

## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



---

### ATTORNEY FOR APPELLANT

Rachelle Ponist  
Hand Ponist Smith & Rayl, LLC  
Indianapolis, Indiana

### ATTORNEY FOR APPELLEE

Erin M.R. Romer  
Romer Legal  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Roseline Bixler,  
*Appellant-Respondent,*

v.

Ryan Hunt,  
*Appellee-Petitioner*

July 29, 2021

Court of Appeals Case No.  
20A-DR-1495

Appeal from the  
Vigo Superior Court

The Honorable  
Lakshmi Reddy, Judge

Trial Court Cause No.  
84D02-1401-DR-50

**Mathias, Judge.**

- [1] Roseline Bixler (“Mother”) appeals the trial court’s order granting the petition of Ryan Hunt (“Father”) to modify custody of their daughter, M.H. (“Child”). We affirm.

## Facts and Procedural History

- [2] Child was born in September 2012, and Mother and Father married the next month. Father filed for divorce in January 2014. The divorce was finalized by agreement in March 2014. Under their agreement, Mother and Father were granted joint physical and legal custody of Child. At the time, both parties lived in Terre Haute.
- [3] At a hearing in July 2015, Mother testified that she and her new husband would be moving to Alaska because her family lived there and there would be housing waiting for them. The trial court awarded temporary custody to Father “due to Mother’s instability at the time.” Appellant’s App. Vol. II p. 26. In 2016 and again in 2017, Mother asked for primary custody so Child could live with her in Alaska. “[S]he argued for many of the advantages of Alaska such as free housing, free health care, and the school system.” *Id.* The court denied both requests. In December 2018, however, the court awarded Mother primary custody, based on evidence that Father had abused his new wife in the presence of Child and that Mother was stable at the time. The court ordered Father to “participate in an intensive anger management course and counseling for domestic abuse.” *Id.* at 62.
- [4] In late September 2019, there was an “incident” between Mother and her new husband in Alaska, and Mother was arrested for domestic violence. *Id.* at 30. On September 30, she filed notice that she intended to relocate to Hawaii on October 9. She indicated, among other things, that her new husband had left her and her three children, that she could not find affordable housing in Alaska,

that her parents lived in Hawaii and she would be moving in with them, and that the schools were better in Hawaii than in Alaska. She also stated that she was requesting to “start over, stress-free and no chances of these events ever happening again” and that “there is no chance of my marriage being reconciled.” *Id.* at 27. The trial court issued an order explaining that it could not hold a hearing or make a ruling by October 9 and that while Mother could travel to Hawaii with the children “immediately if necessary, she is on notice that if the Court denies the relocation she will have to either return to Alaska or custody may have to be modified.” *Id.* at 72. Mother and the children flew to Hawaii in October. Contrary to the statements in her notice, Mother reconciled with her new husband, and he eventually joined her in Hawaii.

[5] In late October, while the relocation issue was still pending, Father visited Hawaii. “[D]espite the fact that Father had not seen [Child] in quite some time,” Mother did not allow him to see Child every day. *Id.* at 30. In addition, Mother did not bring Child to Indiana over Christmas break for Father’s holiday parenting time, despite being ordered multiple times to do so. Subsequently, “Mother showed no remorse or regret for limiting Father’s parenting time when he came to Hawaii or in denying his Christmas parenting time.” *Id.* at 31.

[6] A hearing was held on the relocation issue in February 2020. On March 17, 2020, the trial court issued an order denying Mother’s request to permanently relocate Child to Hawaii. The court concluded that Mother failed to prove the move was made in good faith and for a legitimate reason, as required by

Indiana Code section 31-17-2.2-5, and that even if she had, the relocation was not in the best interests of Child. Among other things, the court found that Mother's claim she could not afford housing in Alaska was "surprising" given that "one of the reasons she gave for relocating to Alaska is that she could get free housing because she is an Alaskan native." *Id.* at 29. The court noted, "Mother made the decision to move within days without even taking time to consider if arrangements could be made to continue living in Alaska since she also previously relied on the fact that she had so many family members in Alaska to support her." *Id.* "Additionally, she did not even take time to see if reconciliation was a possibility before moving 3000 miles away as it turns out that Mother and husband reconciled immediately after she moved." *Id.* Having denied the relocation, the court gave Mother until May 1, 2020, "to move back to Alaska or relocate to Indiana in a city that is within thirty (30) minutes of Father's residence so that Father can have frequent and meaningful contact with [Child]." *Id.* at 31.

