## MEMORANDUM DECISION




ATTORNEY FOR APPELLANT

Nicholas J. Hursch
Shambaugh, Kast, Beck & Williams, LLP
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE

Nicholas F. Wallace
Myers, Smith, Wallace, LLP
Fort Wayne, Indiana

# IN THE COURT OF APPEALS OF INDIANA

Marc Gillig,
*Appellant-Petitioner,*

v.

Megan Jane Manes,
*Appellee-Respondent*.

April 12, 2022

Court of Appeals Case No. 21A-JP-1990

Appeal from the Allen Circuit Court

The Honorable Wendy W. Davis, Judge
The Honorable Jesus R. Trevino, Magistrate

Trial Court Cause No. 02C01-1908-JP-563

**Weissmann, Judge.**

[1] Megan Jane Manes (Mother) moved with her 10-year-old son, P.G., to Ohio, about 1-1/2 hours away from P.G.'s father, Marc Gillig (Father). Father objected to the move and requested the trial court transfer custody of P.G. to him so P.G. could continue living in the Fort Wayne area. The trial court approved the move and denied Father's request for custody. Father appeals, claiming that Mother's motives were selfish and that the move was not in the child's best interests. As the evidence supports the trial court's judgment, we affirm.

## Facts

[2] In 2019, the paternity court awarded joint legal custody of P.G. to Father and Mother. The court awarded primary physical custody to Mother and parenting time to Father of two weekday evenings, alternating weekends, and on holidays and extended parenting time as provided in the Indiana Parenting Guidelines. The court prohibited both parties from moving with P.G. "to a residence without complying with Ind. Code 31-17-2.2-et al." App. Vol. II, p. 17. These statutes generally require that a parent seek court approval before moving any significant distance with a child.

[3] In March 2020, Mother moved with P.G. to St. Mary's, Ohio, without court permission. Living about 80 minutes from Father's home, Mother continued to drive P.G. to her parents' home for Father's parenting time. Father objected to Mother's relocation, requested an emergency restraining order barring Mother's move, and petitioned for a change in custody and child support. For the next

six months, Mother and Father adhered to the parenting time schedule in the 2019 order.

[4] After a hearing on Father's motions, the trial court denied Father's objection to the move and ruled that Parents should continue to share joint legal custody. The court also determined that P.G.'s best interests dictated Mother's continued primary custody. The court altered Father's parenting time to one weekday evening and three of four weekends per month. The previously ordered parenting time for holidays and extended parenting time remained unchanged. The court also ordered Mother to transport P.G. to and from the maternal grandparents' home for the start and end of Father's parenting time. The court denied Father's request to modify child support but ordered Mother to pay $1,500 of Father's attorney fees for her failure to seek court approval of her move. Father appeals.

## Discussion and Decision

[5] Father claims the trial court's judgment is clearly erroneous under Indiana Code § 31-17-2.2-5 (relocation statute) because Mother's move to Ohio was irregular, in bad faith, and not in P.G.'s best interests. Under that statute, a court may approve a parent's move with a child when that parent proves the relocation is made "in good faith and for a legitimate reason" and the non-moving parent fails to prove that the move is not in the best interests of the child. I.C. § 31-17-2.2-5(e)-(f).

[6]

# I. Standard of Review

[7] We review custody modification rulings for an abuse of discretion, with a "preference for granting latitude and deference to our trial judges in family law matters." *Rogers v. Rogers*, 876 N.E.2d 1121, 1126 (Ind. Ct. App. 2006) (internal citations omitted), *trans. denied*. We will not substitute our judgment for that of the trial court and reverse only when the custody modification decision is clearly erroneous. *Id.* at 1127. It is not enough to show that the evidence might support some other conclusion. *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002). Instead, Father must establish that the result he seeks is required by the evidence. *Id.*

# II. Good Faith and Legitimate Reason for Move

[8] Father contends Mother failed to prove under the relocation statute that her move to Ohio was in good faith and for a legitimate reason. He argues the move was neither financially motivated nor employment related nor designed to place Mother closer to family. But Mother testified, and the trial court found, that Mother moved to Ohio to be closer to her boyfriend, whom she intended to and did marry. That alone was a legitimate reason for her move. *See In re Paternity of B.R.H.*, 166 N.E.3d 915, 925 (Ind. Ct. App. 2021) (finding under relocation statute that mother's desire to be with her husband was legitimate reason for move), *trans. denied*.

[9] The trial court also found that COVID-19 and the health issues of Mother's parents forced her to move from their home. Father suggests that finding is

undermined by the court's requirement that exchanges of the child for Father's parenting time should occur at maternal grandparents' home. But the order does not require the maternal grandparents to be present during the exchanges or that the exchanges occur within their home. Setting the grandparents' home as the location for exchange does not conflict with the finding that COVID-19 and the grandparents' health issues forced Mother's move.

[10] Father points to Mother's failure to file a notice of intent to move as showing her bad faith in moving. But the court noted Mother's omission and still found her move to be in good faith. App. Vol. II, p. 11. Moreover, Mother paid a consequence for her behavior because the trial court ordered her to pay $1,500 of Father's attorney fees due to her non-compliance with the statute. Although we do not condone Mother's failure to file the statutorily required notice before moving, Father essentially asks us to reweigh the evidence, a task we do not undertake on appeal. *In re Paternity of Snyder*, 26 N.E.3d 996, 997 (Ind. Ct. App. 2015) (ruling that appellate court will not reweigh evidence).

## III. Best Interests of Child

[11] Father also argues that the trial court erroneously determined under the relocation statute that the move was in P.G.'s best interests. The move placed P.G., who has been diagnosed with autism, about 1 hour and 20 minutes away from Father's home. Father contends that P.G.'s support system, consisting of medical providers and extended family, is in the Fort Wayne area, where Father lives. Father also claims the move harms P.G. because the child returns

very late to Mother's home after weekday parenting time with Father and does not adjust well to change due to his autism.

[12] Mother responds that P.G.'s aversion to change is, instead, a reason to support the move, as she has been his primary caregiver since his birth and largely has been responsible for overseeing P.G.'s treatment. The trial court agreed, finding that it was in P.G.'s best interests to live mainly with Mother because she was "most suited to care for the child's additional needs . . . ." App. Vol. II, p. 12.

[13] Father has failed to meet his burden of proving the trial court's ruling is clearly erroneous. The evidence supports the trial court's determination that continuing to live with Mother in Ohio was in P.G.'s best interests. Mother, who is not employed, can remain P.G.'s primary caretaker and accompany him to his various medical providers. Father continues to have considerable parenting time, and his child support obligation remains the same. The distance between the parents' homes does not prevent either parent from participating in P.G.'s life consistently.

[14] Under the trial court's order, P.G. has a stable home with each parent, but he will reside mainly with the parent most experienced and able to address his needs. As the evidence supports the trial court's decision to approve the move, we affirm the trial court's judgment. *See D.G. v. S.G.,* 82 N.E.3d 342, 348 (Ind. Ct. App. 2017) (noting longstanding policy that appellate courts should defer to trial court determinations in family law matters), *trans. denied.*

[15] Najam, J., and Vaidik, J., concur.