15, which provides:

In determining whether an award of joint legal custody . . . would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

(1) the fitness and suitability of each of the persons awarded joint custody;

(2) whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare;

(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) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;

(5) whether the persons awarded joint custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so; and

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

- [9] Here, the trial court methodically addressed the statutory factors in its written order. Therein, the court found that Mother and Father were fit and suitable candidates for legal custody and *willing* to communicate with one another about important matters involving the Children. However, the trial court was not convinced that the parties could *effectively* communicate with one another about those matters. Indeed, the trial court remarked that it was “unable to find that the parties c[ould] cooperate in advancing the [C]hildren’s welfare currently.” Appellant’s App. Vol. 2 p. 15. This finding directly supported the trial court’s determination that an award of joint legal custody was not in the Children’s best interests. *Cf. In re Paternity of E.P.*, 194 N.E.3d 160, 166 (Ind. Ct. App. 2022) (“[T]he second factor listed in the joint legal custody statute, namely, whether the parents are willing and able to cooperate to advance the child’s welfare, is particularly important in making a legal custody determination.”).
- [10] As to the prospect of joint legal custody, the trial court specifically found that Mother had “reasonable causes for concern” based on evidence that, in the past, Father delayed taking action in important matters related to relocating the Children. Appellant’s App. Vol. 2 p. 15. The trial court also reflected on the practical impact of the substantial geographic distance involved, in that Father lived in the Bahamas, Mother lived with the Children in Indiana, and the evidence indicated that neither Mother nor Father intended to relocate closer to the other parent. The evidence indicated that the geographic distance between the households detrimentally impacted Father’s ability to stay as involved as

Mother in the Children's day-to-day lives. Since the birth of the Children, Father had only intermittent parenting time. Although Father's relatively lower level of involvement was largely attributable to the geographic distance involved, the trial court pointed out that, despite the distance, Father could attend the Children's medical appointments via "video chat," but there was "no indication that Father ha[d] attempted th[o]se avenues" of communication. *Id.* The evidence ultimately supported the trial court's determination that Father's "limited contact with the [C]hildren create[d] a scenario where the [c]ourt [was] unable to find that [Father] has a close relationship with the [C]hildren[.]" *Id.*

[11] Despite the trial court's finding that Mother and Father were not currently capable of cooperating to promote the Children's welfare, Father argues that the trial court should have granted the parties joint legal custody. Father generally focuses on the evidence most favorable to his position, such as evidence indicating that he and Mother had successfully communicated about certain matters, including childcare arrangements. Critically, however, we are not at liberty to reweigh the evidence. Rather, we must consider the evidence in a light most favorable to the trial court's decision. Based on the evidence before the trial court—including the substantial geographic distance involved—we cannot say the trial court clearly erred in awarding sole legal custody to Mother, who was the Children's primary caregiver. We therefore affirm.

[12] Affirmed.



Bailey, J. and Bradford, J., concur.

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