

## 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.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Marriage of:  
Krisandra Ruggirello,  
*Appellant-Petitioner,*

v.

David Ruggirello,  
*Appellee-Respondent.*

May 24, 2022

Court of Appeals Case No.  
21A-DC-2711

Appeal from the Orange Circuit  
Court

The Hon. Frank Newkirk, Jr.,  
Special Judge

Trial Court Cause No.  
59C01-2004-DC-27

**Bradford, Chief Judge.**

## Case Summary

[1] Krisandra and David Ruggirello (respectively, “Mother” and “Father,” collectively, “Parents”) were married in 2015 and had two children (collectively, “the Children”) together before Mother filed for dissolution of their marriage in October of 2020. Pursuant to a marital settlement agreement, Mother was to have primary physical custody of the Children with Parents having equal parenting time. In March of 2021, Mother petitioned the trial court for relocation and change in custody, wishing to take the Children with her to Clarksville, Tennessee. Following a hearing, the trial court denied Mother’s petition. Mother contends that the trial court’s denial of her request to relocate the Children to Tennessee was clearly erroneous. We affirm.

## Facts and Procedural History

- [2] On October 17, 2015, Mother and Father were married, and had two children together: A.R. (born December 10, 2016) and C.R. (born October 10, 2018). On April 13, 2020, Mother petitioned for dissolution of the marriage, and Parents entered into a marital settlement agreement, which was approved by the trial court on October 13, 2020. Pursuant to the settlement agreement, Parents had joint legal custody, Mother was the primary physical custodian of the Children, and Parents had an equal parenting-time schedule.
- [3] On March 15, 2021, Mother petitioned for relocation and modification of custody and moved for a change of judge. On April 9, 2021, Special Judge Frank Newkirk, Jr., accepted jurisdiction of the case, and, on April 22, 2021, appointed Guardian ad Litem Melissa Richardson (“GAL Richardson”).

[4] On October 26 and 27, 2021, the trial court held an evidentiary hearing. On November 17, 2021, the trial court issued its order denying Mother's request to relocate to Tennessee and for modification of custody, which provides, in part, as follows:

12. The [Children] are bonded to maternal grandparents and see them weekly.
13. The [Children] attend church in Orange County, at the same church that maternal grandparents attend.
14. The [Children] are not school-age, however, they attend daycare in Paoli, which costs \$160.00 per week.
15. Mother is employed by Hoosier Hills PACT, where she works as the Alternative School Director with Paoli Schools.
16. Mother has accepted a job with E & C Housing in Clarksville, Tennessee, where she could make \$5,000.00 more per year than she earns from her current job.
17. Mother did not look for other employment.
18. Father is employed at National Water Services in Paoli.
19. In June 2020, Mother started a relationship with Kyle Datillo, who was living in Louisville, Kentucky at the time.
20. Mother is now pregnant with Mr. Datillo's baby, with a due date of April 24, 2022.
21. Father expressed concerns that Mother, when previously pregnant with the [Children], spoke about suicide and suffered with post-partum depression.
22. Mother denied being suicidal when previously pregnant, however, Patricia Busick, Mother's mother testified that Mother was suicidal when she was pregnant with [C.R.].

23. Both [Parents] testified that they take medication for anxiety and/or depression.
24. Kyle Datillo has relocated to Clarksville, Tennessee, where all of his family resides, in order to run a property management business.
25. Kyle Datillo has purchased a home, in his name alone, where [Mother] intends to live upon relocating.
26. Clarksville, Tennessee is a little over a three (3) hour drive from Orange County.
27. Mother testified that she desires to move to Clarksville, Tennessee for the following reasons:
  - a. Better opportunities for herself and the [Children].
  - b. Consistency.
  - c. Better education and activities.
  - d. Better and more reliable daycare.
  - e. A new job.
28. Mother has secured daycare for the [Children] in Clarksville, Tennessee, which will cost \$300.00 per week until they begin school.
29. Mother does not emphasize her relationship with Kyle Datillo as a reason for moving, however this is clearly a substantial factor.
30. [Mother] and Kyle Datillo are not engaged or considering marriage at this time.
31. [Mother] has no back-up plan in the event the Court does not allow the [Children] to relocate with her or if she loses the opportunity to share housing with Mr. Datillo.
32. Mother expresses concerns regarding the lack of communication between her and Father and states that she does not believe that co-parenting works, due to their inability to communicate.

