MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Natasha M. Furman,

Appellant-Petitioner,

v.

Justin H. Furman,

Appellee-Respondent.

May 17, 2021

Court of Appeals Case No. 20A-DC-1597

Appeal from the Pike Circuit Court

The Honorable Lynne Ellis, Special Judge

Trial Court Cause No. 63C01-1708-DC-223

Mathias, Judge.

[1] Natashia M. Furman[1] ("Mother") filed a notice of intent to relocate from Pike County, Indiana, to Satellite Beach, Florida, with three of her children. The children's father, Justin H. Furman ("Father"), objected and filed a motion to prevent relocation. The trial court denied Mother's proposed relocation following an evidentiary hearing. She now appeals, arguing that the court abused its discretion in denying her relocation request.

[2] We affirm.

Facts and Procedural History

[3] Mother and Father were married in Indiana in 2003 and have four children together: Con.F., who turned eighteen in December 2020; as well as Cr.F., born in 2011, E.F., born in 2008, and Co.F., born in 2007 ("Minor Children"). The Minor Children have lived in Pike County, Indiana their entire lives, and a majority of their relatives live in the area.

[4] In August 2017, Mother filed for divorce. A few months later, the court entered an order that dissolved Mother's and Father's marriage and approved the parties' settlement agreement. Under that agreement, Mother and Father shared legal custody of their four children, Mother had primary physical custody, and Father would exercise parenting time. The agreement also stipulated that Mother had two years to acquire financing on the marital residence "for the

[1] We acknowledge that Mother remarried in August 2018 and her current surname is Aiman.

sole purpose of releasing [Father]" from existing debt on the home. Appellant's App. p. 15. If Mother failed to meet the two-year deadline, she would sell the house.

[5] In August 2018, Mother married Andrew Aiman ("Husband"). About two months later, Husband had an altercation with Con.F., after which Con.F. went to live with Father. Father subsequently filed a motion requesting primary physical custody of Con.F. and shared physical custody of the Minor Children. *See id.* at 30–31. That motion remained pending—and Con.F. still lived with Father—when, in April 2020, Mother filed a notice of intent to relocate "within the next thirty (30) days" approximately fifteen hours away to Satellite Beach, Florida. *Id.* at 33. Mother indicated that she and Husband each had better job opportunities and that relocation would provide "her children with unique opportunities." *Id.* Father timely objected and requested a hearing.

[6] The trial court held an evidentiary hearing on July 24. Prior to the hearing, the court conducted in-camera interviews with two of the Minor Children—Cr.F. and Co.F. *See id.* at 5; Tr. Vol. II, pp. 4, 6.[2] During the hearing, several witnesses testified, including Mother, Husband, the children's paternal grandmother ("Grandmother"), Con.F., and Father.

[2] The record is not clear as to why the court did not also interview E.F., but we observe that E.F. has certain disabilities that make it "hard for her to communicate." Tr. Vol. III, p. 31; *see also* Tr. Vol. II, p. 53.

[7] Mother's testimony revealed the following: she sold the marital home, pursuant to the dissolution agreement, and the sale was set to close in about a month; she and Husband signed a contract, on May 1, to purchase a home in Satellite Beach, Florida; she has worked in the cosmetology industry for nearly sixteen years and specializes in unique services; she has been working at a salon in Satellite Beach since the middle of May and returns to Indiana every four weeks to provide services for her local clients; and the Satellite Beach schools and surrounding area offer the Minor Children opportunities that are not available in Pike County. *See* Tr. Vol. II, pp. 30, 33–37, 74–75, 101. In addition, Mother did not contest Father's request to have primary physical and legal custody of Con.F. *Id.* at 77–78.

[8] Husband, who is an army veteran with a security clearance, indicated that he recently resigned his government position as an electronics engineer and has multiple job offers in the Satellite Beach area.[3] *Id.* at 39, 140–43. He explained that the offer he planned to accept, if the relocation request was granted, would "be the next step in [his] career" as well as "the highest paying job [he's] ever had." *Id.* at 142. If the court denied the relocation request, however, Husband expressed "no doubt" that he could find a job locally. *Id.* at 166.

