MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jaysie Dunn,
Appellant,

v.

Lenard Vander Lyke,
Appellee.

December 27, 2023

Court of Appeals Case No. 23A-DC-1705

Appeal from the Tipton Circuit Court

The Honorable Thomas R. Lett, Judge

Trial Court Cause No. 80C01-2211-DC-1233

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

[1] Jaysie Dunn ("Mother") appeals the trial court order awarding sole physical custody of her and Lenard Vander Lyke's ("Father") children to Father and allowing Father to relocate with the children.

[2] We affirm.

Issues

[3] Mother raises two issues on appeal which we restate as follows:

I. Whether the trial court clearly erred when it granted Father's request to relocate out-of-state with the children.

II. Whether the trial court clearly erred by failing to consider and/or specify the factors for determining child custody.

Facts and Procedural History

[4] Mother and Father have two children, At.V.L., born October 14, 2019, and Ar.V.L., born June 8, 2021 (collectively, "Children"). The parties were married on October 3, 2021. In October 2022, Mother moved out of the marital residence, and Father remained in the residence with Children. Father filed a petition for dissolution of marriage on November 22, 2022. Following the December 27, 2022, provisional hearing, the trial court entered a provisional order under which the parties were granted joint legal custody of Children,

Father was granted possession of the marital residence and primary physical custody of Children, and Mother was granted parenting time.

[5] On April 18, 2023, Father filed his Notice of Intent to Relocate to the State of Georgia on June 1, 2023. The Notice stated, in relevant part:

> 5. The reason for the proposed move is that Father has been offered employment in Georgia which would provide for an increase in income. Father additionally has no family located in Indiana, with paternal grandparents and other extended family members instead residing in Georgia, and moving would provide Father and minor children familial support.
>
> 6. A modification of parenting time is necessary.
>
> 7. Father's relocation is in minor children's best interests.
>
> …
>
> 9. That Father has personally notified Mother of the intended move and will continue to keep her informed of the exact address and telephone number of the parties' minor children.

App. at 21-22.

[6] On May 18, 2023, the trial court held the final dissolution hearing. Without objection, Father entered into evidence his Exhibit 17, which he testified was a printout of a text exchange made between the parties before the dissolution action had been filed. The text exchange in the exhibit states, in relevant part:

> Hey you know, I just wanted to put this in text so you're not blindsided, but since we talked about me moving to Georgia with the kids and you were okay with it, I'm going to have my lawyer write it up and we'll set up visitation plans and talk through it and work it out so it best benefits the kids.
>
> Okay that sounds perfect, thank you!!

Ex. at 69.

[7] Father testified that he was requesting primary physical custody of Children in Georgia and parenting time for Mother. Father also admitted into evidence, without objection, his Exhibit 19 which was a "summary" of his "child-related requests" and included his "request to relocate with minor children" and that Mother have parenting time with Children based on "the district school calendar according to Father's Georgia address." Ex. at 74.

[8] Following the presentation of evidence at the final hearing, the following exchange took place between the trial court, the parties' attorneys, and Mother:

> THE COURT: *There's no objection to the relocation.*
>
> MR. ADLER (MOTHER'S COUNSEL): *Right.*
>
> THE COURT: So if you want to start listing your home or doing whatever you need to do to move, you're able to do that.
>
> THE PETITIONER (MOTHER): But is that with the kids?
>
> THE COURT: I'm sorry?

THE PETITIONER: Is that with the kids, Your Honor?

MS. KEMP (FATHER'S COUNSEL): Judge, I think we want to clarify a little because we didn't have any argument that he, his desire to relocate and he intends to relocate with the children and if the Court is not inclined to grant that, he would stay closer to the children.

THE COURT: Okay.

MS. KEMP: He would stay here.

THE COURT: So that's his choice.

MS. KEMP: Sure.

