MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David D. Beal,
Appellant,

v.

Brooklyn Sloss,
Appellee-Plaintiff.

May 23, 2022

Court of Appeals Case No. 21A-JP-2318

Appeal from the Lake Superior Court

The Honorable Aimee M. Talian, Magistrate

Trial Court Cause No. 45D06-1911-JP-1098

Bailey, Judge.

Case Summary

[1] David D. Beal ("Father") appeals certain provisions of the trial court's final order in this paternity action.

[2] We affirm.

Issues

[3] Father raises four issues which we restate as follows:

I. Whether some of the trial court's findings are unsupported by the evidence.

II. Whether the trial court erred when it awarded primary physical custody of the parties' child ("Child") to Child's mother, Brooklyn Sloss ("Mother").

III. Whether the trial court erred when it awarded sole legal custody of Child to Mother.

IV. Whether the trial court erred when it allowed Mother to relocate with Child.

[4] In addition, Mother requests an award of her attorney fees incurred on appeal.

Facts and Procedural History

[5] Mother grew up in Indianapolis and obtained her undergraduate degree from Indiana University in Bloomington. Upon completing an internship in August

of 2016, Mother moved in with her parents in East Chicago, Indiana, to where they had recently relocated. Mother took a job with ScribeAmerica, and in September 2017, she met Father. At that time, Father was a physician at St. Catherine's Hospital. Mother and Father worked together and began dating in October of 2017. Father and Mother "had a contentious relationship from the start, often fueled by an inability or unwillingness to communicate effectively." Appealed Order at 2.

[6] In January of 2018, they discovered Mother was pregnant. Father initially requested that Mother terminate the pregnancy, and Mother refused. Father ended his relationship with Mother soon thereafter. Father's interactions with Mother during her pregnancy varied from being upset that Mother was not aborting the pregnancy, to asserting that he was not the father of the Child, to demanding that Mother split custody of Child with him equally. In mid-summer of 2018, Father came to Mother's parents' house and informed Mother that he had moved out of his condominium in Chicago and might be sleeping on his brother's couch. However, Father actually renewed his lease on the condominium in August of 2018.

[7] Child was born on September 8, 2018, and lived with Mother in Mother's parents' house in East Chicago. Father visited with Child a couple of times following Child's birth. On September 20, 2018, Mother filed an application for IV-D Child Support Services. Soon thereafter, Father informed Mother that he was moving to France to work with Doctors Without Borders for "several years." Tr. v. II at 25; Ex. v. 8.

[8] On October 2, 2018, Father sent Mother a text with a photograph and message informing her that he had arrived in Paris. Mother texted to Father a link to pictures of Child and Father responded, "No more photos please[.] You all have broken my heart[.]" Ex. v. 1 at 15. On October 4, Father texted Mother to ask how Child was doing and once more informed Mother he would be doing "global humanitarian" work "in developing countries" for "several years." Ex. v. 8 at 9. Over the next couple of weeks, the parties continued to exchange text messages in which they argued over who was responsible for Father's lack of involvement with Child; Father argued Mother was keeping Child from him, and Mother argued Father was choosing not to be involved with Child. On October 19, Father texted, in part:

> My family and I have decided that its best you all just move on[.] … Stay away from me and I'll stay away from you. What you have done is unforgiveable. There is nothing else you should ever expect from me after this. I strongly urge you all to just walk away and stay away[.] Have a good life with your son[.]"

Id. at 24.

[9] Thereafter, Father did not have contact with Mother or Child until Mother texted a picture of Child to Father approximately eight months later, on June 12, 2019. Father responded that he would like to see Child, he had returned from France "last month," and he would be available for two more weeks. Ex. v. 3 at 126-27. In August of 2019, the parties met to discuss Father seeing Child, and Father demanded equal custody of Child. Father refused to tell Mother where he was living or whether he was going to remain in the United

States. Mother therefore told Father he would have to go through the proper channels in the courts to arrange parenting time.

