MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

In Re the Paternity of H.E., Minor Child;

Evelina M. Edmundson,

Appellant / Cross-Appellee-Mother

v.

Ryan Paul Edmundson,

Appellee / Cross-Appellant-Father

February 28, 2025

Court of Appeals Case No.
24A-JP-143

Appeal from the St. Joseph Superior Court

The Honorable Mark P. Telloyan, Judge

Trial Court Cause No.
71D07-1610-JP-538

Memorandum Decision by Judge Tavitas
Judges May and DeBoer concur.

Tavitas, Judge.

Case Summary

[1] Both Evelina Edmundson ("Mother")[1] and Ryan Edmundson ("Father") appeal the trial court's order regarding their minor child, H.E. ("Daughter"). Mother claims that the trial court erred by: (1) granting the parties' joint legal custody; (2) abating Father's child support obligation; (3) increasing Father's parenting time; and (4) summarily denying Mother's request for attorney fees and costs. Father cross-appeals and argues that the trial court erred by: (1) not awarding sole legal custody to Father; (2) denying Father's request that certain witnesses testify remotely via Zoom; and (3) summarily denying both parties' requests for attorney fees. Finding no error, we affirm.

Issues

[2] Mother presents four issues, which we reorder and restate as:

I. Whether the trial court abused its discretion by granting the parties' joint legal custody of Daughter.

II. Whether the trial court abused its discretion by increasing Father's parenting time.

III. Whether the trial court abused its discretion by abating Father's child support obligation.

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[1] Although the parties were never married, Mother changed her name so that she would have the same last name as her daughter.

IV. Whether the trial court erred by summarily denying Mother's request for attorney fees and costs.

On cross-appeal, Father presents three issues, which we restate as:

I. Whether the trial court abused its discretion by not granting Father sole legal custody of Daughter.

II. Whether the trial court abused its discretion by denying Father's request that certain witnesses testify remotely via Zoom.

III. Whether the trial court abused its discretion by summarily denying both parties' request for attorney fees.

Facts

[3] Mother and Father are the biological parents of Daughter, who was born in September 2012. Father established paternity in March 2017. The paternity order granted the parties joint legal custody, granted Mother primary physical custody, and required Father to pay $50 per week in child support. In April 2018, on Mother's request, the trial court granted Mother sole legal custody of Daughter in a final order.

[4] In the summer of 2019, Mother lost her job in Indiana but found work in Florida one year later. Mother filed a notice of her intent to relocate to that state, and, in response, Father filed motions to modify physical and legal custody. In April 2021, the trial court ordered that Mother continue as primary physical custodian and granted Father parenting time consistent with the

Indiana Parenting Time Guidelines ("Guidelines") with an additional overnight on Sundays during bi-weekly visitation. The trial court held a hearing on Mother's relocation in July 2021, but postponed hearing the other pending matters to a later date. On August 5, 2021, the trial court issued an order providing that Mother should be allowed to relocate and that Father's child support obligation should abate given the significant expenses he would incur to exercise parenting time with Daughter in Florida. The trial court also ordered Mother to pay $4,500 to Father for rental expenses he incurred when visiting Daughter in Florida. In the fall of 2021, Father purchased a condominium in Florida to facilitate his visits with Daughter. On December 3, 2021, the guardian *ad litem* ("GAL") filed a report recommending that Mother retain primary physical custody of Daughter and that Mother continue as the sole legal custodian.

[5] Evidentiary hearings regarding temporary physical custody and legal custody were held on April 10-13, 2023. On June 9, 2023, the trial court issued a provisional order finding that there was no credible evidence to support Father's claims of parental alienation syndrome, Munchausen syndrome by proxy, or factitious disorder. As for legal custody, the trial court determined:

> This court is most convinced that the Father and Mother are not capable of joint legal custody. The typical fallback, then, is to award sole legal custody to one parent or the other. "Where parties made child rearing a battleground, case was remanded to trial court to award sole custody to one party." *In re Paternity of*

> *E.P.*, 194 N.E.3d 1[6]0 (Ind. Ct. App. 2022).[2] **However, this court would like to try a different approach – "split legal custody," whereby father would have final say over the areas he has requested (educational, medical, religious) and mother has control over all other areas (social, extracurricular, fashion, sports, counseling, online activities, etc.).** That's how it works in most families; fathers and mothers just take control of different areas. The time frame would be temporary – six months, which would be long enough to give the plan time to succeed or fail. If either parent were strongly opposed at the end of six months, this order would be rescinded and a typical "sole custody" order would be entered. If the parties agreed that this approach was working, the court would then enter a permanent order. To help the parties succeed, this court would during the six months be willing to have Zoom hearings to resolve in an expeditious fashion any dispute that did arise and seek to keep the parties on track.