- [7] Mother filed a motion to correct error, which the trial court denied on April 23. The next day, the court issued an order moving the deadline for Mother to return to Alaska or Indiana from May 1 to July 1 because of COVID-19 travel restrictions. Less than a week later, however, Mother, her husband, and the three children moved into a new apartment in Hawaii under a one-year lease. The move required a change of school for Child, but Mother did not tell Father about the move or file a notice of intent to relocate. In May, Father filed a petition to modify custody, alleging that Mother would not give him the

address of the new apartment, that the relocation did not comply with the court's orders, and that it was not in Child's best interests to remain in Hawaii.

[8] With Father's petition to modify pending, Mother denied him his summer parenting time. She cited COVID-19, but as the trial court later found, her own behavior in 2020 revealed this was not the real reason. She stayed at two hotels for days at a time while visiting with others and not wearing a mask, she hosted her nephew's birthday party with several kids with no masks, and her sister visited from out of state and stayed with her. Moreover, Mother "did not request in advance to modify the summer parenting time schedule" based on COVID-19. *Id.* at 45.

[9] The trial court held a hearing on Father's petition to modify custody in July 2020 and then, in August, issued an order granting the petition. The court entered findings of fact and conclusions of law, which we quote at length here:

### **FINDINGS OF FACT**

\* \* \* \*

16. The denial of her relocation required Mother to return to either Alaska or Indiana by May 1, 2020. On its own Motion, the Court issued a Supplemental Order on April 24, 2020, and decided that due to the COVID-19 pandemic and various travel restrictions it was reasonable to allow Mother until July 1<sup>st</sup> to return to Alaska or Indiana and scheduled a review hearing for July 21, 2020.

17. However, despite there being an Order for Mother to return by July 1<sup>st</sup>, on April 30, 2020, Mother, her husband, and children moved into a new apartment in Hawaii after Mother entered into a one year lease.

18. Mother has been laid off work since soon after the COVID-19 pandemic and stay at home orders began.

19. According to Father, he was not told by Mother that she moved into a new apartment in Hawaii, but noticed during Facetime calls with [Child] that she was in a different location.

20. The 3 bedroom apartment in Hawaii is being rented for \$2410/month plus \$350 for utilities. This new apartment location requires [Child] to be switched to another school [than] the one she had been attending since Mother moved to Hawaii back in October of 2019. Mother did not file a Notice of Intent to Relocate which was required, especially since [Child] would be switching schools.

21. Mother testified that she is aware of the cost of housing in Indiana and Alaska, but had not really looked into any housing. She also did not submit any resumes or applications for employment in Indiana or Alaska stating that it would be pointless to look for jobs outside Hawaii during this COVID-19 pandemic.

22. This testimony further suggests that Mother had no real intention of complying with the Court's Order.

23. Father testifie[d] that Mother made statements on the social media platform, TikTok, that she had no intention of complying with the Court's Order to move back to Indiana or Alaska. The Court watched these social media videos made and published by

Mother. At one point, Mother stated that she “won’t budge on moving anywhere”. During the hearing, Mother stated that these videos were out of frustration and that she is willing to comply with the Order to move back to southeast Alaska once the pandemic subsides.

24. When Mother moved to Alaska several years ago and when seeking custody of [Child], Mother raised the point of having family in Alaska. Now, Mother contends that she only has distant family back in Alaska. Her parents have lived in Hawaii since 2004, almost sixteen (16) years.

25. Father did not receive his summer parenting time and did file a Motion to Enforce Summer Parenting Time. There is a dispute between the parties as to why this happened. According to Mother, she refused Father his summer parenting time because anyone arriving had to quarantine for two (2) weeks. Father testified that the information he received was that if he did not leave the gate to pick up [Child], he did not need to quarantine.