[10] In September of 2019, Father repeatedly appeared at Mother's home in East Chicago unannounced and uninvited, causing conflict with Mother's family members. Mother thereafter sought and obtained a protective order against Father, citing multiple incidents of harassment. Mother listed in the court documents two possible addresses for Father. Father subsequently filed a request to set aside the protective order and an accompanying affidavit asserting that, since 2016, he had lived continuously at 411 S. Sangamon St., Apt. 6B, in Chicago—i.e., the condominium from which Father told Mother he had moved in the summer of 2018. Father asserted that he therefore had not received proper service regarding the action seeking a protective order. Ex. v. 2 at 107-08.

[11] On November 22, 2019, Mother filed her Petition to Establish Paternity of Child. On December 2, 2019, Father informed Mother, through his attorney, that he would not submit to the jurisdiction of the Indiana courts, that she should dismiss the protective order, and that he should have parenting time three days and nights per week. On December 3, Mother requested and obtained a dismissal of the protective order.

[12] In March of 2020, the parties received the DNA test results confirming Father's paternity of Child. Father demanded immediate parenting time but, due to COVID-19 concerns, Mother offered Father only parenting time via video calls.

Father initially declined such parenting time but later acquiesced. However, Father became upset when Child, who was a toddler, got distracted during on-line visits and when Mother ended one such visit after forty-five minutes. After Mother received from Father a negative COVID test result, she allowed Father weekly in-person parenting time with Child.

[13] On June 26, 2020, the court approved the parties' agreement to interim parenting time for Father pursuant to the Indiana Parenting Time Guidelines. However, Father did not engage in many of the provided parenting times because of his alleged "non-traditional" work schedule. Tr. v. II at 89. Father refused Mother's requests that he provide her with his employer information and a copy of his work schedule. Father subsequently informed Mother that he had no work schedule after June of 2020 because he had been terminated. Father later provided Mother with copies of two letters from his employer, both of which were dated June 22, 2020. The first letter stated that Father's employment would be terminated as of September 20, 2020, and the second letter stated his termination date was October 20, 2020. Father also presented letters stating that he was working in Texas and Iowa as a contract physician in June and July of 2020 and from October through December of 2020.

[14] From June of 2020 through June of 2021, Father engaged in regular parenting time with Child.

[15] On December 7, 2020, Mother filed a Notice of Intent to Relocate with Child to Indianapolis. On January 4, 2021, March 8, 2021, and June 30, 2021, the trial

court conducted final hearings on all pending matters in the paternity action. Father represented himself. In an order dated October 7, 2021, the trial court issued its Amended Final Hearing Order. In addition to the above facts, the court made the following relevant findings of fact, sua sponte:

> 6. Father has testified that he was in Paris[, France] for September and October of 2018. He told Mother that he returned from Paris, France in May of 2019. Father also testified that he returned to Europe in the Spring of 2019. Father does not know where he stayed and how long he was overseas.
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> 7. During his testimony in open court, Father was able to recall that he visited Barcelona, Spain and Nice, France.
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> * * *
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> 9. In addition to Father's evasive and inconsistent testimony regarding his travels overseas, much of Father's testimony during these proceedings have [sic] been less than helpful to the Court. His responses are often condescending and are a borderline abuse of the judicial process. Father is litigious and will only provide a detailed response to questions that could be perceived to benefit his case; otherwise, his responses include "I don't recall" or "I don't remember" or responding to a question with a question.
>
> 10. This Court does not find Father's testimony to be credible.
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> * * *
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> 12. Father would repeatedly appear at the home of Mother's family in East Chicago, unexpectedly and uninvited, causing conflict with Mother's parents. This resulted in Mother

attempting to obtain a protective order that was later dismissed, police being called to Mother's home, and Father's arrest for Resisting Law Enforcement for failing to identify himself. Father's criminal case has since been dismissed.