Appellant's App. Vol. III p. 185 (emphases in original) (footnotes omitted).

[6] The trial court ordered the parties to share physical custody in alternate weeks during non-summer months. During the summer, the parties shared physical custody, with neither party having Daughter for more than three weeks without returning Daughter to the other parent for at least ninety-six hours. The court deferred a ruling on child support until the evidentiary hearing on all pending motions.

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[2] We note that this is not an accurate quotation from *E.P.*, in which the court wrote: "Where the parties have made child-rearing a battleground, joint custody is not appropriate." *E.P.*, 194 N.E.3d at 166.

[7] On July 27, 2023, the trial court held a final hearing on all pending issues.[3] On September 11, 2023, the court issued an order, which provides in relevant part:

> **Reconsideration.** Regarding the Motion to Reconsider the Second Provisional Order filed by mother, the court now GRANTS and hereby rescinds said order. Any notion of "split legal custody" and the logic for its implementation is set aside. Mother argues, "I don't think it's working" and the court respects her point of view. All along the court maintained this novel approach would be terminated if either party found it unworkable.
>
> **Findings of Fact**. Having received a great deal of evidence at the trial and argument at the 7/27 hearing, the court now specifically finds as follows: . . . .
>
> 1. Father and mother are the biological parents of [Daughter].
>
> 2. Paternity was established in March, 2017, with a stipulation of joint legal custody.
>
> 3. In April[] 2018 the (probate) court granted mother sole legal custody.
>
> 4. Both parties [appear] to be likable, well-spoken, and confident in their opinions and abilities.
>
> 5. *A previous guardian ad litem, Brooks Grainger, recommended joint legal custody and proffered that sole legal custody would result in the custodian "holding it over the head" of the other.*

[3] The trial court entered numerous preliminary or "temporary" orders before the final hearing was held in 2023. None of these orders were appealed (because they were not final orders), nor did either party file an interlocutory appeal from any of these orders.

6. All parties live in Florida, the result of a year 2021 decision by this court (another judge), allowing mother to temporarily relocate for employment.

7. Father, an Indiana real estate investor, obtained a Florida residence and lives there much of the year so that he may exercise the full extent of his parenting time (13 overnights per month). This move resulted in additional expense to the father. The lengths father has gone to maintain a close relationship with his daughter are exemplary.

8. This court has conducted an in camera interview with [Daughter].

9. [Daughter] has been well cared for by both parents.

10. Mother created a fake online profile and directly contacted the previous judge in this matter (Mary Beth Bonaventura).

11. At trial, the court heard from Deborah Miller (licensed clinical social worker), Rebecca Vent (guardian ad litem appointed 2020), [Mother], [Father], Dr. Anthony L. Berardi, PhD. (psychologist), and Dr. Michael Jenuwine, PhD. (legal professional and former parenting time coordinator). Based on the testimony given, the court finds there is no parental alienation syndrome and no Munchausen by Proxy or Factitious Disorder.

12. *Social worker Miller recommended joint legal custody (with the access to a counselor/mediator) as in the best interest of all parties*.

13. *Psychologist Anthony Berardi indicated that he was hopeful regarding this situation and has seen cases like [this] one "turn around."*

14. Father by counsel argues to the court that there had been a substantial change in circumstances.

15. *Both father and mother stated at trial that they were tired of fighting.*

Conclusions regarding relocation to Florida. Pursuant to Indiana Code § 31-17-2.2, mother made a relocation request in good faith and for a legitimate reason. The court granted her request in a 2021 temporary order. There is no good reason to undo this decision. It is in the best interest of [Daughter] that this arrangement be made permanent.

Conclusions of law regarding father's child support obligation. In 2019, mother filed a Motion to Modify Child Support. At trial, mother submitted six worksheets regarding father's income from August, 2019, to present . . . . By counsel she requested that father pay $27,024 in child support arrears. The court believes this matter was addressed in the order allowing mother's relocation to Florida: "In addition; in recognition of Father's additional travel costs, Father's child support for [Daughter] shall temporarily abate during the period of the temporary relocation provided by this Order." *Pursuant to the court's discretionary power, no further child support payments are due as Father's obligation to pay was removed.*

Conclusion regarding summer physical custody. In light of testimony heard and the court's in camera interview, father's request for extended parenting time in the summer months is denied. The following arrangement is ordered. "The parties shall equally split the summer as it relates to overnights, with neither party having [Daughter] for more than three (3) weeks without returning [Daughter] to the other parent for at least ninety-six (96) hours. In odd years, father shall provide a proposal to mother no later than March 1, and in even years mother shall provide her proposal no later than March 1. Each proposal must

delineate the exact dates, including ensuring that Father's Day always falls during Father's parenting time, and the Fourth of July holiday time falls during Father's parenting time in odd years and Mother's parenting time in even years. Mother's Motion for Return of Child is regarded as moot.

