

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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State of Indiana, ex rel. and  
D.F. (Mother),  
*Appellant-Plaintiff,*

v.

J.W. (Father),  
*Appellee-Defendant*

May 16, 2023

Court of Appeals Case No.  
22A-JP-2360

Appeal from the St. Joseph Probate  
Court

The Honorable Aric J. Rutkowski,  
Magistrate

Trial Court Cause No.  
71J01-1905-JP-164

**Memorandum Decision by Judge Weissmann**  
Judges Bailey and Brown concur.

**Weissmann, Judge.**

- [1] D.F. (Mother) and J.W. (Father) are the parents of five-year-old A.W. (Child). Mother and Father share legal custody over Child under a mediated parenting plan giving Mother primary physical custody with Father having regular parenting time. Mother moved to modify this arrangement, wishing to relocate to Massachusetts with Child. After considering the factors for and against Child's relocation, the probate court denied Mother's modification request. Mother appeals, challenging several of the factual findings. We affirm, finding no clear error.

**Facts**

- [2] In 2019, Mother and Father agreed to a mediated parenting plan for Child. The plan provided for joint legal custody, with Mother having primary physical custody and Father having regular parenting time. This arrangement worked until 2022, when Mother filed a notice of intent to relocate with Child to Massachusetts. Mother's fiancé had accepted a job in Massachusetts, where much of Mother's family resides.
- [3] Father objected to the relocation, and the probate court held an evidentiary hearing to determine the balance of the statutory relocation factors. Mother argued the relocation would allow her to move closer to her immediate family and her fiancé, with whom she was expecting a child. Mother's fiancé has purchased a house for the family in Massachusetts. Mother testified that there were also possible better educational opportunities for herself and Child in

Massachusetts. Meanwhile, Father argued that the relocation would place hardships on his ability to continue his relationship with Child, largely due to the long distance between Indiana and Massachusetts.

- [4] In making its decision, the probate court determined that Mother made the relocation request in good faith and for a legitimate reason. But the court found the other factors favored rejecting the relocation. The court also determined the best interests of Child weighed toward rejecting the relocation and having Child remain in Indiana.

## **Discussion and Decision**

- [5] In denying Mother's relocation request, the probate court made specific findings of fact and conclusions of law. When reviewing the court's decision, we "shall 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." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (quoting Ind. Trial Rule 52(A)). "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). As an appellate court, we "neither reweigh the evidence nor reassess witness credibility," and we view the evidence in the light most favorable to the judgment. *D.C. v. J.A.C.*, 977 N.E.2d 951, 954 (Ind. 2012).

## Modification of Custody and Relocation

[6] “When a parent files a notice of intent to relocate, the nonrelocating parent may object by moving to modify custody or to prevent the child’s relocation.” *Id.*

When an objection is made, “[t]he relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason.”

*Id.* If the relocating parent shows good faith and a legitimate reason, “the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child.” *Id.*

[7] Courts weigh the following statutory factors when considering whether a relocation is in the child’s best interest:

- (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.

Ind. Code § 31-17-2.2-1(b). Other factors may include “the child’s age and sex; the parents’ wishes; the child’s wishes, with the wishes of children fourteen years or older being given more weight; the child’s relationship with parents, siblings, and any other person affecting the child’s best interests; and the child’s adjustment to home, school, and the community.” *D.C.*, 977 N.E.2d at 954 (describing Ind. Code § 31-17-2-8). A change in one of these “other factors” is not a prerequisite to relocation. *Id.*

### ***Challenged Factual Findings***

- [8] Mother challenges several of the probate court’s factual findings on grounds that they are clearly erroneous. We, however, find evidence in the record to support the challenged findings and conclude no error occurred.
- [9] Mother first challenges the “implication” that she deliberately scheduled Child’s medical appointments to exclude Father. Appellant’s Br., p. 13. The relevant factual finding reads:

Mother has been the child’s primary caregiver and has been largely responsible for her daily needs and her healthcare. The child does deal with health issues that require the use of inhalers and other medications. The Mother did schedule many of the child’s medical appointments during times when she knew the Father would be unavailable due to his work schedule.

App. Vol. II, p. 6.

[10] This finding is supported by Mother’s own testimony at the evidentiary hearing. After clarifying that she schedules Child’s medical appointments, Counsel asked Mother why Father was often unable to attend. She answered: “Because he’s working.” Tr. Vol. II, p. 44. Moreover, any alleged “implication” in this finding was obviated by the specific finding that there was no evidence “of established conduct by Mother to thwart contact between Father and [Child].” App. Vol. II, p. 11.

[11] Next, Mother contends the probate court erred in weighing the educational benefits of relocating Child. The court found:

The Mother intends to enroll the child at the Gordon School, a private school in Massachusetts if allowed to relocate. [Mother] and [her fiancé] stated that they would be responsible for the cost of the child’s education.

*Id.* at 15.

[12] To Mother, this finding fails to accurately describe the educational benefits relocation would have on Child because it did not directly compare the private school in Massachusetts to Child’s educational options in Indiana. But the court explicitly noted the “educational opportunities available” for Child in Massachusetts. *Id.* at 11. Mother’s argument that the court should have judged the educational benefits of relocation to Massachusetts as stronger is a request for this court to reweigh the evidence, which we will not do. *D.C.*, 977 N.E.2d at 954.

[13] The third contested finding is that Child’s maternal grandmother is wheelchair bound and requires adult supervision “at all times.” App. Vol. II, p. 7. Mother had attempted to argue that Child being closer to her side of the family, including Child’s grandmother, would be a beneficial aspect of the relocation. The probate court, however, found any benefits mitigated by the fact that after the move, Child would be about 60 miles away from her relatives and that maternal grandmother is in poor health. As to this specific finding, Father concedes that no evidence in the record explicitly establishes that the grandmother is wheelchair bound and requires constant supervision, but he argues the court made a reasonable inference with the evidence before it. We agree with Father.

[14] The relevant testimony established that the grandmother “gets really ill,” she “doesn’t really walk anymore,” and family members often stay with her to monitor her health. Tr. Vol. II, pp. 98-99. Findings are clearly erroneous “only when the record contains no facts to support them either directly or by inference.” *Best*, 941 N.E.2d at 502. We find this evidence supports the spirit of the probate court’s finding—that the grandmother would have difficulties in caring for Child. Accordingly, we see no clear error.

- [15] Lastly, Mother disagrees with two of the court’s findings about Father.<sup>1</sup> First, she says the court downplayed the extent that Father missed parenting time, believing the court’s finding “does not adequately reflect the undisputed evidence.” Appellant’s Br., pp. 18-19. And second, she says the evidence does not support the court’s finding that Father “has been actively involved” in Child’s life and attended “many” of Child’s medical appointments. App. Vol. II, pp. 7-8. As she readily admits in her brief that some evidence in the record supports both findings, Mother’s arguments are, again, merely improper requests for this court to reweigh the evidence. *D.C.*, 977 N.E.2d at 954.
- [16] Finding no error in the probate court’s findings of fact or conclusions of law, we affirm the denial of Mother’s relocation request.

Bailey, J., and Brown, J., concur.

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<sup>1</sup> Although Mother challenges several other factual findings, she readily admits that these findings “are not, strictly speaking, clearly erroneous.” Appellant’s Br., p. 20. As the only standard we have for reversing the probate court’s judgment is that the decision was clearly erroneous—and Mother concedes these findings were not—there is no reason to address them.