* * *

17. Father refuses to provide a current work schedule to this Court as well as to Mother, despite numerous requests. If Father does provide a work schedule, it represents his work schedule for the previous months. Father will also insist that parenting time occur around his schedule, a schedule that is unknown to the Court because Father refused to provide the same during his testimony. The Court does note that Father requested the Court accept the late filing of an Exhibit 64, after the close of evidence, that included work schedules for various months in 2020 and his work schedule for July 2021 at a hospital in Iowa. If Mother cannot accommodate Father's demand for parenting time due to her own work schedule, parenting time will not occur resulting in Father filing an additional Petition for Rule to Show Cause. The record reflects that Father has filed five additional Petitions for Rule to Show Cause from July 2021 through August 2021 and said petitions remain pending before the Court.

18. Father insists that the Indiana Parenting Time Guidelines do not require the exchange of work schedules, but will often request time that would be Mother's parenting time under said guidelines. Father is rigid and refuses to devise a schedule that allows the child to participate in activities with both families, such as a family wedding. Father did not agree to allow the child to be a ringbearer in a family wedding because Mother did not get his permission in advance. Mother and [Child] participated in the wedding. Mother offered Father make-up parenting time and Father refused.

19. Mother attended nursing school at Marion in Indianapolis, and with the assistance of family, she was able to graduate and find housing and employment in the area. While she was in class, [Child] would attend daycare in Indianapolis. At the end of the week, Mother and [Child] would return to East Chicago for the weekend....

20. Mother wishes to remain in the Indianapolis area permanently as she has family members in the area and has begun to establish a life with [Child] there as that has always been her intention. Mother has already received several raises in pay at her current employer, Methodist Hospital in Indianapolis.

21. Father remains in Chicago and requests custody of [Child] be placed with him, objecting to Mother's relocation. Father will not maintain contact with Mother when [Child] is in his care and the child will sometimes act out with Father by hitting him. Mother still feels threatened by Father's aggressive and erratic behavior.

22. The parties have been unable to agree on the legal custody of the minor child…. The parties do not reside in close proximity to each other and Mother has been the sole provider and caregiver for this child since birth. Mother has proven that she will be present in the child's life and has made decisions in the best interest of the child.

23. Mother and Father are unable to communicate and cooperate on any level, and as a result, joint legal custody is not in the best interest of the child. The Court also questions the suitability of Father to exercise legal custody given his aggressive and erratic behavior.

24. It is in the best interest of the child that Mother is awarded sole legal and physical custody of the minor child. The Court has

considered several of the statutory factors, including but not limited to the child's sex and age, the relationship of the parties with the child and each other, and the child's adjustment to community and family. Specifically, Father was absent from the child's life for approximately eight months shortly after the child's birth. Mother has proven to be the primary caregiver for the child since birth. Father has exhibited questionable behavior since the child's birth, including harassing Mother by text message, sitting outside of Mother's home for hours, and disappearing from the child's life for months at a time. Mother has shown that she will act in the best interest of the child at all times. Father has not.

25. Mother's relocation is being made for a legitimate purpose of employment and is being made in the best interest of [Child]. [Child] has been attending daycare in Indianapolis since shortly after his birth so Mother could finish her studies. Mother is originally from the Indianapolis area and has family that still reside there to assist her. Mother's parents plan on returning to the Indianapolis area in the future. The parties have been navigating the distance between Chicago and Indianapolis during the pendency of this matter and the distance is not unmanageable.

26. Although there is a history of parenting time problems between the parties, the Court does not view said problems as an effort on Mother's part to thwart Father's parenting time. Instead, the difficulty arises from a combination of two demanding and non-conventional work schedules and a lack of communication and flexibility. Further, Father did not want parenting time with the minor child for approximately eight months when [Father's] exact whereabouts were unknown. When Father did decide that he wanted contact with the child, it ha[d] to be his way or not at all.