THE COURT: *But she didn't object to his relocating so I'm assuming, and based on her testimony and the representation of counsel, that if he retains custody, the children go with him to Georgia.* And if he doesn't retain custody, then he can decide where he'd like to live. But he's able to go to Georgia alone if he wants to. Okay?

MS. KEMP: Okay, yes.

THE COURT: *Is that right?*

MR. ADLER: *Exactly.*

THE COURT: *So if he stays the custodial parent, children go with him down to Georgia.*

Tr. at 91 (emphasis added).

[9] In the June 16, 2023, Dissolution of Marriage Decree, the trial court entered findings and conclusions sua sponte. The trial court stated, in relevant part:

> 3. The Mother moved out of the marital home in October, [2022], leaving the children with the Father. The children are settled in Father's home, and *after considering all of the factors relevant to determining custody, the court finds it to be in the best interests of the children to continue residing with the Father*.
>
> 4. The parties shall have joint legal custody of the minor children and the Father shall have primary physical custody.
>
> 5. *Father intends to relocate to the state of Georgia, and the Mother has no objections to this relocation*. Mother currently resides in Kentucky. The court grants the Father's request to relocate to Georgia with the children.

Appealed Order at 1-2 (emphasis added). Mother filed a timely motion to correct error, which the trial court denied. This appeal ensued.

Discussion and Decision

Standard of Review

[10] Neither party requested findings under Indiana Trial Rule 52 in this custody dispute, but the trial court entered findings sua sponte. Our standard of review in this situation is clear:

> Pursuant to Indiana Trial Rule 52(A), we do 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 witnesses. Where, as here, the findings and conclusions are entered sua sponte, the specific findings control only as to the issues they cover, while a general judgment standard applies to any issues upon which the trial court has not found, and we may affirm a general judgment on any theory supported by the evidence adduced at trial.

Kietzman v. Kietzman, 992 N.E.2d 946, 948 (Ind. Ct. App. 2013) (quotation and citation omitted).

[11] On review, we grant latitude and deference to trial courts, which are "enabled to assess credibility and character through both factual testimony and intuitive discernment" and are, therefore, "in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). Moreover, we "may not reweigh the evidence or reassess witness credibility, and the evidence should be viewed in a light most favorable to the judgment." *Montgomery v. Montgomery*, 59 N.E3d 343, 350 (Ind. Ct. App. 2016) (citations omitted).

Relocation

[12] Mother challenges the court order allowing Father and Children to relocate to Georgia. As an initial matter, we address Father's assertion that a notice of relocation was not statutorily required—although he did provide such notice—because the original order granting him custody was only provisional.

However, Father cites no authority to support this assertion. Rather, Indiana Code Section 31-17-2.2-1(a)[1] states that a relocating person must file a notice of intent to relocate with the court that either issued a custody order or has jurisdiction over custody proceedings. Nothing in the statute or caselaw interpreting it states that the custody order must be the initial or final order or that the notice requirement is not applicable to a provisional custody order. Nor does *Dillon v. Dillon*, cited by Father, support such an assertion; in *Dillon*, the only reason a relocation notice was not required was because the father relocated before divorce proceedings had even begun and, thus, before there was *any* custody order. 42 N.E.3d 165, 167-68 (Ind. Ct. App. 2015). Here, Father did not relocate before dissolution proceedings began and, at the time of his notice of relocation, there was a provisional custody order in place granting Father custody of Children. The notice requirements of Indiana Code Section 31-17-2.2-1(a) apply here.

[13] Mother contends that she had notice of Father's intent to relocate, but no notice of his intent to relocate *with Children*. However, the evidence clearly establishes otherwise. Mother not only knew about but agreed with Father's intention to relocate with Children before the dissolution action was even filed. *See* Ex. 17 (parties' text exchange). Mother was informed again of Father's intention by his notice which stated that part of the reason for the move was to "provide

[1] Subsection (b) of the statute contains exceptions to the notice requirement that are not applicable in this case.

