MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Peter A. Sparks,
Appellant-Respondent,

v.

Irina V. Sparks,
Appellee-Petitioner.

August 22, 2022

Court of Appeals Case No. 22A-DC-495

Appeal from the St. Joseph Circuit Court

The Honorable William L. Wilson, Special Judge

Trial Court Cause No. 71D05-1909-DC-749

Weissmann, Judge.

[1] The trial court denied Father's request to move his 16-year-old son from Indiana to Wisconsin, instead leaving the teenager in his current high school, where he enjoyed a computer "coding" class and an in-person Japanese language class not offered at the Wisconsin high school. Father, a mathematician, argues that logic and reason—the foundation of both mathematics and law—dictated the move.[1] But Father ignores a critical variable: the best interests of the child. We conclude first that Father waived any irregularities in the proceedings and second that Father has not met his burden of showing the trial court abused its discretion in determining that the child should remain in Indiana. The judgment is affirmed.

Facts

[2] Peter Sparks (Father) and Irina Sparks (Mother), who married in 2003, lived in Wisconsin for 10 years before moving to Mishawaka, Indiana. Less than a year after the move, Mother petitioned for divorce. The dissolution court entered a preliminary order granting Mother and Father joint custody of their only child, D.S. While the divorce progressed, Mother and Father lived with the teenager in the family home.

[1] "[E]very legal analysis should begin at the point of reason, continue along a path of logic, and arrive at a fundamentally fair result." *Sunrise Lumber v. Gerald Johnson*, FPCOA No. 165, *3 (1999). Father reasonably compares mathematics and the law.

[3] Father soon filed a notice with the dissolution court revealing his intent to move with D.S. to the family's former hometown of Wauwatosa, Wisconsin. Father alleged that he would have better job opportunities in Wisconsin and that D.S. would be happier there. Mother objected to the child's move. After a hearing, the trial court preliminarily denied Father permission to relocate D.S. to Wisconsin. Father later obtained new housing and began a new job in Wisconsin. He also maintained a home separate from Mother's in Indiana, and Mother and Father continued to share custody of D.S.

[4] At the dissolution hearing 1½ years later, at which Father represented himself, the trial court revisited Father's notice of intent to move but ultimately determined the child should remain in Indiana. The court granted the parents joint custody of D.S. because Father often can work remotely from Indiana.

[5] Father moved to correct error, which the trial court denied after striking "as scandalous and impertinent" Father's disparaging comments about Mother in the motion. Appellee's App. Vol. II, p. 9. Father appeals.

Discussion and Decision

[6] Father, who represents himself on appeal, does not offer a succinct statement of issues on appeal. Mother chooses to simply offer reasons to affirm, rather than specifically addressing Father's rambling claims.

[7] Father appears to present two primary arguments. First, he claims the evidentiary hearing was unfair. Second, he argues the trial court erred in denying his request to move the child and in granting joint custody only to the

extent it required the child to remain in Indiana. We find Father has waived most of the claimed irregularities and that the evidence supports the trial court's judgment.

I. Standard of Review

[8] As Father is appealing from the denial of his motion to correct errors, we review the trial court's ruling for an abuse of discretion. *Old Attica Sch. Preservation, Inc. v. Utica Tp.*, 7 N.E.3d 327, 330 (Ind. Ct. App. 2014). An abuse of discretion occurs when the trial court's decision contradicts the logic and effect of the facts and circumstances before the court. *Id.* We consider only the evidence most favorable to the trial court's judgment without reweighing the evidence or reassessing the credibility of witnesses. *Lynn v. Freeman*, 157 N.E.3d 17, 22 (Ind. Ct. App. 2020). Our Supreme Court has made clear that "in family law matters, trial courts are afforded considerable deference." *D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012).