> 27. Once it has been determined by the Court that the relocation is being made for a legitimate purpose and in the best interest of the child, the burden shifts to Father to show that said relocation is not in the best interest of [Child]. Father has failed to meet said burden.
>
> 28. The Court finds that despite the constant disputes between the parties, it is in the best interest of the child that Father is awarded parenting time pursuant to the Indiana Parenting Time Guidelines as adopted but modified herein. Due to the distance between the parties and their inability to communicate and be flexible in scheduling, Father shall not be entitled to exercise a mid-week parenting time session. In addition, the opportunity for additional parenting time shall not apply for the same reasons.
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> ***

Appealed Order at 2-4.

[16] The trial court ordered that Mother was awarded sole legal and primary physical custody of Child, and Father was awarded parenting time pursuant to the Indiana Parenting Time Guidelines, as modified. The court also granted Mother's request to relocate to Indianapolis and denied Father's pending petitions to show cause. The court ordered the parties to attend the High Conflict Parenting Class and participate in Co-Parenting Counseling. This appeal ensued.

Discussion and Decision

Standard of Review

[17] Our standard of review when a trial court enters findings of fact and conclusions of law sua sponte in a child custody matter is well-settled.

> Pursuant to Indiana Trial Rule 52(A), the reviewing court will "not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012) (internal quotation and citations omitted). Where a trial court enters findings sua sponte, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (citation omitted). Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence. *Id*.
>
> Additionally, there is a well-established preference in Indiana "for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178 (Ind. 1993). Appellate courts "are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence." *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)). "On 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*. "Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to

> the judgment." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (citations omitted).

Steele-Giri v. Steele, 51 N.E.3d 119, 123-24 (Ind. 2016).

Findings of Fact

[18] Father asserts that several of the trial court's factual findings are not supported by evidence in the record. We address each challenged finding in turn.

[19] Father challenges finding number three, which states in full: "Father would push and harass Mother to agree to share parenting time 50/50 and later deny the child was his." Appealed Order at 2. However, at the same time that Father asserts that there is no evidence to support this finding, he also acknowledges that Mother testified to the facts in this finding. Father asserts that the trial court erred in crediting Mother's testimony and not crediting Father's testimony. However, that is simply a request that we reweigh evidence and judge witness credibility, which we may not do. *See Steele-Giri*, 51 N.E.3d at 124. Finding three is not clearly erroneous.

[20] Father challenges finding number eight, which states in full: "Father made no effort to contact the child from October, 2018 through June, 2019. During that time, Father made no effort to contact Mother regarding the child." Appealed Order at 2. Yet, that finding is supported by Mother's testimony, Father's testimony, and the exhibits containing Father's own texts. Father points to Mother's testimony that she "FaceTimed him while he said he was there." Tr. v. II at 26. However, that testimony shows only that *Mother* contacted *Father* by

FaceTime at some unspecified date while Father claimed to be out of the country; it does not show that Father made any effort to contact Mother or Child. Thus, not only is Father requesting that we engage in impermissible reweighing of the evidence, but the evidence he points to does not even support his own contention. Finding number eight is not erroneous.

[21] Father also challenges finding number twelve, which we have quoted in full in the fact section of this opinion and which relates to Father's unexpected and uninvited visits to Mother's home. That finding is supported by the testimony of Mother, Mother's Father, and Mother's grandmother's caseworker, the latter of whom testified to Father's "loud" and "aggressive" tone when he was attempting to enter Mother's parents' home on one occasion. Tr. v. II at 157. It is also supported by the exhibits containing the protective order paperwork and Father's deposition testimony.[1]

[22] Father challenges the factual statement in finding number fifteen that "Father unreasonably demanded 45-minute Face[T]ime sessions" with Child, asserting that there was only evidence that "one of Father's longest Face[T]ime sessions was forty-five (45) minutes." Appellant's Br. at 15-16. However, Mother's testimony was that "*one of* the longest [FaceTime] sessions was … *over* 45

[1] In support of his argument that finding twelve is erroneous, Father irrelevantly points out the trial court stated it would not "use[] against him … that [he's] some sort of criminal" because Mother asserted it was so, citing the trial transcript. Appellant's Br. at 15. Not only did the trial court not find that Father was "some sort of criminal," but the cited trial transcript has nothing to do with the amply-supported factual statements contained in finding twelve.

minutes;" that testimony does not contradict finding fifteen. Tr. v. II at 85 (emphasis added). Finding fifteen is not erroneous.