26. During the hearing, Mother repeatedly stated that she did not allow summer parenting time because it was not safe for [Child] to travel because of her health condition. Mother repeatedly talked about [Child’s] conditions of thrombocytosis and hydronephrosis making travel unsafe, but when pressed further, she admits that no doctor has stated that [Child] is at higher risk for contracting COVID-19 because of her health conditions and no doctor has definitely restricted her travel other than generally recommended no travel like all patients are advised.

27. Mother referred to the COVID-19 pandemic as her defense for numerous things. However, her behavior is inconsistent with someone who is worried about the virus. For example, before moving into her new apartment in April, Mother admits to spending 2-3 nights in a hotel on at least two separate occasions

with her husband and children, along with her sister and boyfriend and their children in a separate room. There were other guests that visited during these stays and while they were all together, no one was wearing a mask. Mother even admitted to hosting a birthday party for her nephew at her apartment where several guests were present without a mask. Additionally, Mother's sister flew to Hawaii from the state of Washington and resided with her in her new apartment without being quarantined for 14 days. Mother contends that her sister was tested negative for COVID-19 before traveling and was not concerned about her sister contracting the virus on the airplane and spreading it to her children.

\* \* \* \*

30. Father brought to the Court's attention that Mother has an "Only Fans" account on TikTok which is an online subscription-based service for adults only and often includes nude content. Mother's account name is babydollbix. Mother admits that she created an account in March 2020, but never posted anything explicit. She posted pictures of her feet and made \$200/month during March, April, and May.

31. Mother's husband and [Child's] Step-Father, Brian Bixler, testified[d]. He is currently working in Hawaii as a supervisor at a security company and earning \$19/hour. Mr. Bixler admits that he was aware of the Court's Order for Mother to move back to Alaska or Indiana and states that he does have family in Farmersburg, Indiana. He states that he generally asked his own mother about housing and employment in Indiana, but provided no specifics.

32. When asked about the domestic violence incident in Alaska that resulted in Mother relocating to Hawaii, Father downplayed the whole incident and said it was no longer an issue. The Court



finds it concerning that a minor incident would have caused Mother to make a rash decision to relocate thousands of miles away and at the time advise the Court that there was no chance of reconciliation with Mr. Bixler.

33. Mr. Bixler testifie[d] that he has a very close relationship with [Child] and that [Child] wants to change her last name from “Hunt” to “Bixler”. The communication in [the talkingparents app] reflects that Mother is in support of [Child] changing her last name because these are [Child’s] feelings.

34. Mother was to move back to either Alaska or Indiana by July 1, 2020, and has never filed a Motion requesting an extension of time to comply with the Court’s Order and/or relief from the Court’s Order. Mother has not engaged in any action to suggest to the Court that she intended to comply with the Court’s Order that denied her relocation.

35. At one point, Father’s counsel asked Mother if she actually intended to comply with the Court’s Order to move back to Alaska or Indiana and Mother responded by saying something to the effect of “I did and then I didn’t”. Mother elaborated by stating that after she considered the consequences, she decided it was in her family’s best interest to defy the Order because it was a “lose lose situation.” Mother stated that if she traveled, she risked her own health and the children’s health and that there was no way to travel safely. However, Mother has submitted no medical records demonstrating her health condition and/or that of [Child].

36. Mother did testify that her doctor told her back in May and June that she could not travel. However, it seems that Mother did not ask her doctor to prepare a letter regarding her own travel restrictions either.

37. Later in her testimony, Mother testified that if it was not for the COVID-19 pandemic, she would have complied with the Court's Order and relocated to Alaska.

\* \* \* \*

47. Father is currently living in Fishers with his girlfriend and her two children. They have a four (4) bedroom home. None of his girlfriend's children have any special needs or health issues.

48. Father works at the Operational Intelligence Center and provides client services. He works full-time at 40 hours a week from Sunday through Thursday from 8:00 a.m. to 4:00 p.m. and has worked there for over three (3) years.