[9] Grandmother opined that Father is "a good parent," providing examples to support her belief; she also detailed her "special contact" with the Minor

[3] Husband has two minor children from a previous marriage, and their mother had already given Husband permission to relocate to Florida with the two kids. *See* Tr. Vol. II, pp. 129–30.

Children. *Id.* at 176, 179. Grandmother further explained that nearly all of the Minor Children's relatives live in the Pike County area, including Mother's parents and several aunts, uncles, and cousins. *Id.* at 178, 183–84; *see also id.* at 110–11. She testified that the family enjoys Sunday dinners together and that Cr.F. and E.F. "are basically best friends" with two of their cousins. *Id.* at 178; *see also id.* at 74. In Grandmother's view, relocation would not be in the Minor Children's best interests "because the family support is here in Indiana, not in Florida." *Id.* at 183. She also expressed concerns about the Minor Children being so far away from their oldest brother, Con.F. *Id.* He communicated a similar sentiment, *id.* at 192, and also detailed the close relationships he has with his siblings as well as the strong attachments they all have to the community, *see id.* at 192, 195–96, 224, 227.

[10] Father revealed that he "was shocked" when he received Mother's notice of intent to relocate. *Id.* at 240. He told the court that he does not want his Minor Children to move, stating, "their family's here . . . . I mean, there's nobody in Florida." *Id.* Father described the thought of going a long period of time without seeing the kids as "nerve-wracking." Tr. Vol. III, p. 7. And he acknowledged that the significant distance would create a financial hardship. *Id.* Father detailed activities he enjoys doing with the Minor Children, as well as his progress in strengthening a strained relationship with Co.F. Tr. Vol. II, p. 243; Vol. III, pp. 8–9. He also noted that E.F. specifically said "she didn't want to move to Florida." Tr. Vol. III, p. 25.

[11] At the conclusion of the hearing, the court denied Mother's request to relocate stating, "I don't believe that [the move] is legitimate," and, "I think the best interest of the [Minor Children] is that they remain in Indiana, and that [Mother, Husband, and Father] figure out how you're going to raise these children together." *Id.* at 34–35. The court subsequently issued an order to the same effect. Appellant's App. p. 9. Mother now appeals.

Standard of Review

[12] We review custody modifications for an abuse of discretion, with 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). We will find an abuse of discretion if the court's judgment is clearly erroneous. *Id.* Where, as here, neither party requested—and the trial court did not issue—specific findings of fact and conclusions of law, we review the court's decision as a general judgment. *Wolljung v. Sidell*, 891 N.E.2d 1109, 1111 (Ind. Ct. App. 2008). On review, we will not reweigh the evidence or consider the credibility of witnesses, and we may affirm on any theory consistent with the evidence before the court. *Lynn v. Freeman*, 157 N.E.3d 17, 22 (Ind. Ct. App. 2020).

[13] 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] Under certain circumstances, such as those here, a parent that intends to relocate must file a timely notice of that intent. Ind. Code §§ 31-17-2.2-1, -3. The nonrelocating parent can then respond in one of three ways. *Id.* § -5(a). Father proceeded under the third option, which requires the nonrelocating parent to file a statement objecting to the relocation, a motion requesting both an order preventing relocation and a modification of an existing court order, and a request for a hearing on the motion. *Id.* § -5(a)(3). At the hearing, the relocating parent bears the initial burden of showing that the "proposed relocation is made in good faith and for a legitimate reason." *Id.* § -5(e). If this showing is made, the burden shifts to the nonrelocating parent to establish "the proposed relocation is not in the best interest of the child." *Id.* § -5(f).

[15] The trial court here determined that (1) Mother failed to establish the proposed relocation "is being made for a legitimate and good faith purpose," and (2) in any event, relocation "is not in the best interests of the children." Appellant's App. p. 9; *see also* Tr. Vol. III, pp. 32–36. Mother ultimately challenges both conclusions, which we address in turn.

