MEMORANDUM DECISION

APPELLANT PRO SE

Peter N. Myma
Skokie, Illinois

IN THE COURT OF APPEALS OF INDIANA

Peter N. Myma,
Appellant-Respondent,

v.

Wendy A. Wroe,
Appellee-Petitioner

February 20, 2023

Court of Appeals Case No. 22A-DR-1940

Appeal from the Brown Circuit Court

The Honorable Bruce A. MacTavish, Special Judge

Trial Court Cause No. 07C01-1610-DR-336

Memorandum Decision by Judge Crone
Judges May and Weissmann concur.

Crone, Judge.

Case Summary

[1] Peter N. Myma (Father), pro se, appeals the trial court's order on multiple issues regarding his ongoing custody and parenting time dispute with Wendy A. Wroe (Mother). We affirm.

Facts and Procedural History

[2] Father and Mother were married in 2005. Two children were born to the marriage: I.M. in 2009 and L.M. in 2013. Father, who had been a college professor, was not gainfully employed during the marriage, and Mother provided the family's primary source of income. Mother petitioned for dissolution in October 2016. On April 30, 2019, after a hearing, Special Judge James Worton issued a dissolution decree. At that point, Father was residing in Skokie, Illinois, had not exercised parenting time for nearly two years, had not completed a court-ordered parenting class, and had not paid any court-ordered provisional support. Mother was residing in Indianapolis with the children and her boyfriend while her home in Nashville, Indiana, was being remodeled.

[3] Judge Worton noted,

> Suffice it to say that both of these parties are somewhat eccentric, unique types of people. This case has been very contentious and has been unusually litigious. It has involved an abundance of motions filed by [Father], (many of which this Court believes to be frivolous), interlocutory appeal (argued to be as of right) of various issues, three different judges, multiple attempts to remove the judge(s), notice of federal lawsuits filed against presiding judges, lawsuit and protective order filed against [Mother] by [Father], in Illinois (which were subsequently dismissed), DCS

> investigations, and so many other filings that it would not be reasonable to attempt to list them all in this decree. It is important to note that though [Father] is not an attorney and chose to represent himself, his abilities as a litigator in this case have been far beyond the usual *pro se* litigant to say the least. However, it is this Court's opinion that [Father], rather than merely utilizing the Court system to zealously represent himself to the best of his ability, he has abused the legal system in an effort to delay the proceedings and harass [Mother].

Appellant's App. Vol. 2 at 70-71. Judge Worton found that "[t]he parties differ[ed] greatly regarding the parenting of the children" and were "unable to communicate civilly[,]" and thus the "case [was] not appropriate for joint legal custody." *Id*. at 72. Although Mother's conduct also had not been "exemplary[,]" *id*., the judge found that it was in the children's best interests to award her sole legal and primary physical custody.

[4] Judge Worton ordered that Father was "entitled to" phone calls or video calls "for up to 30 minute[s] in duration" daily between 6:00 p.m. and 8:00 p.m., ordered him to pay support, and awarded him parenting time as follows:

> For the next six months, following the date of this decree, Father's parenting time shall consist of supervised, therapeutic counseling sessions designed to re-acquaint the children with their Father and repair the parent/child relationship to a point that the children are comfortable with unsupervised parenting time. These sessions shall be at Father's expense and shall take place no more than 3 times per month (according to the counselor's schedule) but must take place at least once per month for the next six months before the Court will consider modification. The session shall take place through Crosswinds Indianapolis counseling office …. Father shall contact said office

> within 10 days of this decree to arrange the first session. Both parties shall cooperate with the counseling plan and shall present the therapist with a copy of this decree.… Mother shall ensure that the minor children are present for the sessions. Father shall communicate to Mother, at least one week in advance, the dates and times of his sessions.
>
> ….
>
> *… Once Father has completed the six-month therapeutic counseling period, and has had a minimum of one session per month, he may notify the Court by motion and the Court will set a status hearing to determine if parenting time should be modified.*

Id. at 74-75 (emphasis added). Neither party perfected an appeal from the decree.

[5] In August 2019, Father requested a change of judge. Special Judge Bruce MacTavish replaced Judge Worton in October. Also in October, Father filed the first of several petitions to modify custody.

