MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of:

W.D. & A.D. (Children),

Deanna Doyle (Mother),

Appellant-Respondent,

v.

Zachary Dowty (Father),

Appellee-Petitioner.

June 27, 2023

Court of Appeals Case No. 22A-JP-3077

Appeal from the Jasper Circuit Court

The Honorable John D. Potter, Judge

Trial Court Cause Nos. 37C01-2011-JP-198
37C01-2011-JP-199

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitas concur.

Kenworthy, Judge.

Case Summary

[1] Zachary Dowty ("Father") and DeAnna Doyle ("Mother") are the parents of two children, W.D. (born January 1, 2015) and A.D. (born November 30, 2016) (collectively "Children"). Mother appeals from an order modifying physical custody of Children, arguing the trial court abused its discretion by granting Father—rather than Mother—primary physical custody. Concluding the court did not abuse its discretion in its modification of custody, we affirm.

Facts and Procedural History

[2] Mother and Father participated in a paternity action, which led to an initial custody order issued in early 2021 that granted Mother and Father joint physical custody of Children. As agreed by Mother and Father, there was a split-week arrangement resulting in an equal number of scheduled overnights.

[3] When the trial court issued its initial custody order, Mother and Father lived in Rensselaer. Mother later found a higher-paying job in West Lafayette and wished to relocate there. Father moved to modify custody, parenting time, and support. Mother then notified the court of her intent to move, indicating she believed "a revision of parenting time is necessary." *Appellant's App. Vol. 2* at 25. The court scheduled a hearing. In the meantime, Mother moved to West Lafayette and the family tried to maintain their existing split-week schedule.

[4] At the September 2022 hearing, there was evidence the split-week arrangement was too burdensome for Mother and Father to maintain, with a forty-five-minute drive between homes and Mother and Father now living in different

time zones. The arrangement also took a toll on Children, who at times had to wake up as early as 4:00 a.m. so Mother and Father could exchange custody.

[5] Father requested primary physical custody of Children, testifying he believed it was in Children's best interests to remain in Rensselaer. Father testified the family had "built a support system" in Rensselaer, explaining he and Mother had come to rely on his family members to help when a child was sick. *Tr. Vol.* 2 at 13. He also testified Grandmother often met W.D. at the school bus. Father expressed concern that, in West Lafayette, Children "do not have access to that support structure" or a comparable support structure. *Id.* He noted that, even after Mother moved, she had reached out to his family for help when A.D. was sick. According to Father, his biggest concern about Children living in West Lafayette was "[t]he lack of familial support" in the community. *Id.* at 23.

[6] There was evidence Father was employed in Rensselaer where he had a three-bedroom home with a bedroom for each child. The home was "just down the road" from Children's paternal grandmother ("Grandmother"). *Id.* at 18. Father described how he and Children would sometimes have dinner with Grandmother on a weeknight and "play for a little bit[.]" *Id.* Grandmother testified that, before Mother moved to West Lafayette, Grandmother helped with Children "[s]everal days a week" since their birth. *Id.* at 36. Grandmother testified she helped the family by transporting Children or watching them.

[7] As to Mother, she also sought primary physical custody of Children. Mother testified about her employment as "an educator for children 12 to 24 months of age," explaining she was earning more with her employer in West Lafayette. *Id.* at 44. Mother said she wanted to move to West Lafayette not only for work but also because the community offered "a lot more opportunities," including "a lot of opportunities both academically and athletically" for Children because Mother's apartment was only a few blocks away from Purdue University. *Id.* at 46. Mother also noted Children's longtime pediatrician was in West Lafayette. Mother confirmed Grandmother regularly spent time with Children, and she acknowledged Children enjoyed "a close bond" with Father's family. *Id.* at 63. As to Mother's support system, Mother testified she had family and friends in the West Lafayette area. Mother also said her employer would be very accommodating when parenting needs arose but, if she found herself in an emergency, Grandmother would be "the first one [she] would turn to" for support. *Id.* at 61. Mother said she had promised Grandmother "that if [she] needed childcare, [she] would contact her first so that she still has a relationship with [Children]." *Id.* at 47.

[8] After the hearing, the trial court issued a written order granting Father primary physical custody of Children and granting Mother parenting time consistent with the parenting-time guidelines. Although neither party requested special findings under Trial Rule 52(A), the trial court included special findings. In the order, the court determined Mother relocated in good faith and for a legitimate purpose. The court also determined there had been a substantial change in

circumstances because, due to distance between the homes, "[j]oint physical custody is no longer in [Children's] best interest." *Appellant's App. Vol. 2* at 37. As for granting Father primary physical custody, the court found that—among other things—"Father's extended family played a big part in [Children's] lives in Rensselaer," *id.* at 36, and "Mother does not have that support network for [Children] in West Lafayette," *id.* at 37. The court noted that, due to Mother's relocation, Children already "lost part of their regular familial support[.]" *Id.*

[9] Mother appeals.

Discussion and Decision

[10] "We review custody modifications for abuse of discretion, with a 'preference for granting latitude and deference to our trial judges in family law matters.'" *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *In re Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). A court abuses its discretion when its decision is "clearly against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law." *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). Moreover, in modifying a custody order, a court has no obligation to enter special findings. *See generally* Ind. Code arts. 31-14 & 31-17. However, where—as here—the trial court enters special findings *sua sponte*, the findings control "upon the issues or matters covered thereby" and "the judgment or general finding, if any, shall control as to the other issues or matters . . . not covered by such findings." Ind. Trial Rule 52(D). All in all, we "shall not set aside the findings or judgment unless clearly erroneous[.]" T.R. 52(A). In

other words, we reverse "only upon a showing of 'clear error'—that which leaves us with a definite and firm conviction that a mistake has been made." *Egly v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992).