[23] Father asserts that the first portion of finding sixteen is erroneous, i.e., that he said he was unavailable to exercise parenting time on some occasions "because he said he had to work." Appellant's Br. at 19. However, Mother testified that Father repeatedly rejected proposed opportunities to exercise parenting time because he said he had a "non-traditional schedule." Tr. v. II at 89. Mother and the trial court reasonably inferred that Father's statement that he could not participate in some parenting times due to his "non-traditional schedule" referred to his work schedule. Thus, there was evidence supporting the finding that Father told Mother he was unavailable for some parenting times because he had to work.

[24] Finally, Father challenges finding number eighteen, quoted in full in the fact section of this opinion and related to Father's inflexible and uncooperative attitude toward parenting time. However, the factual statements in finding eighteen are supported by Mother's testimony and exhibits containing copies of the parties' text message exchanges. Father is merely asking this Court to discredit Mother's testimony, find Father's testimony more credible, and reweigh the evidence. However, we may not reweigh the evidence and judge witness credibility. *See Steele-Giri*, 51 N.E.3d at 124. Finding eighteen is not erroneous.

Physical Custody

[25] Father asserts that the trial court erred in granting Mother primary physical custody of Child. An initial custody determination in a paternity action must be made by taking into consideration the best interests of the child. Ind. Code § 31-14-13-2. In determining the best interests of the child, "[t]he court shall consider all relevant factors," including the following:

> (1) The age and sex of the child.
>
> (2) The wishes of the child's parent or parents.
>
> (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
>
> (4) The interaction and interrelationship of the child with:
>
> > (A) the child's parent or parents;
> >
> > (B) the child's sibling; and
> >
> > (C) any other person who may significantly affect the child's best interests.
>
> (5) The child's adjustment to the child's:
>
> > (A) home;
> >
> > (B) school; and

(C) community.

(6) The mental and physical health of all individuals involved.

(7) Evidence of a pattern of domestic or family violence by either parent.

(8) Evidence that the child has been cared for by a de facto custodian, ...

(9) A designation in a power of attorney….

Id.

[26] In finding that an award of primary physical custody to Mother was in Child's best interests, the trial court stated that it had "considered several of the statutory factors, *including but not limited to* the child's sex and age, the relationship of the parties with the child and each other, and the child's adjustment to community and family." Appealed Order at 4 (emphasis added). On appeal, Father acknowledges that the trial court is "not required to enter a finding as to each statutory factor it considered in making its custody determination." *Anselm v. Anselm*, 146 N.E.3d 1042, 1046 (Ind. Ct. App. 2020) (citation omitted), *trans. denied*; *see also Russell v. Russell*, 682 N.E.2d 513, 515 (Ind. 1997) (same). However, Father claims the trial court erred because it "failed to consider all of the statutory factors contained in [the statute]." Appellant's Br. at 18.

[27] We disagree. We "generally presume trial courts know and follow the applicable law." *Ramsey v. Ramsey*, 863 N.E.2d 1232, 1239 (Ind. 2007). That presumption "can be overcome if the trial court's findings lead us to conclude that an unjustifiable risk exists that the trial court did not follow the applicable law." *Id*. The law in this case requires the trial court to consider all the *relevant* factors. I.C. § 31-14-13-2. We presume the trial court did that, and our presumption is supported by the trial court's statement listing several specific statutory factors it considered but clearly stating that its consideration was not limited to those specified factors alone. Moreover, some of the factors listed in the statute are not "relevant" in this case, such as the de facto custodian and power of attorney factors; thus, it would not be erroneous for the court to disregard those irrelevant factors. *Id*. Furthermore, Father has not stated which statutory factor(s) the court allegedly failed to consider and how any such alleged failure affected the physical custody decision.