Conclusion regarding non-summer physical custody. *Mother shall continue to have primary physical custody and father shall continue to exercise at least 13 overnights*. Father's request to increase physical custody to 15 nights per month is denied. The "on-duty" parent shall make decisions regarding the day-to-day care and control of [Daughter]. Parenting time during the holidays shall be according to the Indiana Parenting Time Guidelines or as the parties agree. Mother's mid-week visitations remain as ordered on August 5, 2021.

Conclusions regarding legal custody. Indiana Code § 31-17-2-21 states that a court may not modify custody unless the modification is in the best interests of the child and there is a substantial change in circumstances, pursuant to the § 31-17-2-8 factors (age and sex of the child, wishes of the parents, wishes of the child, interaction of the child with the parents, child's adjustment, mental and physical health of all individuals involved, etc.). *The court believes it is in the best interest of [Daughter] for there to be joint legal custody. In this matter, the change of circumstances is [Daughter]'s age, her father's wish to be included in the final decision-making, his increasing positive interaction with [Daughter], the wishes of [Daughter], [Daughter]'s continued adjustment, and the improving mental health of all the parties involved.* Any 504 evaluation shall be according to federal law and at the discretion of the chief administrator of [Daughter]'s school.

* * * * *

> **Conclusions regarding Rules to Show Cause**. The court declines to hold either party in contempt. Parties are encouraged to treat each other with respect.

Appellant's App. Vol. II. pp. 49-51 (bold in original, italic emphases added) (citations omitted). The trial court also denied the parties' requests for attorney fees.

[8] Mother filed a Motion to Clarify and, on October 31, 2023, the trial court entered an order on Mother's Motion to Clarify incorporating the September 11, 2023 order. As for Mother's motion, the final order provided in relevant part:

> **Conclusion Regarding Make-Up Time.** Father shall receive two days of make-up time following his inability to exercise parenting time when [Daughter] was ill with COVID-19. The parties are ordered to agree on what days the make-up time is to occur. If the parties cannot agree, Father shall choose the days make-up time is to occur.
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> * * * * *
>
> **Conclusion Regarding Mid-Week Parenting Time**. Both parties are ordered to comply with Indiana Parenting Time Guidelines, Section II(D)(l)(b) which provides for "One (1) evening per week, preferably in mid-week, for a period of up to four hours but the child shall be returned no later than 9:00 P.M." or as otherwise agreed to by the parties.
>
> **Conclusion Regarding Disputes**. Should the parties not be able to agree on any matter, they are encouraged to retain a professional trained in mediation or arbitration to resolve the disagreement, with each party to evenly split the cost of such arbitration or mediation.

> **Conclusion Regarding Future Medical Decisions**. If the parties are not able to agree on [Daughter]'s future medical needs, the advice of the child's physician shall control.

Id. at 52. This appeal ensued.

Discussion and Decision

Standard of Review

[9] "'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.'" *Hahn-Weisz v. Johnson*, 189 N.E.3d 1136, 1141 (Ind. Ct. App. 2022) (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)). Trial courts are "'enabled to assess credibility and character through both factual testimony and intuitive discernment," and, therefore, 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*. (quoting *Best*, 941 N.E.2d at 502).

[10] We also noted in *Hahn-Weiz* that:

> there is a well-established preference in Indiana for granting latitude and deference to our trial judges in family law matters. Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence. On appeal it is not enough that the evidence might support some other conclusion,

> but it must positively require the conclusion contended for by appellant before there is a basis for reversal.

189 N.E.3d at 1141 (quoting *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016)) (internal citations and quotations omitted).

[11] Trial courts have discretion in both initial custody and modification of custody determinations, and we review those determinations for an abuse of discretion. *See In re Paternity of Snyder*, 26 N.E.3d 996, 998 (Ind. Ct. App. 2015) ("We review custody modifications for abuse of discretion, with a preference for granting latitude and deference to our trial judges in family law matters."); *see also In re B.W.*, 17 N.E.3d 299, 307 (Ind. Ct. App. 2014) ("Child custody determinations fall squarely within the discretion of the trial court and will not be disturbed except for an abuse of discretion.").

[12] Here, at Father's request, the trial court entered findings of fact and conclusions thereon. When reviewing such findings and conclusions, "we 'shall not set aside the findings or judgment unless clearly erroneous[.]'" *McClendon v. Triplett*, 184 N.E.3d 1202, 1213 (Ind. Ct. App. 2022) (quoting Ind. Trial Rule 52(A)). We will neither reweigh the evidence nor reassess the credibility of the witnesses. *Id*. (citing *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)). Instead, "we view the evidence most favorably to the judgment." *Id*. (citing *Best*, 941 N.E.2d at 502). The trial court's factual findings are clearly erroneous only if the record contains no facts to support the findings, either directly or by inference. *Id*. (citing *Best*, 941 N.E.2d at 502). "We review the trial court's

legal conclusions de novo." *Id*. (citing *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013)).