II. Fair Hearing

[9] Father contends the hearing was unfair due to: 1) summary presentations of evidence by Mother and the guardian ad litem; 2) the guardian ad litem's alleged improper treatment of Father and lack of a written report; and 3) unexplained delays that benefited Mother.

i. Summary Presentations of Evidence

[10] Father's examination by Mother consumed all of the first day of the hearing, largely due to Father's recalcitrance.[2] At the start of the second day of the hearing, the trial court requested Mother and the guardian ad litem present the rest of their case by summary presentation to ensure a decision before school began in January. Mother and the guardian ad litem agreed to the summary presentation and Father did not object. After their summary presentations, Father presented his evidence including testimony from his four witnesses. Father also offered his exhibits, all of which the trial court admitted. The trial court took judicial notice of the preliminary hearing on Father's notice of intent to move conducted 1½ years earlier.

[11] The trial court then suggested the closure of evidence because it believed it had sufficient evidence on which to rule. Father objected, claiming "there's a bunch of stuff that I haven't presented." Tr. Vol. II, p. 168. Father did not specify his unpresented evidence, and the hearing ended without more evidence.

[12] Father claims on appeal that he never had the opportunity to cross-examine the guardian ad litem. Although that is true, Father never sought cross-examination or objected on that basis. *See Archem, Inc. v. Simo*, 549 N.E.2d 1054, 1060 (Ind.

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[2] Father repeatedly answered counsel's queries by posing his own questions. Tr. Vol. II, pp. 46-47, 50, 54. Father also often offered more information than requested, leading to repeated, but ultimately unavailing, admonishments or other intervention from the trial court. *Id.* at 22-23, 54, 81. Father also focused on issues irrelevant to whether the move to Wisconsin was in the best interests of the child. *See*, *e.g.*, *id.* at 95 (referring to Mother breaking the marriage "contract"), 132-34 (focusing on his colleagues and their treatment of him in prior positions).

Ct. App. 1990) (finding waiver where litigant failed to object where trial court did not provide opportunity for cross-examination). Father further waived this claim by failing to make an offer to prove in the trial court. *See* Ind. Evidence Rule 103(a)(1) (requiring that to preserve the issue of exclusion of evidence, litigant must object, specify the grounds for the objection unless apparent from the context, and inform the court of the substance of the excluded evidence by an offer of proof); *Duso v. State*, 866 N.E.2d 321, 324 (Ind. Ct. App. 2007) (an offer to prove—usually, a specification of the substance of the evidence, an explanation of its relevance, and the grounds for admissibility—is required to preserve for appeal a challenge to the exclusion of evidence).

[13] In any case, Father has shown no prejudice. The trial court heard extensive evidence from Father during the three days of hearings over 1½ years. The final two days consisted almost exclusively of Father's testimony and his presentation of evidence. The trial court ended the presentation on the third day because it "was extremely concerned that time was not being used wisely by Father." Appellee's. Vol. II, p. 73. It found Father mainly just "voice[d] his grievances about unilateral career sacrifices, the way the [guardian ad litem] handled his role, and how poorly he is treated in academia." *Id.* For those reasons, the court "concluded that additional testimony by Father would be irrelevant, cumulative, and repetitive." *Id.*

[14] On appeal, Father lists the excluded evidence that he would have presented. Appellant's Br., pp. 25-26. As the court predicted, such evidence would have

been irrelevant, cumulative, and repetitive, as most of it relates not to D.S.'s current circumstances but to Mother's actions from 10 to 20 years ago. *Id.*

[15] Given the circumstances, the trial court was well within its authority to limit Father's presentation of additional evidence. *See* Ind. Evidence Rule 611 ("The Court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment."). Even if error occurred, it would be harmless because the excluded evidence was irrelevant, cumulative, or repetitive. *See Miller Brewing Co. v. Best Beers of Bloomington, Inc.*, 608 N.E.2d 975, 985 (Ind. 1993) (finding admission of irrelevant and cumulative evidence was harmless error because no prejudice resulted).

ii. Guardian Ad Litem

[16] Father complains that the final two-day hearing was unfair because he did not receive a written report from the guardian ad litem 10 days earlier. Father relies on Indiana Code § 31-17-2-10 and -12. The former allows the court to seek advice from "professional personnel," who must submit their reports to the court in writing and be subject, upon request by counsel, to cross-examination. Ind. Code § 31-17-2-10(a)-(b). Indiana Code § 31-17-2-12 is inapplicable because it involves only post-hearing custody investigations requested by a parent or custodian, and none is involved here. Father ignores Indiana Code §

31-17-6-1, which allows a court in custody proceedings to appoint a guardian ad litem for a child and imposes no deadlines or requirement of a written report.