I. *The trial court erred in concluding that Mother's proposed relocation was not made in good faith and for a legitimate reason.*

[16] Mother first claims the trial court erroneously determined that she failed to prove that her relocation request was made in good faith and for a legitimate reason. Specifically, Mother argues that she "provided several objective [bases] for requesting a relocation," and that the court's decision contradicts "established precedential law." Appellant's Br. at 9, 12. We agree.

[17] Over the last several years, this court has issued a series of decisions discerning what the legislature intended by requiring a relocating parent prove that "the proposed relocation is made in good faith and for a legitimate reason." I.C. § 31-17-2.2-5(e); *see Lynn*, 157 N.E.3d at 23–25; *Gold*, 14 N.E.3d at 841–42; *Nelson v. Nelson*, 10 N.E.3d 1283, 1286 (Ind. Ct. App. 2014); *Gilbert v. Gilbert*, 7 N.E.3d 316, 320–21 (Ind. Ct. App. 2014); *H.H. v. A.A.*, 3 N.E.3d 30, 35 (Ind. Ct. App. 2014); *T.L. v. J.L.*, 950 N.E.2d 779, 787–88 (Ind. Ct. App. 2011) (collecting cases). Collectively, those decisions establish that the relocating parent must provide an objective reason for relocation that is neither pretextual nor illegitimate on its face—"a rather low bar in application." *Lynn*, 157 N.E.3d at 25. We have cautioned that this initial showing must not pose "an inordinately high bar" because doing so could prevent our trial courts from determining what is in the best interests of the children. *Id.* And our preference for resolving relocation disputes on a judicial best-interests determination is well settled. *See, e.g.*, *id.*

[18] Here, the trial court concluded Mother failed "to demonstrate that the move is being made for a legitimate and good faith purpose," reasoning that Mother and Husband "have the ability to secure employment anywhere." Appellant's App. p. 9. The court elaborated on this reasoning at the conclusion of the evidentiary hearing: "I truly do not believe [the move] was a legitimate situation, because [Mother] can make the same amount of money [in Indiana], and you were making the same amount of money than what you would make down [in Florida]." Tr. Vol. III, p. 34. The court also noted that Husband "made it very clear" he "can get a job anywhere." *Id.* We conclude that the court's reasoning and ultimate conclusion is flawed in two respects.

[19] First, the record does not support the trial court's finding that Mother "can make the same amount of money" in Indiana as she can in Florida. The uncontroverted evidence reveals that Mother, who had been in the cosmetology industry for almost sixteen years, has a unique skillset involving "hand tied extensions and balayage," which is "specialty colors." Tr. Vol. II, pp. 34, 36. And capitalizing on this skillset "requires a certain type of clientele" that is both wealthier and more prevalent in the Satellite Beach, Florida area. *Id.* at 36. Mother's recordkeeping further established she was "making over 66 percent more and working two days less" since she began working at a Satellite Beach salon. *Id.* at 37. In short, the court's finding that Mother "can make the same amount of money" in Indiana is clearly erroneous.

[20] Second, though the record supports the trial court's finding that Mother and Husband "have the ability to secure employment anywhere," Appellant's App.

p. 9, we have previously determined that relocating for financial purposes or to secure employment are objectively legitimate reasons, *see Lynn*, 157 N.E.3d at 25; *H.H.*, 3 N.E.3d at 35–36; *see also Baxendale*, 878 N.E.2d at 1254, 1256 n.5. In *H.H.*, for example, the mother's stated reason for relocation was to live and create a family with her husband in Hawaii. 3 N.E.3d at 36. And we concluded that this reason "was sufficient to prove that her request was made in good faith and for a legitimate purpose." *Id.* In reaching this conclusion, we acknowledged that the mother was gainfully employed in Indiana and that the husband "was making approximately the same salary" in Hawaii. *Id.* But we also observed that the evidence revealed the mother would have better opportunities working the same job in Hawaii, and that the husband was working fewer hours and had better benefits. *Id.* We thus held that the trial court erred in concluding the mother's proposed relocation was not made in good faith and for a legitimate reason. *Id.* We reach the same conclusion here.