[28] Father also contends that the trial court's factual findings contained in finding twenty-four, relating to physical custody, are not supported by the evidence. However, those findings are supported by the testimony of the witnesses—including Father—and the exhibits containing protective order court documents and copies of the parties' texts to each other. That evidence supports the findings that Father was completely absent from Child's life for eight months, that Mother has been the primary caregiver since Child's birth, that Mother has acted in Child's best interests while Father has not, and that Father "has exhibited questionable behavior since the child's birth." Appealed Order at 4.

Father's arguments to the contrary are impermissible requests that we reweigh evidence and judge witness credibility.[2]

[29] We presume that the trial court complied with the law by considering all "relevant" statutory factors, and Father has cited no findings to rebut that presumption. *See Ramsey*, 863 N.E.2d at 1239. In addition, the factual findings relating to physical custody are supported by the record evidence. The trial court's physical custody order is not erroneous.

Legal Custody

[30] Father maintains that the trial court erred when it granted sole legal custody of Child to Mother rather than awarding the parties joint legal custody. Under Indiana law, "[a] biological mother of a child born out of wedlock has sole legal custody of the child, unless a statute or court order provides otherwise." I.C. § 31-14-13-1. Indiana Code Section 31-14-14-2.3[3] provides that, when considering an award of joint legal custody in a paternity action, the trial court must consider the best interests of the child. In making that determination, the trial court must also consider seven other listed factors, including "whether the

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[2] We note that the trial court specifically found that Father's testimony was not credible. Appealed Order at 2.

[3] We note that, regarding legal custody, both Father and the trial court erroneously cite Article 17 of the family law statutes—which deals with custody in general—rather than Article 14—which deals with custody within a paternity action in particular. However, as the relevant statutes under both Articles are substantially similar in all relevant ways, there is no harm caused by the trial court's erroneous citation. *Compare* I.C. § 31-17-2-5 *with* I.C. § 31-14-13-2.3 (both listing the same factors to be considered in determining the best interests of the child, except the latter statute adds a seventh factor not at issue in this case – i.e., "whether there is a pattern of domestic or family violence").

persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare." *Id*. Thus, where the evidence showed that the parties "displayed neither the willingness nor the ability to communicate and cooperate for the best interests of [Child]," we have held the trial court did not abuse its discretion in awarding sole legal custody to one parent. *Kakollu v. Vadlamudi*, 175 N.E.3d 287, 297 (Ind. Ct. App. 2021), *trans. denied*.

[31] Here, Mother had sole legal custody of Child pursuant to Indiana Code Section 31-14-13-1. However, Father sought joint legal custody through the paternity action. In determining whether joint legal custody would be in Child's best interests, the trial court found that Mother had "been the sole provider and caregiver for this child since birth …[and] ha[d] proven that she will be present in child's life and ha[d] made decisions in the best interest of the child." Appealed Order at 4. The court found that Father, on the other hand, was voluntarily absent from Child's life for a period of eight months, did not maintain contact with Mother when Child was in Father's care, had "aggressive and erratic behavior," and had not shown that he will act in the best interests of Child at all times. *Id*. The court also found the parties no longer live in close proximity to each other. Most significantly for purposes of legal custody, the trial court found that "Mother and Father are unable to communicate and cooperate on any level, and as a result, joint legal custody is not in the best interests of the child." *Id*.; *see Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1260 (Ind.

Ct. App. 2010) (noting the parties' ability to communicate and cooperate is "particularly germane" to whether joint legal custody should be granted).

