

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Connor M. Finch,
Appellant-Respondent,

v.

Heather N. Duthie,
Appellee-Petitioner.

March 31, 2021

Court of Appeals Case No.
20A-JP-1949

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

Trial Court Cause No.
18C02-1506-JP-108

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, Conner Finch (Father), appeals the trial court's Order granting Appellee-Petitioner's, Heather Duthie's (Mother's), request to relocate with minor child E.F. (Child) to Germany.
- [2] We affirm.

ISSUE

- [3] Father presents two issues on appeal, which we restate as the following single issue: Whether the trial court erred by concluding that Mother's relocation to Germany with Child was in Child's best interest.

FACTS AND PROCEDURAL HISTORY

- [4] Mother and Father are the biological parents of Child, born on July 11, 2014. Mother and Father, who were never married, both studied at Ball State University at the time of Child's birth. On October 16, 2015, the parties entered into a partial agreement establishing paternity, child support, and parenting time for Father. Final issues regarding custody, parenting time, child support, and Child's last name were reserved for the final hearing. Shortly after the agreed order was entered, the parties, on their own accord, modified Father's parenting time to a 50/50 schedule on alternating months.
- [5] On February 8, 2017, the parties appeared for a final hearing on issues regarding custody, parenting time, and child support. At the time of the hearing, Mother was still a student at Ball State University, had a roommate,

was working at Texas Roadhouse, utilized friends as sitters for Child, and paid for Child's daycare while Child was in her care. Father had dropped out of college and taken a job with Indianapolis Metropolitan Police Department (IMPD). He was residing with his parents, and similarly paid for Child's daycare while Child was in his care. At the hearing, Mother also notified the court that she was engaged to her then fiancé who was in the United States military and based in Virginia. Mother ended up not marrying her then fiancé, nor relocating to Virginia.

[6] On May 16, 2017, the trial court issued an Order, maintaining joint legal and physical custody of Child, establishing child support, and ordering that Child shall have Father's last name. Because there were "too many unknowns," such as Father's and Mother's work schedule, Mother's living arrangement, and the fact that Child would start preschool in the Fall of 2018, the trial court directed the parties to schedule a review hearing in the summer of 2018 so as to address those underlying issues. (Appellant's App. Vol. II, p. 6). A review hearing was never requested by the parties in the summer of 2018.

[7] On July 27, 2020, Mother filed her notice of her intent to move with Child to Germany. Mother stated that she was now married, and her husband was stationed in Germany with the United States Army. Mother indicated that she wanted to move to Germany by October 27, 2020. On August 13, 2020, Father objected to Mother's move, and he filed a verified motion to modify custody, parenting time, and child support. On October 7, 2020, Mother requested an emergency hearing on her notice of intent to move.

[8] A remote hearing via Zoom was held on October 14, 2020. Mother stated that she married her husband whom she had been dating for two years in May 2020, and shortly thereafter, her husband, who was newly recruited in the United States military, was assigned to a military base in Germany. Mother stated that her husband is expected to be stationed in Germany for three years. Mother stated that at Child's new school, Child will have access to all sports, field trips, academic opportunities, and the benefit of learning a second language. According to Mother, living in Germany would be a cultural and educational experience for Child. Mother testified that she would be a stay-at-home mom while she pursues her master's degree. Mother testified that if she were permitted to take Child to Germany, she preferred Father to have Child over Christmas and summer breaks in Indiana, and that she would be willing to split the cost of Child's ticket for those two trips. Father testified that Mother's relocation with Child to Germany was not in Child's best interest. Father stated that Child's doctor, dentist, church, and extended family from both parties are all in Indiana and the relocation would be unfair to Child. Although he wanted Child to remain in Indiana, he preferred to exercise his parenting time during the summer and Christmas break. Father testified that while studying and living in Germany would be great experience for Child, it may not be the "best situation." (Transcript p. 37). Father testified that if the court granted him physical custody of Child based on Mother's relocation to Germany, "Nothing would make [him] happier." (Tr. p.35).

[9] Evidence was presented that the parties have worked well together in the recent past about Child's schedule. Since May 2017, Mother and Father have been splitting parenting time with Child every other month. When Child started first grade, the parties changed the parenting time schedule: Father would typically pick Child up after school each day and have him until about 6:30 p.m. Father would then do homework with Child, play if there was time, feed him dinner, return him to Mother, and then go to work. Mother would then have the Child overnight, and then take him to school the next morning. The parties alternated weekends with Child and split the summer parenting time evenly. Both parties have been involved in Child's medical and dental appointments, and the Child has seen the same doctors since birth. Child has also been involved in sports and Father volunteers as an assistant coach to Child's football team. Also, during summer, Child participates in golf lessons at Lake Tippecanoe, a country club where the paternal grandparents are members. Father claimed that Child loves and is good at golfing.

[10] At the close of the evidentiary hearing, the trial court took the matter under advisement. The following day, October 15, 2020, the trial court issued an Order, granting Mother's request to relocate to Germany, and Father was ordered to meet Mother on October 19, 2020 to sign the passport application so as to enable Mother to obtain Child's passport. On October 22, 2020, Mother filed a motion for rule to show cause because Father had refused to sign the passport application. On October 23, 2020, Father simultaneously filed a motion to stay the relocation order (which was denied) and a notice of appeal.

