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IN THE
COURT OF APPEALS OF INDIANA

In Re: The Paternity of B.G.H.;
Kelsey Morrison,
Appellant-Respondent,

v.

Aaron Harmon,
Appellee-Petitioner.

July 20, 2021
Court of Appeals Case No.
20A-JP-2387
Appeal from the Delaware Circuit
Court
The Honorable Kimberly S.
Dowling, Judge
Trial Court Cause No.
18C02-2004-JP-73

Pyle, Judge.

Statement of the Case

[1] In this paternity action, Kelsey Morrison (“Mother”) appeals the trial court’s orders that: (1) determined that Indiana was a more convenient forum than Michigan; (2) awarded the parties joint legal custody of their son, two-year-old B.H. (“B.H.”); (3) awarded Aaron Harmon (“Father”) parenting time in Indiana on alternating weekends; and (4) ordered Father to pay \$85.00 per

week in child support. Finding no abuse of the trial court's discretion, we affirm the trial court's judgments.

[2] We affirm.

Issues

1. Whether the trial court abused its discretion when it determined that Indiana was a more convenient forum than Michigan.
2. Whether the trial court abused its discretion when it awarded the parties joint legal custody of their son.
3. Whether the trial court abused its discretion when it awarded Father parenting time in Indiana on alternating weekends.
4. Whether the trial abused its discretion when it ordered Father to pay \$85.00 per week in child support.

Facts

[3] Shortly after the parties met in St. Thomas, the Virgin Islands, Mother became pregnant. Thereafter, Father's employer, FEMA, sent Father to Puerto Rico, and Mother returned to her home in Michigan. During the summer of 2018, Father returned to his home in Delaware County, and Mother moved to Indiana to live with Father. The parties' son, B.H., was born in in November 2018. Father executed a paternity affidavit, and the parties agreed to share joint legal custody of B.H.

[4] Following B.H.'s birth, the parties continued to live together in Father's home in Delaware County and shared parenting responsibilities for B.H. Father

worked for a construction company and earned approximately \$40,000.00 in 2019. Mother, who has a college degree in accounting, worked as a substitute teacher and a part-time tutor and earned approximately \$7,000.00 in 2019.

Mother worked when Father could be at home with B.H. and stayed home with B.H. when Father worked.

[5] In October 2019, Father was involved in an incident that resulted in a death. Shortly thereafter, Mother and B.H. began spending time with Mother's family in Michigan and eventually moved to Michigan permanently in January 2020. Also in January 2020, as a result of the death, the State charged Father with murder, Level 3 felony aggravated battery, Level 4 felony leaving the scene of an accident, and Level 6 felony leaving the scene of an accident.¹ Father was arrested in February 2020 and released on bond the following week.

[6] In April 2020, Father filed, in Indiana, a petition to establish paternity, custody, and support. Shortly thereafter, Mother filed a similar petition in Michigan. Mother also filed, in Michigan, a motion to determine jurisdiction and, in Indiana, a motion to stay the proceedings and for a determination of inconvenient forum. In the Indiana motion, Mother asked the trial court to dismiss the Indiana case because, according to Mother, "Indiana [was] an inconvenient forum pursuant to I.C. 31-21-5-8 and . . . Michigan [was] a more appropriate forum . . . to exercise jurisdiction over [B.H]." (App. Vol. 2 at 17).

¹ Father's jury trial on these charges is scheduled for September 2021.

[7] The Indiana trial court held a hearing on Mother’s motion to determine jurisdiction in June 2020. At the hearing, the trial court heard the evidence as set forth above. In addition, Father testified that it was a four-hour drive from his home to Mother’s home in Michigan. Father also testified that he had the criminal trial court’s permission to meet Mother in Indiana at the midway point between his house and Mother’s house to exchange B.H. However, Father further explained that he was not allowed to leave Indiana because of his pending criminal charges. In addition, Father testified that he had never abused Mother or B.H. Mother testified that Father had been controlling.