49. Father is still in the National Guard and is gone for training one weekend a month. He says there is no chance of deployment because of issues with knees and migraines.

50. Father states that he is still attending counseling every other week. The Court did receive the counselor's report on or about July 14<sup>th</sup> which was fairly general.

\* \* \* \*

52. Father states that if the schools are closed and/or [Child] needs to do remote learning, this will be done at his sister's home.

53. Father focused his testimony on why it is in [Child's] best interest that he have custody of [Child]. Father believes that [Child] needs stability and consistency and that he can provide that. Father argues that [Child] has already been to six (6) different schools and she needs to remain in one place to thrive.

He states that [Child] has half-siblings in Indiana that she should have an opportunity to get to know.

54. Additionally, Father's sister lives just ten (10) minutes away and his brother lives on the east side of Indianapolis and has two kids. He sees his siblings frequently and says he has more family in Terre Haute with his [m]other, step-father, a sister with two kids, aunts, and uncles and nephews and he used to visit them a couple times a month.

55. Father says he has spoken with [Child's] previous pediatrician and her pediatric counselor in Carmel and has an appointment penciled in for August.

56. Father also asserts that Mother spends a lot of time and effort on social media and believes that [Child] needs to learn self-respect.

57. Father also argues that if [Child] really has a medical condition, then she should get medical care, which is located in Indiana at Riley Medical Center and he can ensure that she receives treatment. Also, because Father lives in Hamilton County, he suggests that [Child] can attend the top school district in Indiana.

58. Father testifie[d] that [Child] has mentioned wanting to change her last name to "Bixler" and Mother told him that the decision is up to [Child]. The Court confirmed this conversation in the talkingparents exhibit introduced into evidence.

59. Father states that his preferred arrangement would be for [Mother] to return to Indiana so that they can have equal parenting time with [Child]. Father testifie[d] that if he gets custody of [Child] and Mother remains in Hawaii, that he would

ensure that [Child] talks with her Mother every day and get [Child] a phone so that she can communicate with Mother.

60. Father has concerns that education is not a priority for Mother. When he checked the school records, [Child] had been late/tardy more than ten (10) times. And, it wasn't until Father called the school that Father learned that [Child] was no longer enrolled there and that Mother enrolled her in a different school for the Fall.

61. Father testifie[d] that when he asked Mother for her new apartment address that she responded by saying that he could get it through the Court.

62. Since their marriage dissolved, Mother has lived in several places in Terre Haute, in Pennsylvania, in Michigan, two different places in Alaska, and now two different places in Hawaii. Father lived in the same house for 13 years in Terre Haute before he moved to Noblesville and now lives in Fishers in a home with his girlfriend.

\* \* \* \*

65. Mother states that as soon as the pandemic is over she intends on moving back to Alaska, even though she has no support system in Alaska anymore. She states that she does not intend to return to Indiana because she has no support in Indiana, except for her husband's mother in Farmersburg and Avery [another ex-wife of Father]. However, Mother is adamant that staying in Hawaii is in her [family's] best interest.

66. This Court has a long history with these parties having conducted several lengthy and several short hearings regarding custody and parenting time issues. Both parties have

misrepresented the truth on many occasions and both parties have underreported their personal problems while possibly exaggerating the problems of the other party. It is unfortunate that the parties have not learned how to communicate better and successfully co-parent.

## CONCLUSIONS OF LAW

\* \* \* \*

5. Determining what is in the best interest of a child is not always a simple task, especially when both parents have problems and challenges of their own, not to mention an inability to communicate, cooperate, and co-parent.

6. [Child] is a 7 year old girl who is not old enough to fully understand the situation and not old enough that the Court would rely upon her wishes. The parents are not in agreement on a custody arrangement. The Court does not have clear evidence of [Child's] interaction with her parents, siblings, and step-father. Although, the Court has concerns that a 7 year old is discussing changing her last name to her step-father's name when her biological father is a part of her life and it does not appear that Mother is discouraging this idea, but rather the opposite. The Court cannot say whether [Child] has adjusted to Hawaii since the relocation was denied and there is nothing to suggest that she will not adjust just as easily to being back in Indiana where she had been for quite some time. The Court has equal concerns about the mental health of both parents and the impact it is having on [Child]. Father has a pattern of domestic violence and Mother has a pattern of being in relationships involving domestic violence. There is no evidence of a de facto custodian.