I. Modification of Legal Custody

[13] Mother first argues that the trial court abused its discretion by modifying legal custody from Mother having sole legal custody and granting the parties joint legal custody of Daughter. On cross-appeal, Father also argues that the trial court abused its discretion by not granting him sole legal custody of Daughter. Father argues in the alternative, however, that the trial court did not abuse its discretion by granting the parties' joint legal custody. Accordingly, we begin by addressing the parties' arguments regarding legal custody.

[14] We review three statutes when modification of legal custody is sought: (1) the custody modification statute—Indiana Code Section 31-14-13-6; (2) the custody factors statute—Indiana Code Section 31-14-13-2; and (3) the legal custody statute—Indiana Code Section 31-14-13-2.3.

[15] Indiana Code Section 31-14-13-6 requires the party seeking to modify an existing custody order to prove that: (1) modification is in the best interests of the child; and (2) there has been a substantial change in one or more of the factors set forth in Indiana Code Sections 31-14-13-2 or, if applicable 31-14-13-

2.5.[4] In making a child custody determination under Indiana Code Section 31-14-13-2, a trial court "shall" consider "all relevant factors," including:

> (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.
>
> (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

I.C. § 31-14-13-2; *In re Paternity of A.R.S.*, 198 N.E.3d 423, 434 (Ind. Ct. App. 2022) (citing *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1259-60 (Ind. Ct. App. 2010)).

[4] Indiana Code Section 31-14-13-2.5 applies only when the trial court finds by clear and convincing evidence that the child has been cared for by a de facto custodian, which is not the case here.

[16] Regarding joint legal custody, Indiana Code Section 31-14-13-2.3 provides:

> (a) In a proceeding to which this chapter applies, the court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.
>
> (b) An award of joint legal custody under this section does not require an equal division of physical custody of the child.
>
> (c) In determining whether an award of joint legal custody under this section would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint legal custody have agreed to an award of joint legal custody. The court shall also consider:
>
> (1) the fitness and suitability of each of the persons awarded joint legal custody;
>
> (2) whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare;
>
> (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) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody;
>
> (5) whether the persons awarded joint legal custody:
>
> (A) live in close proximity to each other; and
>
> (B) plan to continue to do so;

> (6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody; and
>
> (7) whether there is a pattern of domestic or family violence.

Ind. Code § 31-14-13-2.3(c).

[17] We have noted before that the second factor listed in this statute—whether the parents are willing and able to cooperate to advance the child's welfare—is particularly important in making a legal custody determination. *In re Paternity of E.P.*, 194 N.E.3d 160, 166 (Ind. Ct. App. 2022) (citing *Milcherska v. Hoerstman*, 56 N.E.3d 634, 641 (Ind. Ct. App. 2016)). Accordingly, we have held that "[w]here the parties have made child-rearing a battleground, joint custody is not appropriate." *Id.* (citing *Carmichael v. Siegel*, 754 N.E.2d 619, 635 (Ind. Ct. App. 2001)); *see also Rasheed v. Rasheed*, 142 N.E.3d 1017, 1022 (Ind. Ct. App. 2020) ("'[T]o award joint legal custody to individually capable parents who cannot work together is tantamount to the proverbial folly of cutting the baby in half in order to effect a fair distribution of the child to competing parents.'") (quoting *Milcherska*, 56 N.E.3d at 642).

[18] Mother argues that the trial court abused its discretion by awarding joint legal custody and notes the significant history of conflict between the parties. The trial court itself noted this history in its previous provisional orders. Mother, therefore, argues that an award of joint legal custody was inappropriate in this case. Although we might agree with Mother if we were sitting as the trial court, it is not enough that the evidence supports another conclusion; it must

"positively require the conclusion" contended for by Mother. *Hahn-Weiz*, 189 N.E.3d at 1141. That is not the case here.

[19] Looking only at the evidence that supports the trial court's decision, we conclude that the trial court recognized the history of conflict between the parents but also noted that there had been a change in circumstances since the prior custody order. The trial court noted that Daughter is now eleven years old; Father had relocated to Florida for part of the year so that he could exercise his parenting time and maintain his relationship with Daughter; and, perhaps most important, the court noted the improvement in the mental health of all the parties. The court also conducted an *in camera* interview with Daughter.