[32] The evidence—including witness testimony and the exhibits containing copies of the parties' text messages to each other—supports the challenged findings, and those findings support the court's decision regarding legal custody. Father's contention to the contrary is simply a request that we reweigh the evidence and judge witness credibility. We may not do so. *See Steele-Giri*, 51 N.E.3d at 124.

[33] The trial court did not err in granting sole legal custody of Child to Mother.

Relocation

[34] Father challenges the trial court order allowing Mother to relocate with Child to Indianapolis. Indiana Code Sections 31-17-2.2-0.5 through 31-17-2.2-6 govern the proposed relocation of a custodial parent. A parent intending to relocate with a child must file notice of that intention, I.C. § 31-17-2.2-1, and the nonrelocating parent must file a response in which he or she may object to the relocation and file a motion to modify custody, I.C. §§ 31-17-2.2-1, -5. Following an objection to relocation and corresponding motion to modify custody, the relocating parent must prove "that the proposed relocation is made in good faith and for a legitimate purpose." I.C. § 31-17-2.2-5(e). If the relocating parent meets that burden of proof, "the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child." I.C. § 31-17-2.2-5(f).

[35] In determining whether to permit relocation of the child or, instead, modify custody, the trial court must take into account the following:

> (1) The distance involved in the proposed change of residence.
>
> (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time....
>
> (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time ... 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.

I.C. § 31-17-2.2-1(c).

Evidence of Good Faith and Legitimate Reason

[36] To prove good faith and a legitimate reason for relocation, the relocating parent must "demonstrate an objective basis—that is, more than a mere pretext—for relocating." *Gold v. Weather*, 14 N.E.3d 836, 842 (Ind. Ct. App. 2014) (quotation and citation omitted). Good faith and legitimate reasons for relocation include moving to live closer to family members, for financial reasons, and for employment opportunities. *Id.*; *see also, e.g.*, *B.L. v. J.S.*, 59 N.E.3d 253, 259 (Ind. Ct. App. 2016) (noting legislature intended that "legitimate" and "good faith" reasons for relocating would include such reasons as "liv[ing] closer to family members, for financial reasons, and for employment opportunities" (citation omitted)), *trans. denied*. And, although the trial court must consider the distance of the proposed relocation and the hardships and expense for the nonrelocating parent to exercise parenting time, an inconvenience caused by the relocation—even if it is out of state—does not alone warrant custody modification and denial of the request to relocate. *Fridley v. Fridley*, 748 N.E.2d 939, 941 (Ind. Ct. App. 2001) (citing *Hanks v. Arnold*, 674 N.E.2d 1005, 1007 (Ind. Ct. App. 1996)).

[37] Here, the evidence established that Mother wished to relocate to Indianapolis because she and Child had been there frequently during days when Mother was attending school and Child was in daycare; Mother had graduated from school and obtained a well-paying job in her chosen profession in Indianapolis; and Mother had family and friends in Indianapolis to whom she wished to live

closer. Those are all legitimate and good faith reasons for wishing to relocate. *See B.L.*, 59 N.E.3d at 259; *Gold*, 14 N.E.3d at 842.

Evidence of Best Interest of Child

[38] As Mother met her burden of proving her desire to relocate was made in good faith and for legitimate reasons, the burden shifted to Father to prove that the move would not be in Child's best interest. To meet that burden, Father was required to present evidence on each factor enumerated in Indiana Code Section 31-17-2.2-1(b). *In re Marriage of Harpenau*, 17 N.E.3d 342, 347 (Ind. Ct. App. 2014). In addition to the evidence discussed in the previous section, the evidence also established that the parties had been "navigating the distance between Chicago and Indianapolis during the pendency of this matter and the distance is not unmanageable." Appealed Order at 4. Moreover, the trial court ordered the parties to meet at the approximate half-way point between Chicago and Indianapolis—i.e., "at the Remington (Highway 24) exit off of I-65"—to exchange Child for parenting times. *Id*. at 5. Thus, the evidence indicates that the hardship and expense caused by the distance of the relocation would not be extreme. I.C. § 31-17-2.2-1(b)(1) and (2); *cf., e.g.*, *In re paternity of X.A.S.*, 928 N.E.2d 222, 226 (Ind. Ct. App. 2010) (finding, in a case permitting relocation, that the hardship and expense caused by relocation were not extreme where the relocating parent would pay the child's airfare to visit the nonrelocating parent in another state), *trans. denied*.