7. The Court believes that the best thing for [Child] is if both parents lived in the same area so that they could exercise equal or

near equal parenting time and both be involved in her life. There is no justifiable reason why this cannot happen.

8. When Mother relocated from Terre Haute to Pennsylvania it was not for a good faith or legitimate reason because she did not have a job she was moving towards nor was there any reason that it was in [Child's] best interest.

9. When Mother relocated to Alaska which was thousands of miles away from Father, it was not for a good faith or legitimate reason because she did not have a job she was moving towards nor was there any reason that it was in [Child's] best interest. Moreover, Mother made Alaska seem like the panacea with the free housing, free health care, and all the family support she would have. However, that turned out not to be the case as according to Mother, the free housing wasn't that good and the medical treatment required a lot of travel time, and the family members were not close immediate family members since her parents and siblings lived in Hawaii.

10. When Mother relocated from Alaska to Hawaii it was not for a good faith or legitimate reason because she did not have a job she was moving towards. Moreover, when she ultimately found a job, she was not making any more money than she made in Alaska. However, Mother now seeks to make Hawaii seem like the best place arguing that the school system is better [than] Alaska and that obtaining health care is easier in Hawaii and that travel is easier. However, these are not the reasons why Mother relocated to Hawaii, but rather she was escaping an alleged abusive relationship.

11. Mother testified that she left Alaska suddenly because of a domestic violence incident with her husband, Brian Bixler. The Court never received clear testimony of what transpired, but from what little was presented, it did not seem to be such a significant

event that would have resulted in a rash decision for Mother to pick up and move with three children thousands of miles away with no plan. More concerning, based upon Mother's own testimony either during this hearing or the past is that she is now in her third relationship which she describes as involving domestic violence. This suggests that Mother has her own pattern of being in volatile relationships that are not setting a good example for [Child].

12. Many of the prior Orders discuss Father's problems and how he apparently treats women which is perhaps why he has three (3) ex-wives who have a strong dislike for him. Their feelings are so strong that the Court has observed both Mother and Avery engage in a campaign against Father and Avery being present when Mother has hearings. In fact, Avery was even present in Alaska when Mother participated in a telephonic hearing in the past.

13. The Court still has concerns about how Father treats women and the negative impact it can have on [Child]. However, the Court has to believe that people can change and that is the whole purpose behind counseling. That being said, the Court cannot say for certain whether Father is in the best counseling or how seriously he is taking the matter. By the same token, Mother needs to be in counseling if this is her third relationship involving domestic violence.

14. That being said, [Child] deserves and requires stability. Mother has continued to relocate to places that are far away from Father which deprives him of having a consistent relationship with [Child] when there is no real benefit to Mother or [Child] to be located so far away.

15. In addition, Mother has engaged in a pattern of preventing Father from having parenting time. She did not provide Father

with as much parenting time as he should have received while in Hawaii back in October of 2019, she prevented him from having parenting time during Christmas of 2019, and while she may have had a legitimate reason for denying Father summer parenting time because of COVID-19, she did not request in advance to modify the summer parenting time schedule. Moreover, she did not file a Notice of Intent to Relocate when she moved into an apartment in April of 2020 which required a change in schools and resulted in a one year lease when Mother was to return to Alaska or Indiana within two (2) months. The actions engaged in by Mother and her testimony and evidence presented suggests that she has had no intention of complying with the Court's Order denying her relocation.