[8] Following the hearing, later that same day, the trial court issued an order with the following findings: (1) B.H. had lived in Indiana from his birth in November 2018 until January 2020; (2) B.H. had lived in Michigan for only five months; (3) there was no physical violence between the parties; (4) Father had earned \$40,000.00 in the past but had been laid off from work; (5) Mother earned significantly less than Father but had a degree in accounting and was likely voluntarily underemployed; (6) Father’s evidence existed in Indiana and Mother’s evidence existed in both Indiana and Michigan. Based on these findings, the trial court concluded that Indiana was the proper forum for the case.²

² According to Father, “the Michigan court found, [on] June 24, 2020, that [B.H.] had only resided in Michigan since January of 2020, therefore Michigan was not the child’s ‘home state’ and declined jurisdiction.” (Father’s Br. 6). Although Father provides no citation for this information, Mother does not dispute it.

[9] During the pendency of the proceedings, Mother drove B.H. to Indiana one weekend a month so that Father could have parenting time with his son. Mother and B.H. stayed at Father's house during these visits. In August 2020, Father's mother and stepfather moved in with him. Mother and B.H. continued their monthly visits to Indiana; however, Mother began staying in a local hotel. Mother allowed Father to have parenting time from noon until 9:00 p.m. on Saturday and from breakfast until noon on Sunday, when she and B.H. returned to Michigan.

[10] In October 2020, the trial court held a hearing on Father's April 2020 petition to establish paternity, custody, and support. At the beginning of the hearing, Mother's counsel told the trial court that the parties did not have a custody issue because they had signed a paternity affidavit agreeing to joint legal custody. Father's counsel agreed that the parties had already agreed to joint legal custody and that the parties' primary disputes concerned parenting time and child support. At no point in the proceedings did Mother request the trial court to award her sole legal custody of B.H.

[11] Regarding parenting time, Father testified that he would like to spend more than one weekend per month with his son and asked the trial court to award him two weekends per month of parenting time. Father also offered to meet Mother in Indiana at the midway point between his home and Mother's home to exchange B.H. for the two monthly visits. Father further explained that he has a fourteen-year-old daughter from a previous relationship with whom he has two weekends per month of parenting time. He asked the trial court to

award him parenting time with B.H. on the same weekends that he has parenting time with his daughter so that his two children could form a sibling bond. Father further testified that his mother and stepfather would be living with him for at least three more months and would be available to help him if needed during B.H.'s overnight visits and that B.H. has his own bedroom at Father's house. In addition, Father testified that he pays \$75.00 per week for child support for his daughter and that he had been paying \$75.00 per week in child support for B.H. According to Father, he had also helped to pay for Mother's gas and hotel rooms when she had brought B.H. to Indiana for parenting time with Father.

[12] Mother responded that, although Father "is a great dad," she did not want to drive B.H. to parenting time two times per month because travelling to Indiana every other weekend was disruptive to then two-year-old B.H.'s schedule. (Tr. Vol. 2 at 63). Mother further asked if, pursuant to the Guidelines when distance is a factor, Father could travel to Michigan for one of his proposed twice-monthly visits with B.H.

[13] Father further testified that he had earned \$37,979.00 in 2019. According to Father, during 2020, up until the time of the October 2020 hearing, he had only earned \$5,753.00 because he had frequently been laid off from work because of COVID-19 restrictions. Father also testified that he had recently started a new job and had earned \$27.23 per hour for the preceding three weeks. According to Father, the union had deducted 2.5% of his pay for union fees and \$6.00 per week for union dues. The parties asked, and the trial court agreed, to hold a

child support review hearing within sixty days because both Mother and Father had new jobs.

[14] In December 2020, the trial court issued an order that provides, in relevant part, as follows:

2. The parties further agree that they will share joint legal custody of [B.H.]
3. Mother shall have physical custody of [B.H.] reserving to Father parenting time as follows:
 - a. Father shall have alternating weekends with [B.H.] commencing January 2021 and alternating weekends thereafter until further order of the Court[.] Father shall have [B.H.] the same weekend that he has his older child[.]

* * * * *

- f. The parties shall meet in Cecil, IN on Highway 24 for the exchange. If there is not an appropriate place in Cecil, IN for the parties to meet, then they shall meet at the nearest Indiana location for the exchange given [Father's] restrictions on leaving the State at the current time.

(App. Vol. 2 at 10-11).

[15] The trial court also found that Father had a weekly income of \$706.00 per week. Based upon this weekly income, the trial court ordered Father to pay \$85.00 per week in child support.