33. [Father] states that the current court case has strained communications between him and [Mother], however, Father expresses a willingness to go to co-parenting counseling in order to improve the relationship.
34. Mother and Mother's witnesses expressed concerns about Father's temper.
35. Despite the stated concerns about Father having a temper, [GAL Richardson] testified that the girls do not voice any fear of their father and that she has no safety concerns.
36. Father does not believe moving is in the [C]hildren's best interests.
37. Father and Mother both provide day-to-day care for the [C]hildren under their agreement.
38. [Father] does not want to go for extended periods without seeing [the Children], however, given the distance to Mother's new home, maintaining the current schedule will not be possible.
39. [GAL Richardson] reported that both [Children] appear happy and healthy.
40. [GAL Richardson] reported that both [Children] are well-bonded to both parents, and to remove them from either parent will be an enormous loss to the girls.
41. [GAL Richardson] expressed that for children this young, the relationship with a parent is most important.
42. [GAL Richardson] reported the [Children] are thriving in the current joint custody and shared parenting time arrangement.
43. [GAL Richardson] testified that she does not see a reason for a change in legal or physical custody.
44. [GAL Richardson] testified that moving to Tennessee is not in the [Children]'s best interest.

IT IS THEREFORE ORDERED as follows:

1. Mother’s Notice of Intent to Move with the [C]hildren is denied. Although her reasons for moving are not spiteful or unreasonable, moving the [C]hildren to Tennessee away from their Father, grandparents and home is not in their best interest.

Order pp. 2–5.

## Discussion and Decision

- [5] As an initial matter, we note that Father has not filed an Appellee’s Brief. In such cases, we need not undertake the burden of developing an argument for the appellee. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court’s judgment if the appellant presents a case of *prima facie* error. *Id.* “Prima facie error in this context is defined as, at first sight, on first appearance, or on the face of it.” *Id.* (quotation omitted). Where an appellant does not meet this burden, however, we will affirm. *Id.*
- [6] Mother contends that the trial court clearly erred in denying her petition to relocate with the Children to Tennessee.

We review custody modifications for abuse of discretion, with a “preference for granting latitude and deference to our trial judges in family law matters.” *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993) (affirming trial court judgment shifting primary custody of children to father). We set aside judgments only when they are clearly erroneous, and will not substitute our own judgment if any evidence or legitimate inferences support the trial court’s judgment. *Id.* at 179 (citing Ind. Trial Rule 52(A)).

[....]

Therefore, “[o]n appeal it is not enough that the evidence might support some other conclusion, but it must positively require the

conclusion contended for by appellant before there is a basis for reversal.” *Id.* (citations omitted).

*Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (footnote omitted). “[O]n review, we will not reweigh the evidence, judge the credibility of witnesses or substitute our judgment for that of the trial court.” *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 946 (Ind. Ct. App. 2006).

[7] In cases where relocation of children is requested, Indiana Code section 31-17-2.2-1 governs and provides, in part, as follows:

(c) Upon motion of a party, the court shall set the matter for a hearing to allow or restrain the relocation of a child and to review and modify, if appropriate, a custody order[.] The court shall take into account the following in determining whether to modify a custody order [...]:

- (1) The distance involved in the proposed change of residence.
- (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation.
- (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties.
- (4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual’s contact with the child.
- (5) The reasons provided by the:
  - (A) relocating individual for seeking relocation; and
  - (B) nonrelocating parent for opposing the relocation of the child.

(6) Other factors affecting the best interest of the child.

- [8] Finally, as Mother notes, neither party requested special findings pursuant to Indiana Trial Rule 52(A). Sua sponte findings control only as to the issues they cover and are reviewed for clear error and a general judgment standard applies to any issues upon which there are no findings. *Gold v. Weather*, 14 N.E.3d 836, 841 (Ind. Ct. App. 2014), *trans. denied*. “We may affirm a general judgment entered with partial findings on any theory supported by the evidence adduced at trial.” *Id.* Because Mother does not challenge any of the trial court’s findings as unsupported by the record, we accept all of them as true. *Haggarty v. Haggarty*, 176 N.E.3d 234, 246 (Ind. Ct. App. 2021). In such cases, we will affirm “if the unchallenged findings are sufficient to support the judgment[.]” *Moriarty v. Moriarty*, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020), *trans. denied*.
- [9] We conclude that the trial court’s findings are sufficient to support its judgment. The trial court heard all of the evidence and concluded that moving away from Father, their maternal grandparents, and home was not in the Children’s best interests. This conclusion is clearly supported by the record, as there are findings that the Children are bonded to Father and their maternal grandparents and appear to be happy and healthy. In addition, GAL Richardson and Father both testified that relocation was not in the Children’s best interests, testimony the trial court was entitled to credit, and apparently did. Mother draws our attention to testimony regarding Father’s temper and anger-control issues to support her contention that the trial court’s judgment is clearly erroneous. This, however,



amounts to nothing more than an invitation to reweigh the evidence, which we will not do. *See, e.g., Kondamuri*, 852 N.E.2d at 946.

[10] The judgment of the trial court is affirmed.

Najam, J., and Bailey, J., concur.