[11] Father now appeals. Additional information will be provided as necessary.

DISCUSSION AND DECISION

A. *Standard of Review*

[12] Initially, we observe that Mother failed to timely file an appellee's brief. When an appellee fails to submit a brief on appeal, we apply a less stringent standard of review with respect to the showing necessary to establish reversible error. *In re Paternity of S.C.*, 966 N.E.2d 143, 148 (Ind. Ct. App. 2012), *trans. denied*. We may reverse if the appellant establishes *prima facie* error, which is an error at first sight, on first appearance, or on the face of it. *Id.* "Moreover, we will not undertake the burden of developing legal arguments on the appellee's behalf." *Id.* Nevertheless, even under this less stringent standard, we are obligated to correctly apply the law to the facts in the record to determine whether reversal is warranted. *Tisdale v. Bolick*, 978 N.E.2d 30, 34 (Ind. Ct. App. 2012).

[13] While neither party requested special findings pursuant to Indiana Trial Rule 52(A), the trial court's order contained findings of fact and conclusions thereon. Under such circumstances, the *sua sponte* findings control only as to the issues they cover and are reviewed for clear error, and a general judgment standard applies to any issues upon which there are no findings. *Gold v. Weather*, 14 N.E.3d 836, 841 (Ind. Ct. App. 2014), *trans. denied*. We may affirm a general judgment entered with partial findings on any theory supported by the evidence adduced at trial. *Id.*

[14] Importantly, our supreme court has expressed a preference 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). “Appellate deference to the determinations of our trial court judges, especially in domestic relations matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time.” *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). “Thus enabled to assess credibility and character through both factual testimony and intuitive discernment, our trial judges are in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children.” *Id.*

B. *Relocation*

[15] When a relocating parent files a notice of relocation, the nonrelocating parent may object, and the trial court shall hold an evidentiary hearing to rule on that objection. Ind. Code § 31-17-2.2-5(a)-(b). First, “[t]he relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason.” I.C. § 31-17-2.2-5(e). Next, “[i]f the relocating individual meets the burden of proof under subsection (e), 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).

[16] Here, the trial court found that Mother’s proposal to move and be with her husband in Germany was made in a good faith and for a legitimate reason. *See In re the Paternity of X.A.S.*, 928 N.E.2d 222, 229 (Ind. Ct. App. 2010) (explaining that a father who had recently married a member of the U.S. Navy

whose ship was docked in California and who wished to relocate to California to live with his spouse presented a good faith and legitimate reason for the relocation), *trans. denied*. Because Mother had met her burden, the trial court turned to the second prong, and it determined that Father had failed to establish that the relocation to Germany would not be in Child's best interest. Father only challenges the latter conclusion, and he claims that the trial court's holding was erroneous.

[17] In determining whether relocation is in a child's best interests, the trial court must take into account 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

(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, found in Indiana Code section 31-17-2-8, that a trial court must consider when making a custody determination, which include: the child's age and sex; the parents' wishes; the child's wishes; the child's interaction and interrelationship with parents, siblings, and other persons affecting the child's best interest; and the child's adjustment to home, school, and the community.

[18] The trial court made a summary conclusion that Father had not met his burden of establishing that Mother's move was not in Child's best interest. Father asserts that the "trial court's findings did not provide any evidence that it had considered the statutory requirements to determine if the relocation is in [Child's] best interest." (Appellant's Br. p. 13). Contrary to Father's claim, the trial court was not required to make specific findings relating to each statutory factor. *See H.H. v. A.A.*, 3 N.E.3d 30, 36 (Ind. Ct. App. 2014). Moreover, our review of the record reveals that the trial court thoroughly considered each statutory factor and included an evidence-based best-interests conclusion. To that end, the trial court heard relevant evidence on each statutory factor as follows:

[19] As to the first factor, the distance involved, it is uncontested by the parties that Germany is a very far distance from Father's home in Indiana. Mother

presented evidence that she would transport Child from Germany to Indiana to allow Father to exercise his parenting time over Christmas and summer breaks. Father stated that he was willing to do the same when it was Mother's turn to exercise her parenting time. Father presented no evidence that he was unable to travel to exercise his parenting time, and we find that the distance was insignificant. As for the second factor, the hardship and expense involved for Father to exercise parenting time, Mother proposed to fully pay for Child's flight costs, but she preferred if they split the costs. Father testified that he annually earns about \$72,000 from IMPD and \$3,500 from the Army National Guard. Father stated that he was doing well financially, and he had "plenty of money in the bank." (Tr. p. 23). Father testified that he could afford to pay for the Child's ticket costs but only if the trips were limited to two times a year. Father added that, if funds allowed him, he would add an extra trip during the year to visit Child in Germany. The evidence presented indicates that the hardship and expense caused by the distance of the relocation would not be extreme for Father.