[16] Mother now appeals both the trial court’s June 2020 order determining that Indiana was a more convenient forum and the trial court’s December 2020 order concerning custody, parenting time and child support.

Decision

[17] Mother argues that the trial court abused its discretion when it: (1) determined that Indiana was a more convenient forum than Michigan; (2) awarded the parties joint legal custody of their son; (3) awarded Father parenting time in Indiana on alternating weekends; and (4) ordered Father to pay \$85.00 per week in child support. We address each of Mother’s contentions in turn.

1. More Convenient Forum

[18] Mother first argues that the trial court abused its discretion when it determined “that Indiana was a more appropriate forum than Michigan for the paternity proceedings.” (Mother’s Br. 16). We disagree.

[19] Where, as here, an issue concerns an interstate custody determination, the Uniform Child Custody Jurisdiction Act (“the UCCJA”), which is codified at INDIANA CODE Chapter 31-21-5-1 *et seq.*, governs.³ *Tamasy v. Kovacs*, 929

³ Although raised by neither party, we note that the UCCJA requires a trial court to stay its proceedings and communicate with the court of another state if the trial court determines that a custody proceeding has been filed in the other state. *See* IND. CODE § 31-21-5-6(b). Thereafter, the trial court must determine whether Indiana is the “home state” and whether the trial court “has jurisdiction to make an initial child custody determination” according to the requirements set forth in INDIANA CODE § 31-21-5-1. Pursuant to these statutory provisions, the trial court in this case should have stayed the proceedings after it learned that Mother had filed a petition in Michigan, communicated with the Michigan trial court, and determined, according to the statutory requirements, whether Indiana was the “home state” and whether the trial court

N.E.2d 820, 825 (Ind. Ct. App. 2010). One purpose of the UCCJA is to prevent parents from seeking custody in different jurisdictions in an attempt to obtain a favorable result. *Id.* We review a trial court’s determination pursuant to the UCCJA for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the trial court or if the trial court has misinterpreted the law. *Id.*

[20] The provision of the UCCJA at issue in this case is the “inconvenient forum statute,” which is codified at INDIANA CODE § 31-21-5-8(b). This statute includes the following list of relevant factors for the trial court to consider when determining whether Indiana or the court of another state is a more appropriate forum:

- (1) Whether domestic violence has occurred and is likely to continue in the future and which state is best able to protect the parties and the child.
- (2) The length of time the child has resided outside Indiana.
- (3) The distance between the Indiana court and the court in the state that would assume jurisdiction.

“ha[d] jurisdiction to make [the] initial custody determination.” *See id.* Our review of the record reveals that the trial court did not comply with these UCCJA procedural requirements. However, Mother and Father have waived any arguments regarding the trial court’s failure to comply with these requirements.

- (4) The relative financial circumstances of the parties.
- (5) An agreement of the parties as to which state should assume jurisdiction.
- (6) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

IND. CODE § 31-21-5-8(b). The above-stated list is not exclusive, and courts may consider all relevant factors, including factors not listed in the statute. *Tamasy*, 929 N.E.2d at 827.

[21] Here, our review of the trial court's order reveals that the trial court found that B.H. had lived in Indiana from the time of his birth in October 2018 until January 2020. At the time of the June 2020 hearing, B.H. had lived in Michigan for only five months. In addition, the trial court found that Father had generally earned about \$40,000 per year but had been laid off from work at the time of the hearing. Although Mother earned significantly less than Father, the trial court found that Mother had a college degree in accounting that she was not using and that she was likely voluntarily underemployed. The trial court also found that Father's evidence existed in Indiana whereas Mother's

evidence existed in both Indiana and Michigan. In addition, the trial court found no evidence of domestic violence. We further note that, at the time of the hearing, Father was unable to leave the State of Indiana because of his pending criminal charges. In addition, the Michigan court declined jurisdiction of the case in June 2020. Based upon these facts and circumstances, the trial court did not abuse its discretion in determining that Indiana was a more convenient forum than Michigan.

2. Joint Custody

[22] Mother also argues that the trial court abused its discretion when it awarded the parties joint legal custody of their son. However, our review of the testimony at the hearing reveals that Mother’s counsel told the trial court that custody was not an issue because the parties had already agreed to joint legal custody. Further, at no point during the hearing did Mother ask the trial court to award her sole legal custody of B.H.