Father and minor children familial support." App. at 21. And, certainly at the time of the hearing Mother was aware of Father's intention to relocate with Children, as he testified about it.

[14] Finally, Mother maintains that she did not consent to the relocation, as the trial court found. However, the evidence shows that she did consent. First, Mother agreed that Father's move with Children to Georgia "sound[ed] perfect" when Father texted her about it before the dissolution action began. Ex. 17. Moreover, at the trial, Mother stated through her counsel that she had no objection to the relocation. "Well-established common law vests counsel with binding representational authority for his/her clients." *Morequity, Inc. v. Keybank, N.A.*, 773 N.E.2d 308, 315 (Ind. Ct. App. 2002), *trans. denied*. Thus, "[i]n the absence of fraud, a client is bound by his or her attorney's representations," and "may not simply disregard the representations made to the trial court." *Sheets v. Birky*, 54 N.E.3d 1064, 1070 n.5 (Ind. Ct. App. 2016); *see also City of Evansville v. Nelson*, 245 Ind. 430, 441, 199 N.E.2d 703, 709 (1964) (quotations and citation omitted) (noting "a client is bound by the acts or non-acts of his attorney, … and he cannot accept the benefits thereof and reject the undesirable acts or non-acts of his attorney"). Mother is bound by her counsel's affirmative statements that Mother did not object to Father's relocation with Children to Georgia if he was awarded custody. The trial court did not err in granting Father's request to relocate.

Statutory Factors

[15] Mother contends that the trial court erred by failing to consider the statutory factors applicable to a relocation request and a custody determination. As to relocation, the applicable statute states only that the trial court "may consider" the factors set forth in the statute, not that it must. Ind. Code § 31-17-2.2-2(a). Therefore, even if the trial court did not consider the factors discussed in the relocation statute, it did not err in failing to do so. Mother cites no authority in support of her argument to the contrary.

[16] Regarding the custody decision,[2] the trial court is statutorily required to consider all relevant factors, including the factors listed in Indiana Code Section 31-17-2-8. However, "it is well-established that in making custody determinations, a trial court is required to consider all relevant factors, but it is not required to make specific findings" absent a party's request for findings under Trial Rule 52(A). *In re Paternity of E.P.*, 194 N.E.3d 160, 166 (Ind. Ct. App. 2022) (citing *Russell v. Russell*, 682 N.E.2d 513, 515 (Ind.1997), and *Hegerfeld v. Hegerfeld*, 555 N.E.2d 853, 856 (Ind. 1990)). Moreover, in reviewing a general judgment—as we do regarding any issues upon which the trial court has not found, when findings are made sua sponte—we presume that the trial court followed the law. *See, e.g.*, *Lynn v. Windridge Co-Owners Ass'n, Inc.*, 830

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[2] In her reply brief, Mother for the first time raises a claim that there was insufficient evidence that the statutory custody factors were met in this case. However, she has waived that contention in this appeal, as an issue may not be raised for the first time in a reply brief. *See, e.g.*, *Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005).

N.E.2d 950, 954-55 (Ind. Ct. App. 2005) (citation omitted) ("When reviewing a general judgment, we presume that the trial court correctly followed the law, and this presumption is one of the strongest presumptions applicable to our consideration of a case on appeal.").

[17] Here, the trial court specifically stated that it "consider[ed] all of the factors relevant to determining custody[.]" Appealed Order at 1. We presume that the trial court followed the law by doing so, and it was not required to state what specific factors it considered. The trial court did not clearly err by failing to consider and/or specify the factors for determining child custody.

Conclusion

[18] Father provided Mother with adequate notice of his intent to relocate with Children to Georgia, and Mother had actual knowledge of that intent. Moreover, the trial court did not err in granting the request to relocate where Mother did not object to it. And we presume the trial court considered the relevant statutory child custody factors, as it said it did. As the court was not required to specifically list the factors it relied upon, it did not err in its custody determination by failing to do so.

[19] Affirmed.

May, J., and Felix, J., concur.