[17] Father's claim fails because he does not provide us with the information necessary to determine whether the guardian ad litem ever needed to file a report. The parties stipulated to the appointment of the guardian ad litem after the trial court suggested the child needed one. The guardian ad litem entered an appearance on behalf of the child and later was served with all pleadings, including those not involving custody, as if he were a party to the proceedings. In addition, the guardian ad litem presented evidence during the final hearing. The trial court's judgment reveals that the guardian ad litem "was appointed to examine the question of what is in [the child's] best interests." Appellee's App. Vol. II, p. 80. But the judgment does not reveal the statute under which the guardian ad litem was appointed and whether the guardian ad litem was tasked with drafting a written report. The record is silent on that issue as well. As Father does not establish that any report was required, we find no error.

[18] Father also complains about the guardian ad litem's "hostile" examination of him. Appellant's Br., p. 22. Father takes particular umbrage to the guardian ad litem's questioning about Father's sharing of information with D.S. The trial court detected "nothing personal" in the guardian ad litem's examination of Father. Tr. Vol. II, p. 73. We also do not discern any irregularity and share the guardian ad litem's concerns about Father's oversharing with D.S.

[19] Father's statements in the trial court and on appeal reflect his refusal to recognize that children may be significantly harmed by exposure to the intricacies of their parents' divorce proceedings and critical comments about the other parent. Tr. Vol. II, pp. 99; *see*, *e.g.*, *Hanson v. Spolnik*, 685 N.E.2d 71, 77 (Ind. Ct. App. 1997). Father, in fact, requests that we open the dissolution case files to public review so that his son and others may access it. The guardian ad litem's inquiry into Father's aberrant views on that subject was relevant and proper, given the trial court's task was to determine the best interests of the child and custody. *See Hanson,* 685 N.E.2d at 78 (finding pattern of parental alienation by other parent was relevant to determination of joint custody, which may be an abuse of discretion when the "parents have made child rearing a battleground").

iii. Delays

[20] Father claims unexplained delays in the dissolution proceeding by Mother, the guardian ad litem, and the trial court amounted to "a de facto" decision for Mother on the relocation issue. The longer that D.S. attended school in Indiana, according to Father, the more likely D.S. would be tied to it. Although Father contends that "[t]he constitution [sic] [Fourteenth A]mendment deals with this," he does not elaborate. Appellant's Br., p. 20. He also does not cite the record to support his claims of undue delay. Mathematics does not allow vagueness, and neither does the law. *See* Ind. Appellate Rule 46(A)(8)(a) (contentions in appellant's brief must be supported by cogent reasoning and

citations to the authorities, statutes, and Appendix or portions of the record relied upon).

[21] Waiver notwithstanding, we find no evidence of undue delay that prejudiced Father. The trial court preliminarily denied Father's request to move only seven months after he filed it and only one month after Father's scheduled move. Although the final hearings in that matter were not conducted for another 1½ years, the proceedings were delayed by changes in representation by both Mother and Father, multiple motions, and the world pandemic. We find no support for Father's claims that the guardian ad litem's protracted examination of him was meant to stall the proceedings to benefit Mother's case. Father largely was responsible for the extended examination, given Father's lack of specificity in his answers and repeated focus on issues irrelevant to the proceedings. The trial court, in fact, praised the guardian ad litem's examination of Father because it led to identifying the exact relief Father was seeking. Tr. Vol. II, p. 73.