Mother simply cannot now argue on appeal that the trial court erred in failing to award her sole legal custody of B.H. when she affirmatively indicated at the hearing that she and Father had agreed to joint legal custody. *See Reynolds v. Reynolds*, 64 N.E.3d 829, 834 (Ind. 2016) (explaining that a party “may not sit idly by and raise issues for the first time on appeal”). *See also Franklin Bank and Trust Co. v. Mithoefer*, 563 N.E.2d 551, 553 (Ind. 1990) (explaining that “[a] party cannot change its theory and on appeal argue an issue which was not properly presented to the trial court”).

3. Parenting Time

- [23] Mother further argues that the trial court abused its discretion when it awarded Father parenting time in Indiana on alternating weekends. She specifically contends that the trial court abused its discretion “by not ordering parenting time pursuant to the ‘where distance is a major factor’ section of the Indiana Parenting Time Guidelines[.]” (Mother’s Br. 19).
- [24] Decisions involving parenting time rights under the paternity statutes are committed to the sound discretion of the trial court. *In re Paternity of W.C.*, 952 N.E.2d 810, 815 (Ind. Ct. App. 2011). Reversal is appropriate only upon a showing of an abuse of that discretion. *Id.* at 816. When reviewing the trial court’s decision, we neither reweigh the evidence nor reexamine the credibility of the witnesses. *Id.* A noncustodial parent in a paternity action is generally entitled to reasonable parenting time rights. *Id.*
- [25] Here, the gravamen of Mother’s argument appears to be that the trial court abused its discretion because it did not order Father to spend his parenting time in Michigan one weekend per month. The commentary to the Guideline specifically addressing parenting time when distance is a major factor states that “[f]or a child under three years of age, the noncustodial parent shall have the *option* to exercise parenting time, in the community of the custodial parent[.]” Ind. Parenting Time Guideline § III. (Emphasis added). Thus, a noncustodial parent is not required to exercise parenting time in the community of the custodial parent. Rather, the noncustodial parent has the option of exercising

such parenting time. Here, that option was not available to Father because, as pointed out by the trial court in its order, Father had “restrictions on leaving the State at the current time” because of his pending criminal charges. (App. Vol. 2 at 11). Based on the facts and circumstances of this case, the trial court did not abuse its discretion when it awarded Father parenting time in Indiana on alternating weekends.

4. Child Support

[26] Lastly, Mother argues that the trial court abused its discretion when it ordered Father to pay \$85.00 per week in child support. Father responds that “this issue is inappropriate for appellate review at this point in time as the [trial] court indicated it would review the support determination after sixty (60) days.” (Father’s Br. 20). Because our review of the trial court’s chronological case summary for this case reveals that this review has apparently not occurred, we will address Mother’s issue.

[27] A trial court’s calculation of child support is presumed valid, and we will review its decision only for an abuse of discretion. *Thompson v. Thompson*, 811 N.E.2d 888, 924 (Ind. Ct. App. 2004), *trans. denied*. An abuse of discretion occurs only when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences to be drawn therefrom. *Barber v. Henry*, 55 N.E.3d 844, 850 (Ind. Ct. App. 2016). The importance of the first-person observation and the prevention of disruption to the family setting justifies the deference given to the trial court in its child support determinations. *Id.*

[28] Here, Mother’s sole contention is that the trial court abused its discretion when it determined that Father’s weekly income was \$706.00. However, Mother’s failure to support her one-paragraph argument with citations to authority and record evidence results in waiver of the issue on appeal. *See e.g., Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015) (explaining that a litigant who fails to support his arguments with appropriate citations to authority and record evidence waives those arguments for appellate review).

[29] Waiver notwithstanding, we find no error. Our review of the evidence reveals that Father’s 2019 income was \$37,979.00, which is \$730.00 per week. In addition, the union deducted 2.5% of Father’s pay for union fees and \$6.00 per week for union dues. As Father points out, “ $\$730 - (.025 \times 730) - 6 = \705.75 .” (Father’s Br. 20). This evidence supports the trial court’s determination that Father earned \$706.00 per week. The trial court did not abuse its discretion in ordering Father to pay \$85.00 per week in child support.

[30] Affirmed.