[21] Mother proposed objectively legitimate reasons for relocating from Pike County, Indiana, to Satellite Beach, Florida. The uncontroverted evidence reveals that relocation would provide both Mother and Husband the opportunity to advance their respective careers and earn more money. In addition, Mother indicated in her notice of intent that "such a relocation provides her [Minor Children] with unique opportunities." Appellant's App. p. 33. That reason is also supported by uncontroverted evidence. Mother explained that Co.F. and Cr.F. "are both very into football" and that Satellite Beach has "an amazing football program." Tr. Vol. II, p. 74. She also remarked

that E.F. "wants to do dance" and that the Satellite Beach area has "an amazing dance studio" which can accommodate E.F.'s special needs. *Id.* at 74–75, 108. Further, there is no evidence that Mother's reasons for relocation are either pretextual or illegitimate on their face.

[22] In sum, these circumstances do not support the trial court's conclusion that Mother's proposed relocation was not made in good faith and for a legitimate reason. At the same time, we recognize that the court was clearly frustrated by the adults' inability to "work together for the benefit of the [Minor Children]" and that Mother had essentially already moved to Florida "without consulting" Father or discussing how the move might "affect the kids." Tr. Vol. III, pp. 32, 34; *see id.* at 32–36. Those observations, however, are more relevant to the court's best-interests determination, which we examine next.

II. *The trial court did not err in concluding that relocation would not be in the Minor Children's best interests.*

[23] Notably, Mother does not specifically challenge the trial court's best-interests conclusion in her initial brief. Instead, Mother maintains in her reply brief that the court "did not find that Father carried his burden in proving that relocation was not in the Minor Children's best interests." Reply Br. at 4.[4] Mother's

[4] By challenging the court's best-interests conclusion for the first time in her reply brief, Mother has waived this claim. See *Monroe Guar. Ins. Co. v. Magwerks Co.*, 829 N.E.2d 968, 977 (Ind. 2005) ("The law is well settled that grounds for error may only be framed in an appellant's initial brief and if addressed for the first time in the reply brief, they are waived."). Waiver notwithstanding—given our preference for resolving a case on its merits—we will address Mother's claim.

argument is essentially that the burden never shifted to Father—under I.C. § 31-17-2.2-5(e)—because the court concluded Mother failed to carry her initial burden—under I.C. § 31-17-2.2-5(e). And because the court never made an explicit "ruling that Father carried his burden," Mother contends that the best-interests prong "of the relocation statutes was not at issue." Reply Br. at 4. While this argument appears to have merit at first blush, it fails on closer inspection. We first explain why the court's best-interests conclusion was appropriate and then show why that conclusion is supported by the evidence.

[24] Mother is correct that the trial court did not specifically declare that "Father carried his burden." But, for two reasons, she is incorrect that the court's failure to do so rendered the best-interests prong inapposite. First, nothing in the relocation statutes requires a trial court make a specific finding on whether the nonrelocating parent conclusively established that the proposed relocation is not in the children's best interests. Imposing such a requirement here—particularly when neither party requested findings or conclusions—would elevate form over substance, which we decline to do. Second, there is nothing in the relocation statutes preventing the trial court from making a best-interests determination even if the court determines the relocating parent failed to satisfy the initial burden. Prohibiting the court from doing so would impede judicial efficiency and run counter to our preference for resolving relocation disputes on a judicial best-interests determination. *Lynn*, 157 N.E.3d at 25 (citing *T.L.*, 950 N.E.2d at 788); *see also* Tr. Vol. II, p. 133 (Mother's counsel remarking that "the issue before the Court is whether this relocation is in the best interest of the

children").[5] We now turn to whether the evidence supports the trial court's best-interests conclusion here.

[25] In determining whether relocation is in a child's best interests, the court must consider the following factors:

> (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

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[5] In support of her position that the trial court "never decided that Father carried his burden in proving that relocation is not in the Minor Children's best interests," Reply Br. at 10, Mother compares the circumstances in this case to those in *T.L.* and *Lynn*, *id.* at 9–10. In those cases, the trial courts explicitly stated, in issued findings of fact and conclusions of law, whether the nonrelocating parent met their best-interests burden. *T.L.*, 950 N.E.2d at 783; *Lynn*, 157 N.E.3d at 22, 25, 28. Here, however, neither party requested specific findings and conclusions under Trial Rule 52(A), and the trial court did not issue them sua sponte. Thus, Mother's reliance on *T.L.* and *Lynn* is misplaced.