[6] In September 2020, Father filed the first of several verified requests for admissions from Mother. In January 2021, Father filed another request for admissions and another petition to modify custody. In February 2021, Mother filed a petition to modify custody, a motion for attorney fees, and a petition for rule to show cause, which alleged that Father had violated court orders regarding attending parenting classes, paying for a guardian ad litem, and the timing of his phone calls with the children. *Id*. at 125. In March 2021, Father filed a subpoena duces tecum, which Mother successfully quashed, as well as the first of several requests for production of documents. In April 2021, Father

filed the first of several motions to compel production of documents. In May 2021, Father filed another request for production of documents. On May 10, 2021, Judge MacTavish held a hearing, after which he issued an order noting that Father had not complied with the order for therapeutic counseling, and ruling that certain of Father's requests for admissions were deemed admitted. Appellant's App. Vol. 3 at 44.

[7] On May 17, 2021, Mother filed a verified notice of intent to relocate with the children to North Carolina in June 2021 so that her boyfriend could "obtain a more secure and better paying job." *Id*. at 41. Shortly thereafter, Father filed an objection to the notice and a petition for rule to show cause, which alleged that Mother had denied him telephonic visitation and "refused to coordinate" the therapeutic counseling sessions. *Id*. at 54. Judge MacTavish set a hearing for July 22, 2021, which was continued multiple times at the request of both parties.

[8] In July 2021, Father filed another motion to compel production of documents, and in September 2021, he filed a motion to compel discovery. In November 2021, Father filed requests for a temporary restraining order and a permanent injunction, as well as another petition for rule to show cause based on Mother's alleged failure to comply with a subpoena for notes allegedly documenting her "complete and abusive denial" of his visitation, among other things. *Id*. at 72. In December 2021, Judge MacTavish reset the previously scheduled hearing for February 22, 2022. On January 19, 2022, Father filed another request for a

temporary restraining order. On February 3, 2022, Father filed a request for special findings pursuant to Indiana Trial Rule 52(A).

[9] On February 22, 2022, the hearing was held as scheduled on all pending matters, with Father appearing pro se and Mother appearing in person and by counsel. Father told Judge MacTavish that he had called Crosswind at the number "given in the final decree and they informed [him] that they do not do supervised visitation" and that "they only take referrals from the DCS." Tr. Vol. 2 at 7. According to Father's own compiled transcription of his text messages to Mother, he must not have called Crosswind until after November 6, 2021, which was the date of the most recent text in which he asked Mother for information regarding the children's availability for a therapeutic counseling session. Ex. Vol. at 31-32 (Res. Ex. A). Due to time constraints, the hearing was ultimately continued to June 6, 2022. In March 2022, Father filed another petition to modify custody.

[10] At the June 6 hearing, Judge MacTavish heard testimony from both parties, admitted numerous exhibits from Father, and took matters under advisement. Both parties submitted proposed orders, and the judge adopted Mother's order verbatim. The order, dated August 9, 2022, reads in pertinent part as follows:

> 2. The children have not had any in person parenting time with [Father] since October of 2016 and there have only been three telephone conversations between the children and [F]ather during this same time period (January[] 3, 2020 and two calls in mid-November of 2021).
>
> ….

5. Within six (6) months of the Court's issuance of its April 30, 2019 Decree [Father] had filed a Verified Petition to Modify Custody on October 15, 2019, not to mention numerous other Motions and Notices during that time span. As was the case previous to the Decree being issued, this matter has continued to be unusually litigious with an abundance of motions filed by [Father], many of which the Court again believes to be frivolous (with so many filings that it would again be unreasonable to attempt to list them all in this Order). It continues to be the Court's opinion that [Father] is abusing the legal system in an effort to harass [Mother].

….

7. In no less than four (4) separate Orders issued since [Father's] October 15, 2019 Verified Petition to Modify Custody was filed, this Court has reiterated its order that it will not entertain a petition to modify parenting time or custody until the parties strictly comply with the Decree's provisions regarding therapeutic counseling (see Order dated November 13, 2020, Order dated February 1, 2021, Order dated February 19, 2021, and Order dated May 18, 2021).[1]

8. Although there is conflicting testimony regarding the reasoning (and it appears to the Court both parties are likely responsible in part), the therapeutic counseling ordered in the Decree has yet to be commenced, not to mention completed.