16. It is worth noting that even Father in the past has engaged in a pattern of not following Court Orders.

\* \* \* \*

19. The Court finds that Mother has engaged in a pattern of denying Father parenting time in several respects. First, by continuing to relocate to places thousands of miles away without any good faith or legitimate reason that minimizes Father's parenting time. Her relocation to Hawaii was not in good faith or a legitimate reason which is why the Court denied her relocation. After moving to Hawaii and before the Court even addressed her relocation, Mother minimized Father's time while he was visiting Hawaii in the month of October and denied parenting time over Christmas stating that she was not traveling to Indiana for the holidays. Additionally, while Mother denied Father's summer parenting time citing COVID-19 as the basis, she simultaneously engaged in behavior that did not show her deep concern for COVID-19 affecting [Child] by doing the following: staying at two different hotels for a couple of days at a time while visiting with third parties and not wearing a mask; hosting her nephew's birthday party with several kids and no one was wearing a mask,



and allowing her sister to travel from the State of Washington to Hawaii and stay in her household for a few days when she emphasizes that all travelers were to have a 14 day quarantine period. While Mother alleges that her sister was in quarantine at her household, this does not prevent [Child] or her other children from exposure, or even Mother herself who says she is at high risk due to her medical problems. Moreover, the fact that Mother entered into a one year apartment lease just two months before she was Court Ordered to return to Alaska or Indiana demonstrates that she had no intention to comply with the Court Order. This COVID-19 pandemic may go on for the rest of the year and into 2021 and with Mother using this as her basis, Father will go more than one year without seeing his daughter.

20. Mother's continued denial of Father's parenting time, combined with her relocation which has been denied, is a substantial change in circumstances. Moreover, the fact that Mother relocated because of an alleged domestic violence incident with her husband with whom she has now reconciled is also a substantial change in circumstances. The fact that Mother has a TikTok fan page for adults only and she admits to selling pictures of at least her feet certainly raises doubt as to the environment she is creating. This is especially in light of the fact that during the relocation hearing back in February of 2020, evidence was presented that her sister was using social media to elicit some inappropriate behavior.<sup>[1]</sup> The Court also has concerns that Mother is in support of having [Child] change her last name to take her step-father's name which was not only testified to, but documented in the talkingparents communications. The Court

---

<sup>1</sup> Mother contends the trial court erred in admitting and considering the evidence of the social-media activity of Mother's sister, arguing it was hearsay. We need not decide whether the trial court erred in this regard because even if it did, the error was harmless. The court mentioned the evidence in just one sentence of its eighteen-page order, and the other evidence supporting the court's decision is substantial.

finds all of these things to be a substantial change in circumstances.

21. The Court does have concerns because of Father's history. However, he does maintain a stable home and does not move frequently. He has a four bedroom apartment with a girlfriend of one year or more. Both Father and girlfriend maintain steady employment. Father has always been focused on [Child's] education. He lives in an excellent school district. If [Child] has medical problems, she can be seen at Riley Children's Hospital which is recognized for its great health care system. The Court believes that the best chance for [Child] to be able to spend more time with both parents is if the Court at least temporarily modifies custody. The Court believes that this will be in the best interest of [Child].

22. Father's Motion for Modification of Custody is temporarily GRANTED. The parties shall continue to share joint legal custody and Father is awarded temporary physical custody of [Child]. The temporary custody arrangement will be reviewed when the COVID-19 pandemic is over or if Mother has relocated to Alaska or Indiana. Mother is advised that based upon her testimony that she only has distant family members in Alaska and that it is no longer a good support system for her, unless she is able to find employment that is substantially better with much greater income, the Court might question the return to Alaska instead of Indiana where Father has a better chance to continue being involved in [Child's] life.

Appellant's App. Vol. II pp. 36-47. In addition to modifying custody, the court ordered both parties to get counseling and ordered Father to enroll Child "with a trauma-informed counselor in Fishers, Indiana to address the issues of

witnessing physical violence, emotional abuse, frequent relocations, and multiple divorces.” *Id.* at 49.

[10] Mother now appeals.