[20] Given the conflict between the parents when Mother had sole legal custody, and even when the parents had "split" joint legal custody, the trial court exercised its considerable discretion and decided that joint legal custody was the best path going forward. The trial court's decision is supported by the testimony of social worker Deborah Miller, who opined that, with help from a counselor or mediator, joint legal custody could succeed. Similarly, psychologist Anthony Berardi testified that both parents had made progress and that he had seen similar high-conflict cases improve. Importantly, both parents testified that they were, as the trial court put it, "tired of fighting." Appellant's App. Vol. II p. 50. And the trial court specifically found that it was in Daughter's best interest for the parents to have joint legal custody.

[21] The trial court here tried several options to alleviate the conflict between the parents. Initially, Mother had legal custody of Daughter. Then, the trial court tried "split" legal custody. Neither approach worked. When faced with this decision yet again, the trial court noted that granting one party sole legal custody would simply result in the custodial parent "holding it over the head" of the non-custodial parent. Appellant's App. Vol. II p. 49. So the trial court decided that, under these circumstances, it would give joint legal custody a try. Under normal circumstances, awarding joint legal custody in a high-conflict case might not be the correct choice. But these are not normal circumstances. Given the particular circumstances of this case, as detailed above, we cannot say that the trial court's decision to grant the parties joint legal custody was an abuse of its considerable discretion. Instead of this creating a battleground, we sincerely hope that the parents will improve upon their past conduct, place the needs of their daughter above their personal dislike for each other, and do what is necessary to make joint legal custody work. Mother's arguments to the contrary—and Father's arguments to the extent that Father argues for sole legal custody—are simply a request that we weigh the parties' prior difficulties and dislike for each other more heavily than the other factors and come to a different conclusion than the trial court did.[5] This is not our role as an appellate court.

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[5] Mother's argument focuses heavily on the prior orders of the trial court noting the contentious nature of this case and Mother and Father's difficult relationship. The trial court's prior orders, however, are not binding on the court. *See Pond v. Pond*, 700 N.E.2d 1130, 1135 (Ind. 1998) ("A trial court may reconsider an order or ruling if the action remains *in fieri*, or pending resolution").

II. Modification of Physical Custody.

[22] Mother also argues that the trial court abused its discretion by increasing Father's parenting time such that the parties have roughly equal parenting time[6]—what Mother refers to as "joint physical custody."[7] The trial court deemed Mother the primary physical custodian but granted Father "at least" thirteen, but less than fifteen, overnights with Daughter during the non-summer months. Appellant's App. Vol. III p. 198. We agree with Mother that this is, essentially, shared physical custody. Similar to her argument on joint legal custody, Mother argues that the trial court failed to identify a change in circumstances that would justify a change in physical custody and failed to determine that such was in the best interests of Daughter. Again, we disagree.

[23] As discussed above, Indiana Code Section 31-14-13-6 requires the party seeking to modify an existing custody order to prove that: (1) modification is in the best interests of the child; and (2) there has been a substantial change in one or more of the factors set forth in Indiana Code Sections 31-14-13-2.[8] In making a child custody determination under Indiana Code Section 31-14-13-2, a trial court

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[6] The trial court granted Father thirteen overnights per month during non-summer months and split parenting time equally during the summer months. Father claims that the trial court merely increased his parenting time, whereas Mother claims that the trial court modified custody. Because the trial court granted effectively equal physical custody, we address Mother's claim as a modification of custody.

[7] We recently observed that "[t]he term 'joint physical custody' does not appear in any statute or court rule that we are aware of, nor does the term appear in the Parenting Time Guidelines." *Russell v. Russell*, 223 N.E.3d 708, 713 (Ind. Ct. App. 2023). Still, we determined that "the term 'joint physical custody' means that the parties will share equal parenting time." *Id.*

[8] Thus, whether modifying legal custody or physical custody, the same legal standard applies. I.C. § 31-14-13-6.

"shall" consider "all relevant factors," including each factor listed above. I.C. § 31-14-13-2; *A.R.S.*, 198 N.E.3d at 430-31.

[24] Mother claims that the trial court modified physical custody[9] without identifying a change in circumstances or finding that such modification was in Daughter's best interests. The trial court, however, identified several changes that justified a modification of physical custody, including that Daughter was now older, that Father relocated to Florida to maintain his relationship with Daughter, and that the parties were tired of fighting and seemed to be willing to work in the best interests of Daughter.