[11] "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1198 (Ind. 2016) (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). And "a 'judgment is clearly erroneous if it applies the wrong legal standard to properly found facts.'" *Id.* (quoting *Yanoff*, 688 N.E.2d at 1262). As for a general judgment, we will "affirm based on any legal theory supported by the evidence." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). In conducting our review, we give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." T.R. 52(A). Indeed, on appeal, we do not reweigh evidence or reassess witness credibility; rather, we consider the evidence "in a light most favorable to the judgment." *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011).

[12] A trial court may modify a custody order only when "modification is in the best interests of the child" and "there is a substantial change in one . . . or more" factors the court may consider when making an initial custody determination. Ind. Code § 31-14-13-6.[1] In making an initial custody determination, the trial

[1] Below, the trial court faced both a motion to modify custody and a notice of intent to move. When a trial court faces only a notice of intent to move, the court generally must first focus on "whether to modify [the] custody order" based on circumstances related to the parent's relocation, including "[t]he distance involved

court "shall consider all relevant factors" and ultimately "determine custody in accordance with the best interests of the child." I.C. § 31-14-13-2. The Indiana General Assembly has listed factors that are typically relevant in custody cases:

> (1) The age and sex of the child.
>
> (2) The wishes of the child's 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 parents;
> >
> > (B) the child's siblings; and
> >
> > (C) any other person who may significantly affect the child's best interest.
>
> (5) The child's adjustment to home, school, and community.
>
> (6) The mental and physical health of all individuals involved.
>
> (7) Evidence of a pattern of domestic or family violence by either parent.

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in the proposed change of residence" and "[t]he reasons provided by the . . . relocating individual for seeking relocation[.]" I.C. § 31-17-2.2-1.

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

Id. Moreover, when the trial court considers modifying custody upon one parent's notice of intent to move, there are other factors the trial court must consider, among them: (1) "The distance involved in the proposed change of residence"; (2) "The reasons provided by the . . . relocating individual for seeking relocation"; and (3) "The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements[.]" I.C. § 31-17-2.2-1(c).

[13] In Mother's notice of intent to move, she asserted "a revision of parenting time is necessary." *Appellant's App. Vol. 2* at 25. Moreover, she does not dispute (a) modifying custody due to her relocation is in Children's best interests and (b) her relocation led to a substantial change in one or more of the pertinent factors. In short, Mother does not contend the trial court applied the wrong standard or was without any statutory basis to modify custody. Mother instead contends the trial court erred because it granted Father—rather than Mother—primary physical custody. In her words: "[I]t was agreed by both parties that there was a need for the change in [custody], however . . . the trial court's ultimate determination was the wrong one." *Appellant's Br.* at 13.

[14] According to Mother, "the evidence presented was insufficient to modify custody . . . to Father and not to her." *Id.* at 17. In so arguing, she focuses on evidence favorable to her position. For example, at one point Mother acknowledges Father's assertion that, if Mother had primary physical custody,

Children's "interactions and interrelationships would be impacted with his family[.]" *Id.* at 18. Mother then directs us to her testimony "that was not the case and [Mother] in fact had gone out of her way to offer to [Grandmother] the ability to watch . . . A.D., even though Mother would have been, and in fact was, able to do so." *Id.* Mother's other appellate arguments proceed in similar fashion, directing us to a range of favorable evidence supporting her position. All in all, "it is Mother's position that by weighing out all of the factors," the trial court's custody decision "was an error and . . . Mother should have been the one to be granted primary physical custody, not Father." *Id.* at 19.

[15] But our role is not to reweigh evidence. *See Best*, 941 N.E.2d at 502. Indeed, on appeal, we must consider the evidence "in a light most favorable to the judgment." *Id.* at 503. As to our deferential standard of review, our Supreme Court has explained that "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." *Id.* at 502. In this way, "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.*

[16] In this case, we note there was no indication Mother was ill-suited to be Children's primary physical custodian—to the contrary, just as Mother has identified on appeal, there is evidence that would have supported granting Mother primary physical custody. Even so, in determining custody in accordance with a child's best interests, a trial court must consider "[t]he

interaction and interrelationship of the child with . . . any . . . person who may significantly affect the child's best interest[.]" I.C. § 31-14-13-2. And the court must also consider, among other things, "[t]he child's adjustment to home, school, and community." *Id.* Here, there was evidence Children had been well-adjusted to life in Rensselaer. In that community, Children lived close to Grandmother, who was an important part of their lives. There was evidence granting Mother primary physical custody would impact that relationship, at the very least through the physical distance. There was also evidence Children benefitted from a strong, established support network of caregivers in Rensselaer and that they lacked a comparable support network in West Lafayette, approximately forty-five minutes away. The trial court drew upon this evidence in rendering its judgment, finding: "Father's extended family played a big part in [Children's] lives in Rensselaer," *Appellant's App. Vol. 2* at 36, and "Mother does not have that support network for [Children] in West Lafayette," *id.* at 37. The trial court further noted that, already, the split-week schedule meant Children "lost part of their regular familial support[.]" *Id.*

[17] Viewing the evidence in a light most favorable to the judgment, we cannot say the trial court clearly erred in determining it serves Children's best interests to have Father as their primary physical custodian. Mother's arguments to the contrary amount to requests to reweigh evidence, which we must decline. In sum, the trial court did not abuse its discretion in modifying physical custody.

Conclusion

[18] Because the evidence supports the pertinent findings, and those findings support the decision to grant Father primary physical custody of Children, the trial court did not abuse its discretion as to the modification of physical custody.

[19] Affirmed.

Bailey, J., and Tavitas, J., concur.