## Standard of Review

[11] Mother asks us to review two of the trial court’s orders: (1) the March 2020 order denying Mother’s request to relocate Child to Hawaii and (2) the August 2020 order modifying custody in favor of Father. But if Mother wanted to appeal the relocation order, she was required to file a notice of appeal within thirty days after the trial court denied her motion to correct error on April 23, 2020. *See Ind. Appellate Rule 9(A)(1)*.<sup>2</sup> She did not. Instead, she waited until the trial court modified custody and then filed a single notice of appeal purporting to challenge both the relocation order and the modification order. *See Appellant’s App. Vol. II p. 3*. By failing to file a timely notice of appeal regarding the relocation order, Mother forfeited her right to appeal that order. *See App. R. 9(A)(5)*.<sup>3</sup> We therefore limit our review to the modification order.

[12] Because the trial court entered findings of fact and conclusions of law, our task is to determine whether the record supports the factual findings, and then

---

<sup>2</sup> *Appellate Rule 9(A)(1)* provides that “if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court’s ruling on such motion is noted in the Chronological Case Summary or thirty (30) days after the motion is deemed denied under *Trial Rule 53.3*, whichever occurs first.”

<sup>3</sup> *Appellate Rule 9(A)(5)* provides, “Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited except as provided by *P.C.R. 2*.”

whether the findings support the judgment. *M.S. v. C.S.*, 938 N.E.2d 278, 281 (Ind. Ct. App. 2010). We will not set aside the findings or judgment unless they are clearly erroneous. *Id.* Under Trial Rule 52(A), “due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses.” “We therefore consider only the evidence favorable to the judgment and the reasonable inferences flowing therefrom, and we will neither reweigh the evidence nor assess witness credibility.” *M.S.*, 938 N.E.2d at 282. “A judgment is clearly erroneous when there is no evidence to support the findings, the findings do not support the judgment, or the trial court applies the wrong legal standard to properly found facts.” *Id.*

- [13] Appellate courts have a “preference for granting latitude and deference to our trial judges in family law matters.” *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002). Such deference is particularly important here as there is a heightened “concern for finality in custody matters.” *Baxendale v. Raich*, 878 N.E.2d 1252, 1258 (Ind. 2008). And the trial court—by directly interacting with the parties—was in “a superior position ‘to assess credibility and character through both factual testimony and intuitive discernment.’” *Gold v. Weather*, 14 N.E.3d 836, 841 (Ind. Ct. App. 2014) (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)), *trans. denied*. For these reasons, we will not substitute the court’s judgment with our own “if any evidence or legitimate inferences support the trial court’s judgment.” *Best*, 941 N.E.2d at 503.

## Discussion and Decision

[14] Following the dissolution of a marriage, modification of custody is governed by [Indiana Code section 31-17-2-21](#), which provides, in relevant part:

(a) The court may not modify a child custody order unless:

(1) the modification is in the best interests of the child; and

(2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter.

Section 31-17-2-8 lists the following factors:

(1) The age and sex of the child.

(2) The wishes of the child's parent or 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 parent or parents;

(B) the child's sibling; and

(C) any other person who may significantly affect the child's best interests.

(5) The child's adjustment to the child's:

(A) home;

(B) school; and

(C) 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 8.5(b) of this chapter.

(9) A designation in a power of attorney of:

(A) the child's parent; or

(B) a person found to be a de facto custodian of the child.

[15] Here, Mother challenges the trial court's conclusion that there was a substantial change of circumstances; she does not separately challenge the court's conclusion that modification is in the best interests of Child.<sup>4</sup> Mother acknowledges the changes identified by the trial court but argues they are not

---

<sup>4</sup> Mother does argue that the trial court erred by concluding, in its March 2020 order, that relocation to Hawaii was not in Child's best interests. Appellant's Br. pp. 30-37. However, as discussed above, Mother forfeited her right to appeal the relocation order by failing to file a timely notice of appeal regarding that order.

substantial enough to justify a modification of custody. She cites *Pierce v. Pierce*, where we said that custody should not be modified “except where there is a strict showing that the change in circumstances is so substantial and continuing it renders the existing custody unreasonable.” 620 N.E.2d 726, 729 (Ind. Ct. App. 1993), *trans. denied*. She also cites *Swonder v. Swonder*, where we said that “the noncustodial parent bears the burden of overcoming the custodial parent’s right to continued custody and must make a showing of a decisive change of conditions in the custodial home or a change in the treatment of the children in the custodial home which necessitates removal.” 642 N.E.2d 1376, 1380 (Ind. Ct. App. 1994).