[25] The evidence also supports a determination that shared physical custody was in Daughter's best interests. Social worker Miller testified that both parents looked after Daughter when in their respective custody and that Daughter was doing well spending time with Father. Importantly, the trial court conducted an *in camera* interview with Daughter. "Indiana Code Section 31-17-4-1 permits a trial court to conduct an in camera interview of a child in chambers within parenting time proceedings." *Moorman v. Andrews*, 114 N.E.3d 859, 866 (Ind. Ct. App. 2018); *see also* Ind. Code § 31-17-2-9 (permitting a trial court to interview a child *in camera* "to ascertain the child's wishes"). Although a trial court cannot rely solely on an *in camera* interview to make its custody

[9] Mother was awarded primary physical custody of the Daughter in the trial court's 2017 final order establishing Father's paternity. The trial court's April 2018 final order continued Mother as the primary physical custodian.

determination, it can rely on the interview along with the other evidence in the record. *Moorman*, 114 N.E.3d at 867.

[26] Here, the trial court did not rely solely on the *in camera* interview. As discussed above, there was other evidence in the record to support the trial court's decision that it was in Daughter's best interests to increase Father's parenting time to what is essentially shared physical custody. In summary, the trial court did not abuse its discretion by modifying child custody to award the parents equal parenting time.

III. Child Support

[27] Mother also argues that the trial court abused its discretion by ordering Father to pay no support in its August 5, 2021 relocation order and in the final order on appeal. According to Mother, the trial court should have ordered Father to pay a child support arrearage in excess of $27,000 based on his failure to pay child support during this period.

[28] A trial court's calculation of child support is presumptively valid, and we will reverse a support order only for clear error. *Bogner v. Bogner*, 29 N.E.3d 733, 738 (Ind. 2015); *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). That is, reversal is proper only where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court or is contrary to law. *Bogner*, 29 N.E.3d at 738.

[29] The statute governing the modification of child support provides, in part, as follows:

> (a) Provisions of an order with respect to child support or an order for maintenance . . . may be modified *or revoked*.
>
> (b) Except as provided in section 2 of this chapter, and subject to subsection (d), modification may be made only:
>
> (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
>
> (2) upon a showing that:
>
> (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and
>
> (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed. . . .

Ind. Code § 31-16-8-1; *see also* Ind. Child Support Guideline 4 ("The provisions of a child support order may be modified only if there is a substantial and continuing change of circumstances which makes the present order unreasonable or the amount of support ordered at least twelve (12) months earlier differs from the Guideline amount presently computed by more than twenty percent (20%)").

[30] Mother's argument that Father should be ordered to pay what she terms as an arrearage is misplaced. Father owed no back child support because the trial court did not order him to pay any child support during the period for which Mother now claims that Father should have paid child support. Father cannot be in arrears on child support that he was not ordered to pay.

[31] Mother's main argument, however, is that the trial court erred in not ordering Father to pay child support as of the August 5, 2021 relocation order.[10] Mother argues that there was no substantial or continuing change in circumstances that would justify a modification of Father's child support. The trial court, however, specifically noted that the reason for abating Father's child support was Mother's relocation to Florida, a relocation to which Father objected. Father had an established real estate business in Indiana. If Mother relocated to Florida, Father would either have to make frequent trips to Florida or, as Father eventually chose, find a place to live in Florida, if he wished to exercise regular parenting time with Daughter. Thus, due to Mother's relocation, Father had to incur significant expenses in order to maintain his relationship with Daughter. At the time, Father's child support was only $50 per week. Father incurred significant expenses by relocating to Florida. This represents a significant change in circumstances. Thus, we cannot say that the trial court abused its significant discretion when it ordered Father to pay no child support.

[32] Mother also claims that the trial court's August 5, 2021 relocation order violated Mother's due process rights by addressing the issue of child support without giving Mother proper notice that child support would be at issue. *See*

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[10] Father does not argue that Mother has waived her argument attacking the August 2021 relocation order. Rightly so. The trial court's order was temporary pending a final hearing. Even if Mother could have brought an interlocutory appeal from the August 2021 temporary order, the failure to bring an interlocutory appeal from a provisional order does not result in waiver on appeal from the final order. *Bojrab v. Bojrab*, 810 N.E.2d 1008, 1014 (Ind. 2004) (holding that "a claimed error in an interlocutory order is not waived for failure to take an interlocutory appeal but may be raised on appeal from the final judgment") (citing *Georgos v. Jackson*, 790 N.E.2d 448 (Ind. 2003)).

In re Marriage of Wilson, 501 N.E.2d 498, 500 (Ind. Ct. App. 1986) ("It is a general rule of procedural due process that reasonable notice and an opportunity to be heard is essential before an order of support may be modified."). The August 5 order was based on a hearing held on July 28, 2021. Mother argues that the sole issue at this hearing was Mother's request to relocate. Mother argues that, by abating Father's child support in the August 5 order, the trial court denied her due process by failing to give her adequate notice that child support would be at issue. We disagree.