(B) nonrelocating parent for opposing the relocation of the child.

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

I.C. § 31-17-2.2-1(c). The final category refers to the statutory factors—set forth in Indiana Code section 31-17-2-8—that a court must consider when making a custody determination: the child's age and sex; the parents' wishes; the child's wishes; the child's relationship with parents, siblings, and any other person affecting the child's best interests; the child's adjustment to home, school, and the community; and the mental and physical health of all individuals involved. We have previously explained that "the relocation statutes do not require findings of fact, but, at a minimum, there must be evidence in the record on each of the" above factors. *Wolljung*, 891 N.E.2d at 1113.

[26] Mother argues that "there is no evidence in the record" on two of the above factors: "the feasibility of preserving the relationship between the nonrelocating individual and the child" or "the hardship involved for the nonrelocating individual to exercise parenting time." Reply Br. at 11. We disagree.

[27] The record includes ample evidence on the feasibility of Father preserving the parent-child relationships and the hardship on Father to execute parenting time if the court granted Mother's relocation request.[6] Mother proposed moving over

[6] Though Mother does not assert that there is a lack of evidence on the other statutory factors, we note that the record includes ample evidence on those factors as well.

900 miles away, a drive of "about 15 hours." Tr. Vol. II, p. 84. At the time of the hearing, Father exercised parenting time "one day a week," "every other weekend," certain holidays, and for "half of the summer." *Id.* at 26, 82–83, 243. Relocation, therefore, would result in a substantial decrease in the amount of Father's visitation time, including depriving him of time with the kids each week. *Cf. Nelson*, 10 N.E.3d at 1287 (finding that "the trial court thoughtfully considered the hardship and travel expenses involved" in light of the significant distance of the proposed relocation).

[28] The court also heard evidence that Father is a "good parent" to the Minor Children: he attends their extracurricular activities; they are his priority when in his care; he enjoys spending time with them; and he could adequately care for them if they were with him full time. Tr. Vol. II, pp. 176, 181, 183, 195, 207, 242–43. As to preserving the parent-child relationships, Father described the thought of "not seeing the kids" for long periods of time as "nerve-wracking." Tr. Vol. III, p. 7. Mother even acknowledged that she could not envision herself being fifteen hours away from the Minor Children. Tr. Vol. II, p. 85. Also, Father works ten-hour days, five days a week, *id.* at 237, and he acknowledged that the distance would create a financial hardship, Tr. Vol. III, p. 7. He nevertheless stated that he would "do what you got to do" to see his kids. *Id.*

[29] The record further reveals that the trial court explicitly considered evidence of Father's relationships with the Minor Children and the hardship relocation would incur. For example, just before the court declared—for a second time—that relocation would not be in the best interests of the Minor Children, the

court remarked to Father, "the kids spend quality time with you, they spend one night a week overnight, and every other weekend, and then all the holidays and so forth, I don't like that distance is a factor." *Id.* at 36. Similarly, the court noted in its order "that the children regularly exercise parenting time with their Father." Appellant's App. p. 9.[7]

[30] In short, contrary to Mother's claim, the record contains evidence on the feasibility of Father preserving his relationship with the Minor Children as well as the hardship relocation would impose on Father. The trial court's best-interests determination is therefore not clearly erroneous.

Conclusion

[31] The evidence does not support the trial court's conclusion that Mother's proposed relocation was not in good faith and for a legitimate reason. The evidence does, however, support the court's conclusion that relocation was not in the Minor Children's best interests. We therefore affirm the trial court's decision denying Mother's relocation request.

[32] Affirmed.

Riley, J., and Crone, J., concur.

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[7] Also, in concluding "it is in the best interest of the [Minor Children] to remain in Indiana," the court observed that the kids "have a strong relationship with their grandmother." Appellant's App. p. 9. This finding has ample support in the record, *see* Tr. Vol. II, pp. 176, 178–81, 183–84, which in turn supports the court's best-interests conclusion.