9. [Mother] filed a Verified Notice of Intent to Relocate on May 17, 2021, and [Father] filed an Objection to said relocation on May 24, 2021. It is noted that [Mother] is now living in Apex, North Carolina with the parties' minor children with her long-

[1] Father included only the last of these orders in his appendix.

time boyfriend. As noted, [Father] has had no parenting time with the parties' minor children in approximately six (6) years and almost no telephone contact with them in this same period. The Apex, North Carolina area provides [Mother] and her family with better opportunities and as such [Mother's] move there was done in good faith, for a legitimate reason and is in the children's best interests.[2]

10. Both parties have filed Petitions for Rule to Show Cause/Contempt. Although it appears both parties have failed, at times, to strictly comply with the orders of this Court or the spirit of the Court's orders, the Court declines to find at this time that either party is in contempt for failing to comply with those Orders. However, both parties are admonished that each party is expected to follow the Court's orders and a contempt finding could be appropriate if they fail to do so in the future. Additionally, [Mother] shall assure the children receive the mail sent to them by [Father], even if sent via registered or certified mail.

11. All pending pleadings not specifically addressed in this Order should be dismissed.

12. [Mother] has requested [Father] pay the attorney fees of Eight Thousand Dollars ($8,000.00) she has incurred in this matter. Due to the many frivolous petitions and motions filed by [Father] and his abuse of the legal system in an apparent effort to harass [Mother], even after the Court entered a similar finding in the Decree, the Court finds that [Father] should pay [Mother's] attorney fees.

IT IS, THEREFORE CONSIDERED, ADJUDGED,

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[2] Father suggests that the trial court's "better opportunities" finding is irrelevant because Mother is not working, but he cites no authority for the proposition that a court may not consider the opportunities that a move affords a party's longtime romantic partner.

DECREED AND ORDERED BY THE COURT AS FOLLOWS:

1. Parenting Time:

(a) The Court believes [Father's] relationship with the children needs to be re-established over a phased-in period. At this point, the Court does not believe therapeutic visitation is in the children's best interests. There were clearly reasons to order this for 6 months at the time of the Dissolution Decree. Today at this point with the parties living in different states, an alternative path must be chosen. The Court orders the following phased-in parenting time for 6 months. The Court will not set any petition to modify for hearing until the parties have complied with this order.

(b) [Father] shall have phone contact with each child for 15 minutes twice per week on Wednesday evenings at 7:00 P.M. and Saturday mornings at 9:00 A.M. [Mother] shall insure the children are available and is ordered not to schedule activities that will conflict with this schedule.

(c) [Father] shall be allowed to go to North Carolina at his expense the first weekend of each month starting in September 2022 and visit with the children.

(d) On Saturday mornings from 9:00 A.M. to 2:00 P.M. for September and October and then from 9:00 A.M. to 4:00 P.M. for the following 4 months thereafter, [Father] shall be allowed to visit the children at [Mother's] house where all parties shall treat each other with courtesy and respect. [Father] may also take the children out to parks and restaurants in the County where [Mother] lives. After 6 months, the Court will review [Father's] parenting time.

2. [Father's] objection to [Mother's] Verified Notice of Intent to Relocate is overruled.

> 3. All petitions/motions not specifically addressed herein are hereby dismissed.
>
> 4. [Father] shall pay [Mother's] attorney fees in the amount of $8,000.00 within 6 months of the date of this Order.

Appealed Order at 1-3. Father filed a motion to correct error, which was denied, and he now appeals.

Discussion and Decision

[11] Initially, we observe that "a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented." *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). "[O]ne acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." *Id*. (alteration in *Zavodnik*) (quoting *Farguson v. MBank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir. 1986)). Moreover, "all litigants, even pro se litigants without legal training, are required to follow procedural rules." *Wright v. State*, 772 N.E.2d 449, 463 (Ind. Ct. App. 2002).[3]

[12] We further observe that Mother has not filed an appellee's brief, so we may reverse the trial court if Father's brief presents a case of prima facie error. *Hahn-*

[3] Father's brief violates Indiana Appellate Rule 46(A) in several respects: the sections of the brief are not arranged in the specified order, the statement of facts is not in narrative form and is inappropriately argumentative, and the sheer prolixity of the arguments significantly detracts from any cogency.

Weisz v. Johnson, 189 N.E.3d 1136, 1140-41 (Ind. Ct. App. 2022). In this context, prima facie error means on first appearance, at first sight, or on the face of it. *Id*. at 1141. "This less stringent standard of review 'relieves [us] of the burden of controverting arguments advanced in favor of reversal where that burden properly rests with the appellee.'" *Id*. (alteration in *Hahn-Weisz*) (quoting *Jenkins v. Jenkins*, 17 N.E.3d 350, 352 (Ind. Ct. App. 2014)).