[20] Turning to the third factor, the feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, Father testified that Child had more ties in Indiana. He remarked that Child's doctor, dentist, church, and extended family from both parties are all in Indiana. Father further stated that Child is enrolled in golf in the summertime and that Child loves playing golf. Father opined that uprooting Child from here would be "unfair" to Child. (Tr. p. 33). It is

undeniable that Father would be deprived of seeing Child daily after school, and further, Child would be deprived of seeing his extended family. Yet, we note that any relocation will affect the relationship between a child and a devoted nonrelocating parent. See *T.L. v. J.L.*, 950 N.E.2d 779, 789 (Ind. Ct. App. 2011) (observing that a significant adverse effect on a nonrelocating parent's relationship with their children "cannot be determinative" or the statute "would never allow for a long-distance move"). And with current technology, "[p]hysical distance does not prevent parents . . . from communicating effectively about education, health care, religion, and other aspects of a child's upbringing." *In re Paternity of W.R.H.*, 120 N.E.3d 1039, 1042 (Ind. Ct. App. 2019). The trial court echoed this sentiment by stating, "[c]urrent advances in technology will allow [Father] to have significant contact with [Child]." (Appellant's App. Vol. II, p. 27). To that end, Mother testified that she was willing to have daily Zoom calls between Father and Child. Further, Mother offered to allow Father to have Child in the summer when she envisioned Child spending more quality time with Father and Father's extended family. Mother also wanted Child to be with Father during Christmas since Father's extended family was big on celebrating Christmas. Mother additionally testified that as soon as the COVID-19 travel and quarantine restrictions are lifted, she wished for Father to have additional parenting time during fall and spring break. All of this evidence supports the trial court's finding that Child could maintain contact with Father even with the relocation.

[21] As to the fourth factor, the existence of a pattern of conduct by Mother, including actions to promote or thwart Father's contact with the Child, Father testified that Mother was great at communicating with him on any issue that related to Child's schedule. Evidence was also presented that Mother has never attempted to withhold parenting time from Father. In fact, the trial court commended the parties for being "mature" for the "way they have co-parented [Child]." (Appellant's App. Vol. II, p. 27). *See T.L.*, 950 N.E.2d at 789 (holding that a "high level of cooperation [is] required on the part of parents . . . in order for both to maintain strong relationships with their children. . . ."). The evidence presented supported a determination that there is no pattern of conduct by Mother to thwart Father's contact with Child.

[22] Turning to the fifth factor, reasons for seeking relocating or opposing relocation, Father objected to Mother's move due to the distance between Indiana and Germany and the feasibility of maintaining a close relationship with Child from such a long distance. Mother's stated reason for relocating was to be reunited with her new husband. The evidence favorable to the trial court's judgment suggests that Mother, like Father, has good faith and legitimate reasons for her position in this matter.

[23] As to the other factors affecting the best interest of the child, (*see* Ind. Code §§ 31-17-2.2-1(c)(6), 31-17-2-8), the evidence showed that: (1) Mother has been Child's primary caretaker since birth; (2) Child was six years old at the time of the court proceedings in this case; (3) Child has a strong bond with both parents; (4) both parents wished to have primary custody of Child; (5) Child

was involved in football and golf in Indiana and had started school; and (6) Child had a very close relationship with his maternal and paternal grandparents and other members of Father's family in Indiana. While much of the evidence under this factor indicates that Mother was removing Child from Father and other close family members to an area where there was little or no support system for her and Child, Mother, nonetheless, testified she, her new husband, and Child, would live in military housing and which supports an inference that there are many families and children of similar age. Further, Mother testified that Father has family in Germany, an uncle, who has come to America a few times. Mother testified that she first met Father's uncle when she was pregnant with Child, and every time that uncle and his family visited from Germany, they made time to see Mother and Child. Mother stated that she has kept close contact with Father's uncle over the years, and she hoped to reconnect with him once she arrived in Germany.

[24] Applying our standard of review, the issue is not whether we would have made the same decision that the trial court did, but whether there is evidentiary support for the trial court's judgment. See *Baxendale v. Raich*, 878 N.E.2d 1252, 1257 (Ind. 2008). Based on our review of the record, we must answer this question in the affirmative. We acknowledge Father presented evidence that would also have supported a conclusion that relocation was not in Child's best interest. However, declining as we must Father's invitation to reweigh the evidence, the trial court did not clearly err in reaching its conclusion. In closing, we note Father and Child will spend portions of every year together

and will be able to speak on the phone, facetime, or Zoom during the times they are apart from each other. Although this will be difficult for Father, it will not be impossible. We do not intend to minimize the undeniable pain that this will cause Father, who is accustomed to seeing Child far more frequently during the week and over the weekends, but we are confident that the relationship between Father and Child will survive the distance.

- [25] In sum, Father failed to carry his burden of proving that relocation was not in Child's best interest. Viewing the evidence in the light most favorable to the judgment, as we must, the evidence supports the trial court's determination that relocation was in Child's best interest.

CONCLUSION

- [26] The evidence supported the trial court grant of Mother's request to relocate, and therefore we do not find the trial court's order erroneous.

- [27] We affirm.

- [28] Najam, J. and Crone, J. concur