[39] Further, Father failed to present any other evidence that the relocation would not be in Child's best interests. The trial court specifically found that the history of parenting time problems between the parties was not due to "an effort on Mother's part to thwart Father's parenting time." Appealed Order at 4. Rather, Father was the party who was "rigid" and inflexible regarding parenting time. Id. at 3. Those findings are supported by Mother's testimony and copies of the parties' text messages to each other. Father has failed to carry his burden of proving the relocation would not be in Child's best interests.

[40] The trial court did not err in granting Mother's request to relocate.

Appellate Attorney Fees

[41] Finally, Mother has requested that we order Father to pay Mother's attorney fees and costs incurred in this appeal, pursuant to Appellate Rule 66(E). Section E of that rule gives this Court discretion to assess damages, including appellate attorney fees and costs, if an appeal is "frivolous or in bad faith." However, such a sanction "is limited to circumstances where the appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Bousum v. Bousum*, 173 N.E.3d 289, 293 (Ind. Ct. App. 2021) (quotation and citation omitted). "A strong showing is required to justify an award of appellate damages, and the sanction is not imposed to punish mere lack of merit, but something more egregious." *Kroger Co. v. WC Assoc., LLC*, 967 N.E.2d 29, 40 (Ind. Ct. App. 2012) (citation omitted), *trans. denied*; *see also Orr v. Turco Mfg. Co., Inc.*, 512 N.E.2d 151, 153 and n.3 (Ind. 1987) (holding punitive

sanctions may not be imposed to punish a lack of merit unless the appellant's contentions and arguments are utterly devoid of all "plausibility" in the sense of lacking apparent validity, reasonableness, or credibility). "As a general proposition, a finding of bad faith requires evidence of a state of mind reflecting dishonest purpose, moral obliquity, furtive design, or ill will." *Kroger*, 967 N.E.2d at 40.

[42] Moreover, we must be mindful that

> the imposition of punitive sanctions does have significant negative consequences. It may punish, and will deter, the proper exercise of a lawyer's professional responsibility to argue for modification or reversal of existing law. It will have a chilling effect upon the exercise of the right to appeal. It will discourage innovation and inhibit the opportunity for periodic reevaluation of controlling precedent.

Orr, 512 N.E.2d at 152.

[43] While the majority of Father's contentions on appeal are requests that we reweigh the evidence and judge witness credibility—which we clearly may not do, *see Steele-Giri*, 51 N.E.3d at 124—we cannot say that Father's appeal shows a "state of mind reflecting dishonest purpose, moral obliquity, furtive design, or

ill will."[4] *Kroger*, 967 N.E.2d at 40. We deny Mother's request for appellate attorney fees and costs.

Conclusion

[44] Viewing the evidence most favorably to the judgment—as we must, *Steele-Giri v. Steele*, 51 N.E.3d 119, 123-24—we hold that the trial court's findings regarding legal and physical custody and relocation are supported by evidence in the record, and those findings support the trial court's judgement. However, Father's appeal is not permeated with frivolity or bad faith such that an award of appellate costs would be appropriate.

[45] We affirm the trial court's decision, and we deny Mother's request for appellate fees.

Najam, J., and Bradford, C.J., concur.

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[4] However, Father is wrong when he asserts that Mother waived her claim for attorney fees by failing to provide supporting citation to the record; Mother's brief cites extensively to the record.