[33] To be sure, the July 28, 2021 hearing concerned Mother's request to relocate to Florida. *See* Tr. Vol. III p. 41. During this hearing, however, both parties referred to the issue of Father's child support. *See id*. at 68 (Mother testified regarding Father's child support obligation); *id.* at 83 (Mother testified about Father's income and assets); *id*. at 214 (Father testified about his child support obligation); *id.* at 218-19 (Father testified about his income and did not seek child support from Mother); Tr. Vol. IV p. 77-78 (GAL testified regarding Father's income and assets and Father's child support obligation); *id*. at 85 (GAL testified that Mother could afford to pay for Father's air travel if Father's child support obligation was higher).

[34] Thus, although the hearing concerned Mother's petition to relocate, both parties presented evidence regarding Father's child support, income, and assets. Moreover, Indiana Code Section 31-17-2.2-6(b)(2) provides that "the court may grant a temporary order permitting the relocation of the child pending a final hearing if the court . . . 31-17-2.2-6(b)(2) issues orders that may be necessary for

temporary custody, parenting time, [and] **support**[.]" (emphasis added). Accordingly, we cannot say that the trial court violated Mother's due process rights by addressing Father's child support obligation in its order granting Mother's petition to relocate to Florida.[11]

IV. Parties' Requests for Attorney Fees

[35] Lastly, Mother argues that the trial court erred by summarily denying her request for attorney fees, and, on cross appeal, Father, refers to his motion for attorney fees of April 8, 2023. Both request that we remand this case with instructions to the trial court hold a hearing on the issue. We are not persuaded the trial court erred.

> A determination regarding attorney fees in proceedings to modify a child support award is within the sound discretion of the trial court and will be reversed only on a showing of a clear abuse of that discretion. *Whited v. Whited*, 859 N.E.2d 657, 665 (Ind. 2007). In determining whether to award attorney fees, the trial court must consider the parties' resources, their economic condition, their ability to engage in gainful employment, and other factors that bear on the award's reasonableness. *Id*. Misconduct by one party that causes the opposing party to incur additional costs may also be considered. *McGuire v. McGuire*, 880 N.E.2d 297, 303 (Ind. Ct. App. 2008).

Vandenburgh v. Vandenburgh, 916 N.E.2d 723, 731 (Ind. Ct. App. 2009).

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[11] Mother briefly claims that the relocation statutes did not authorize the trial court to order her to pay Father $4,500 in rental expenses Father incurred when exercising his parenting time with Daughter in Florida. Mother's argument on this matter is conclusory and not well developed. We, therefore, consider it waived. *See* Ind. Appellate Rule 46(A)(8)(a); *In re Paternity of M.S.*, 146 N.E.3d 951, 957 n.7 (Ind. Ct. App. 2020).

[36] In *Thompson v. Thompson*, 696 N.E.2d 80, 84 (Ind. Ct. App. 1998), the appellant cited no authority for her position that a trial court is required to hold a hearing on a petition for attorney fees. Waiver notwithstanding, however, we held that the trial court did not abuse its discretion by summarily denying a petition for attorney fees. In so holding, we noted that "the trial court was well aware of the parties' respective incomes and other relevant circumstances." *Id*. at 84-85.

[37] The same is true here: the trial court was well aware of the parties' incomes, assets, and behavior during this case. Mother argues that *Thompson* is distinguishable because the trial judge who issued the order on appeal here was, by her count, the seventh judicial officer to preside over this case.[12] We do not find Mother's argument to be persuasive. The trial judge had access to the record, and we will not presume that he was ignorant of the history of this case. And although Mother claims that Father is to blame for the majority of the delays in this case, the trial court noted Mother's own improper behavior in using a pseudonymous social media account to contact the former trial judge in this matter. Given the trial court's broad discretion in awarding attorney fees,

[12] We are painfully aware of the multitude of judicial officers who have presided over this case, which has resulted in a procedural mess. From our review of the record, we count six judicial officers who have presided over this case. The initial judicial officer was Magistrate Polando. Father filed a grievance against Magistrate Polando, causing him to recuse. Magistrate Stewart-Brown then presided over the case. For reasons not clear from the record, Referee Johnston presided over the case after Magistrate Stewart-Brown. Father then moved for a change of judge, which led to Referee Johnston being replaced by Judge Hostetler. Judge Hostetler subsequently retired, and Senior Judge Bonaventura began to preside. Judge Telloyan thereafter assumed jurisdiction over the case.

we cannot say that the trial court abused its discretion by summarily denying Mother's or Father's request for attorney fees.