[22] Nothing in the record suggests any of these delays were intentional or that they were intended to benefit Mother. As the delay allowed Father a second opportunity to present evidence on that issue, it benefited him. He fails to establish unfairness in the proceedings on this basis or any other that he raises.

III. Move and Joint Custody

[23] Father next contends that the trial court erroneously denied him permission to move with D.S. He seems to attack the joint custody decision only if it precludes that move. We find the trial court did not err in either respect.

i. Standard

[24] Once Father filed his notice of intent to move and Mother objected, the trial court had to consider the following factors: (1) distance involved; 2) hardship and expense for Mother to exercise parenting time; 3) feasibility of preserving the relationship between Mother and D.S. through suitable parenting time, including consideration of the financial circumstances of the parties; 4) whether Father engaged in a pattern of conduct to promote or thwart Mother's contact with the child; 5) Father's reasons for seeking relocation and Mother's reasons for opposing it; and 6) factors affecting D.S.'s best interests. Ind. Code § 31-17-2.2-1(c). Father bore the burden of showing that the proposed relocation is in good faith and for a legitimate reason. *See* Ind. Code § 31-17-2.2-5(e). Once Father met that burden, the burden shifted to Mother to show that the proposed relocation is not in D.S.'s best interests. *See* Ind. Code § 31-17-2.2-5(f). After finding Father met his burden, the trial court found Mother also met hers, and we agree with that determination.

ii. Evidence

[25] The evidence showed that Wauwatosa was three to four hours away from Mishawaka, and that Mother's employment contract with a Goshen hospital

would not expire for another 1 ½ to 2 years. Mother and the guardian ad litem favored joint custody, and Father did not disagree so long as D.S. lived in Wisconsin. But Father's joint custody plan would be impossible without Mother breaching her contract and moving to Wisconsin. As Father could work remotely in Indiana about half the time, joint custody was feasible if D.S. attended school in Indiana and Father continued to maintain a home there.

[26] The trial court found joint custody best for the child because both parents were "intelligent, well-educated, and loving parents." Appellee's App. Vol. II, p. 76. And it found that D.S., while having friends and connections in both Indiana and Wisconsin, appeared to favor Indiana and his current high school, where he participated in several activities. The Indiana school offered a computer "coding" class and an in-person Japanese language class not offered at the Wisconsin high school.

[27] Father argues that the Wisconsin school is better for D.S. and that Father is the more attentive parent. He also claims the trial court ignored probative evidence and improperly favored Mother. Father asserts that "[t]he obvious solution (ask anyone on the street) is to have [D.S.] continue his education in [Wisconsin] (best for him) and give him and Father (clearly the more devoted parent) half the income [from Mother's employment and] . . . [d]eclare Father the custodial parent." Appellant's Br., p. 18. And Father criticizes the trial court for failing to recognize that "parental sacrifice or wellbeing" is not separate from the child's wellbeing. *Id.* at 20. "Parent[al] sacrifice is directly related to parent[al]

devotion which is directly related to . . . future parenting performance," according to Father. *Id.* at 20.

[28] But Father's arguments amount to inappropriate requests to reweigh the evidence and fault Mother for the divorce. Throughout his trial court pleadings and testimony and in much of his briefs, Father offers inappropriate and scathing opinions of Mother as a student, girlfriend, and wife. His biggest complaint is that he placed his career on hold and moved to Indiana to allow Mother to pursue her medical training and career, and, because of the divorce, he cannot reap the financial and professional freedom that Mother promised during the marriage. But fault has no place in modern dissolution proceedings. *R.E.G. v. L.M.G.*, 571 N.E.2d 298, 301 (Ind. Ct. App. 1991). The trial court properly focused on the best interests of the child, and the evidence supports its determination that D.S. should continue living and attending school in Indiana.

[29] Given all of this evidence, the trial court did not abuse its discretion in refusing to permit Father to move with D.S. and in entering a joint custody order consistent with that decision. Father's remaining arguments either are frivolous or waived or both, and we do not address them.

[30] We affirm the trial court's judgment.

Robb, J., and Pyle, J., concur.