- [16] The problem with Mother’s argument is that the cases she relies on were decided under an earlier version of the custody-modification statute that was much more restrictive than the current statute. The prior statute provided, in part, “The court in determining said child custody, shall make a modification thereof only upon a showing of changed circumstances so substantial and continuing as to make the existing custody order unreasonable.” See Ind. Code § 31-1-11.5-22(d) (1993). In 1994, however, our legislature amended the statute to eliminate the word “continuing” and the “unreasonable” requirement and to provide, instead, that “[t]he court may not modify a child custody order unless: (1) it is in the best interests of the child; and (2) there is a substantial change in one (1) or more” of the statutory factors a court may consider in determining custody. See P.L. 139-1994, § 2. This amendment, which endures in the current modification statute, see I.C. § 31-17-2-21(a), “did away with the ‘very strict’

standard” that applied under the prior statute and established a more permissive standard, *In re Marriage of Sutton*, 16 N.E.3d 481, 487 n.5 (Ind. Ct. App. 2014) (quoting *Joe v. Lebow*, 670 N.E.2d 9, 20 (Ind. Ct. App. 1996)). No longer must a parent seeking modification show a “decisive” change of conditions or that modification is “necessary” for the welfare of the child. See *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1258 (Ind. Ct. App. 2010).

- [17] Under the correct, more permissive standard, we cannot say that the trial court clearly erred by finding a substantial change in circumstances. The trial court found a substantial change based on several developments between its award of custody to Mother in December 2018 and the modification hearing in July 2020: (1) “Mother’s continued denial of Father’s parenting time”; (2) “her relocation which has been denied”; (3) “Mother relocated because of an alleged domestic violence incident with her husband with whom she has now reconciled”; (4) “Mother has a TikTok fan page for adults only and she admits to selling pictures of at least her feet”; and (5) “Mother is in support of having [Child] change her last name to take her step-father’s name.” Appellant’s App. Vol. II p. 46. We agree with Mother that at least some of these changes, standing alone, were not significant enough to justify modification. But the trial court considered the changes not just alone but also cumulatively. See *id.* at 47 (“The Court finds all of these things to be a substantial change in circumstances.”). Taken together, these developments were more than sufficient



to support the trial court’s finding of a substantial change. Mother’s argument to the contrary is a request for us to reweigh the evidence, which we cannot do.<sup>5</sup>

[18] For these reasons, we affirm the trial court’s modification of custody. In doing so, we acknowledge what the trial court repeatedly noted: Mother’s conduct in this matter cannot be viewed in isolation. Father has significant issues of his own and still has much work to do. That made this a very close case with no easy answer. But the fact that this was a close call is even more reason for us to defer to the trial court’s decision. This is especially so given the court’s thorough written order and obviously careful consideration of the issues.

## Conclusion

[19] Mother has failed to establish that the trial court clearly erred by finding a substantial change of circumstances. We therefore affirm the order granting Father’s petition to modify custody.

[20] Affirmed.

Bradford, C.J., and Brown, J., concur.

---

<sup>5</sup> In the last section of her brief, Mother argues that the trial court “used” her noncompliance with the relocation order to modify custody and that this was improper under *Matter of Paternity of B.Y.*, 159 N.E.3d 575 (Ind. 2020), *reh’g denied*. Appellant’s Br. pp. 49-54. To the extent Mother is suggesting that her noncompliance with the relocation order was the sole basis for the trial court’s custody decision, as was the case in *B.Y.*, she is incorrect. Her noncompliance with the relocation order was just one factor the trial court considered, which the court made clear in its order. *See* Appellant’s App. Vol. II pp. 45-46. To the extent Mother is suggesting that the trial court was not allowed to give **any** consideration to her noncompliance with the relocation order in deciding whether to modify custody, she cites no authority supporting that novel proposition.