[38] On cross-appeal, Father also makes a brief request for appellate attorney fees and asks us to instruct the trial court on remand to determine how much Mother should pay Father for his appellate attorney fees. As we explained in *Bousum v. Bousum*, 173 N.E.3d 289, 293 (Ind. Ct. App. 2021):

> Appellate Rule 66(E) authorizes our court to also award appellate attorney's fees. Our court's discretion to award Rule 66(E) appellate attorney's fees is limited to circumstances where the appeal is "permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). "[T]he sanction is not imposed to punish mere lack of merit but something more egregious." *Troyer v. Troyer*, 987 N.E.2d 1130, 1148 (Ind. Ct. App. 2013) (citation omitted), *trans. denied.* As such, our court exercises caution in awarding appellate attorney's fees because of the "potentially chilling effect the award may have upon the exercise of the right to appeal." *Holland v. Steele*, 961 N.E.2d 516, 529 (Ind. Ct. App. 2012), *trans. denied.*

[39] Here, although we have found Mother's appellate arguments to be unpersuasive, we cannot say that her appeal is "permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay." *Id.* (quoting *Thacker*, 797 N.E.2d at 346). We, therefore, deny Father's request for appellate attorney fees.

V. Father's Request to Allow Remote Testimony

[40] On cross-appeal, Father claims that the trial court improperly denied Father's request to have some of his witnesses testify remotely via Zoom. Indiana Administrative Rule 14, as amended effective January 1, 2023, provides in relevant part:

> **C. Authority in Testimonial Proceedings.** A court *must* conduct all testimonial proceedings in person except that a court *may* conduct the proceedings remotely for all or some of the case participants *for good cause shown* or by agreement of the parties. Remote proceedings must comply with constitutional and statutory guarantees.

(bold in original, italic emphasis added). Thus, although a trial court must generally conduct all testimonial proceedings in person, it has discretion to allow some or all participants to appear remotely "for good cause shown." *Id*. The use of the permissive "may" indicates that the decision to allow participants to appear remotely is within the discretion of the trial court. *See Welch v. 1106 Traub Tr.*, 204 N.E.3d 243, 251 (Ind. Ct. App. 2023) ("It is axiomatic that 'use of the permissive word "may" in a statute indicates a trial court is not required to act, but may do so within its discretion.'") (quoting *Wolfe v. Eagle Ridge Holding Co., LLC.*, 869 N.E.2d 521, 529 (Ind. Ct. App. 2007)), *reh'g denied*; *see also B.N. v. Health & Hosp. Corp.*, 199 N.E.3d 360, 363

(Ind. 2022) (reviewing trial court's decision to proceed with a virtual hearing for an abuse of discretion).[13]

[41] Here, Father failed to comply with the applicable discovery deadlines. He did not timely disclose his proposed expert witness, the opinion of the proposed expert witness, or the chart he wished to introduce listing Mother's behavior that Father claimed supported a diagnosis of Munchausen Syndrome by Proxy and/or parental alienation.[14] Although Father now claims it was too expensive to fly his witnesses to Indiana, he also admitted during the evidentiary hearing that he could afford to fly his witnesses to testify in person. Tr. Vol. VII p. 98. The record is replete with evidence of Father's significant financial assets.

[42] "Presenting live testimony in court remains of utmost importance." Admin. Rule 14, Commentary. Given Father's failure to comply with the discovery deadlines, and the fact that he could have afforded to present his witnesses' testimony in person, albeit at some cost, we cannot say that the trial court abused its discretion by denying Father's request that some of Father's witnesses be allowed to testify remotely.

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[13] The Court in *B.N.* discussed the prior version of Administrative Rule 14, which our Supreme Court modified on May 13, 2020, "in recognition of the ongoing statewide COVID-19 emergency . . . to afford trial courts 'broader authority to conduct court business remotely.'" *Virtual Hearings—Administrative Rule 14*, 9 Ind. Practice § 2.1.2 (3d ed., Nov. 2024 Update) (quoting *In re Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to 2019 Novel Coronavirus*, 144 N.E.3d 197 (Ind. 2020)). "On September 30, 2022 (effective January 1, 2023), the Indiana Supreme Court entered a new order—Interim Administrative Rule 14 which rescinded the May 13, 2020 Emergency Order." *Id.*

[14] At a post-trial hearing, Father acknowledged that "we didn't have an expert witness because of [Father's attorney] failing to timely notice the expert witnesses, so it tied our hands . . . ." Tr. Vol. IX p. 59.

Conclusion

[43] The trial court did not abuse its discretion by: (1) granting the parties' joint legal custody of Daughter; (2) increasing Father's parenting time; (3) abating Father's child support obligation to offset the costs Father incurred in moving to Florida so that he could continue to exercise his parenting time due to Mother's relocation to that state; (4) summarily denying both parties' requests for attorney fees; and (5) denying Father's request that certain witnesses testify remotely via Zoom. We, therefore, affirm the trial court's judgment in all respects.

[44] Affirmed.

May, J., and DeBoer, J., concur.

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