Najam, J., concurs in result.

Tavitas, J., concurs in result with separate opinion.

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Tavitas, Judge, concurring.

[31] I concur with the majority but write separately to highlight the procedures outlined in the UCCJA when both Indiana and another state have dual custody petitions before the court. In this case, Father filed a custody proceeding first in

Indiana, and Mother, who was living with the child in Michigan, filed a subsequent petition in Michigan.⁴

[32] The UCCJA provides that “[a]n Indiana court may communicate with a court in another state concerning a proceeding arising under [the UCCJA].” Ind. Code 31-21-4-1. Chapter 4 of the UCCJA provides the procedural requirements for such communication and cooperation between the courts. *See* Indiana Code Chapter 31-21-4.

[33] Here, the parties were petitioning for an initial custody determination and Indiana was required to follow Indiana Code Section 31-21-5-1, which discusses an initial child custody determination. The trial court had jurisdiction to “make an initial child custody determination” because “Indiana is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six (6) months before the commencement of the proceeding, and the child is absent from Indiana but a parent or person acting as a parent continues to live in Indiana.” Ind. Code § 31-21-5-1(a)(1).

[34] Where there are simultaneous proceedings concerning custody of the child in another state, Indiana Code Section 31-21-5-6(b) requires:

⁴ Our Supreme Court has held: “The jurisdictional limitations imposed by the UCCJA are not equivalent to declarations of subject matter jurisdiction, but rather are refinements of the ancillary capacity of a trial court to exercise authority over a particular case.” *Williams v. Williams*, 555 N.E.2d 142, 145 (Ind. 1990); *see also In re A.N.W.*, 798 N.E.2d 556, 560 (Ind. Ct. App. 2003), *trans. denied*. Accordingly, subject matter jurisdiction is not implicated here.

Except as otherwise provided in section 4 of this chapter, an Indiana court, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under sections 10 through 13 of this chapter. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this article, the Indiana court shall:

(1) stay its proceeding; and

(2) communicate with the court of the other state.

If the court of the state having jurisdiction substantially in accordance with this article does not determine that the Indiana court is a more appropriate forum, the Indiana court shall dismiss the proceeding.

[35] If Indiana finds that it has jurisdiction under the UCCJA, the Indiana court can decline jurisdiction if: (1) “Indiana is an inconvenient forum under the circumstances”; and (2) “a court of another state is a more appropriate forum.” Ind. Code 31-21-5-8(a). “The issue of inconvenient forum may be raised on motion of a party, the court’s own motion, or request of another court.” *Id.* Additionally, an Indiana court may decline jurisdiction if “a person seeking to invoke [Indiana’s] jurisdiction has engaged in unjustifiable conduct.” Ind. Code 31-21-5-9.

[36] Here, Mother filed a motion to stay the Indiana proceedings. The Indiana trial court issued its order finding that “Indiana is the proper forum for this case and declines to stay the proceedings.” The trial court further stated “[t]his Court is

willing to have a conversation with the Judge in Oakland, MI if that Judge so desires.” The trial court then denied the motion to stay the Indiana proceedings.

[37] The trial court properly found Indiana to be B.H.’s home state, but the trial court failed to follow the UCCJA procedures in doing so. Although the trial court did not cite to the UCCJA, the trial court did make findings consistent with Indiana exercising jurisdiction pursuant to Indiana Code Section 31-21-5-1. I find, however, that the trial court did not abide by Indiana Code Section 31-21-5-6 because the trial court knew of the Michigan proceedings at the time of the hearing on the Indiana child custody proceedings, and the statute required the trial court to stay the Indiana proceedings and communicate with the Michigan court. *See Tamasy v. Kovacs*, 929 N.E.2d 820, 826 (Ind. Ct. App. 2010) (“Under the UCCJA, an Indiana court has an affirmative duty to question its jurisdiction when it becomes aware of an interstate dimension in a child custody dispute. The trial court must first determine whether it has jurisdiction, and, if it does, whether to exercise that jurisdiction.”) (internal citation omitted).

[38] Because the parties did not object to the trial court’s procedures in determining jurisdiction, I find that the parties waived that argument. I write separately only to point out that, for initial child custody determinations, the trial court is required to follow Indiana Code Chapter 31-21-5.