[13] And finally, we observe that "[a]lthough it is not prohibited to adopt a party's proposed order verbatim, this practice weakens our confidence as an appellate court that the findings are the result of considered judgment by the trial court." *Safety Nat'l Cas. Co. v. Cinergy Corp.*, 829 N.E.2d 986, 993 n.6 (Ind. Ct. App. 2005), *trans. denied*. That being said, "there is a well-established preference in Indiana 'for granting latitude and deference to our trial judges in family law matters.'" *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). "[T]his deference is a reflection, first and foremost, that the trial judge is in the best position to judge the facts, to get a feel for the family dynamics, 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." *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940 (Ind. 2005). Moreover, "appeals that change the results below are especially disruptive in the family law setting." *Id*. We neither reweigh evidence nor reassess witness credibility, and we view the evidence most favorably to the trial court's judgment. *Sanford v. Wilburn*, 185 N.E.3d 451, 455 (Ind. Ct. App. 2022).

[14] Father raises multiple arguments in his brief, all of which appear to fall under his overarching contention that the trial court's order does not contain sufficiently specific findings, particularly regarding the approval of Mother's relocation, the decision not to hold Mother in contempt, and the award of attorney's fees to Mother. "When a written request for special findings is filed with the court prior to the admission of evidence, the trial court is required to make complete special findings of fact." *Dahnke v. Dahnke*, 535 N.E.2d 172, 175 (Ind. Ct. App. 1989) "The purpose of [Trial] Rule 52(A) is 'to provide the parties and the reviewing court with the theory upon which the trial judge decided the case in order that the right of review for error may be effectively preserved.'" *Hazelett v. Hazelett*, 119 N.E.3d 153, 159 (Ind. Ct. App. 2019).

[15] Indiana Code Section 31-17-2.2-1(c) provides that in determining whether "to allow or restrain the relocation of a child and to review and modify, *if appropriate*, a custody order [or] parenting time order," the trial court "shall take into account the following" considerations:

> (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.

(Emphasis added.)

[16] As indicated above, the trial court's findings regarding Mother's relocation are somewhat cursory. But because Father failed to fulfill his threshold obligation under the dissolution decree to complete six months of therapeutic counseling with the children, he cannot now complain that he should have been granted primary custody in lieu of Mother. Father was responsible for arranging his first counseling session at Crosswinds within ten days of the entry of the April 30, 2019 dissolution decree, and he was responsible for communicating to Mother the dates and times of his sessions at least one week in advance. Mother was responsible for ensuring that the children were present at the sessions; needless to say, a court-ordered counseling session would have taken precedence over any conflicting obligations. Father's unsuccessful attempts to coordinate scheduling with Mother before he belatedly contacted Crosswinds sometime after November 6, 2021, were not required by the decree. If anything, they could be viewed as a deliberate tactic to pin the blame on Mother for Father's

failure to comply with his obligations under the decree. In sum, Father has failed to establish prima facie error here.

[17] Regarding the trial court's decision not to hold Mother in contempt, we note that it is soundly within the trial court's discretion to determine whether a party is in contempt of its order. *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 202 (Ind. 2012). "Crucial to the determination of contempt is the evaluation of a person's state of mind, that is, whether the alleged contemptuous conduct was done willfully." *Id*. "The determination of whether to find a party in contempt permits the trial court to consider matters which may not, in fact cannot, be reflected in the written record." *Id*. at 202-03. "The trial court possesses unique knowledge of the parties before it and is in the best position to determine how to maintain its authority, justice, and dignity and whether a party's disobedience of the order was done willfully." *Id*. at 203 (quotation marks omitted). In view of these largely subjective considerations, we decline Father's invitation to reverse the trial court on this issue.

[18] And finally, with respect to the attorney fee award, we note that Indiana Code Section 31-15-10-1 states that the trial court in a dissolution action

> periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

Father does not specifically challenge the reasonableness of Mother's attorney's fees; he merely claims that Mother "is in an overwhelmingly superior financial condition" and cites to his unsubstantiated testimony at the hearing, which the trial court was not obligated to believe. Appellant's Br. at 53.[4] Father also challenges the trial court's characterization of his voluminous filings as frivolous, noting that several of his requests for admissions were deemed admitted and that he was able to obtain more secure parenting time with the children. Still, we will not second-guess the trial court's reasonable determination that many of his submissions were calculated to harass Mother. Accordingly, we affirm the trial court's order.

[19] Affirmed.

May, J., and Weissmann, J., concur.

[4] Father testified that in 2021, he earned $10,000 in taxable income working an average of seventy hours a week as a driver for Uber and Lyft, in addition to an unspecified amount of social security income. Tr. Vol. 2 at 71-73.