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IN THE
COURT OF APPEALS OF INDIANA

In Re: The Paternity of K.C.;
Kayley Boonstra,
Appellant-Mother,

v.

Daniel Corcoran,
Appellee-Father.

May 25, 2021

Court of Appeals Case No. 20A-JP-1592

Appeal from the Cass Circuit Court

The Honorable Benjamin A. Diener, Special Judge

Trial Court Cause No. 09C01-1708-JP-58

Pyle, Judge.

Statement of the Case

[1] Kayley Boonstra ("Mother") appeals the trial court's order that: (1) denied her second petition to relocate to Virginia; (2) modified custody of the parties' son, five-year-old K.C. ("K.C."), in favor of Daniel Corcoran ("Father"); (3) ordered her to pay $5,406 of Father's attorney's fees; (4) found her in contempt; and (5) ordered her to pay $123 per week in child support. Mother specifically argues

that the trial court clearly erred when it denied her second petition to relocate and ordered her to pay $123 per week in child support. She also argues that the trial court abused its discretion when it modified custody of the parties' son in favor of Father, found her to be in contempt, and ordered her to pay $5,406 of Father's attorney's fees. Concluding that the trial court did not clearly err or abuse its discretion, we affirm the trial court's judgment.

[2] We affirm.

Issues

1. Whether the trial court clearly erred when it denied Mother's second petition to relocate.
2. Whether the trial court abused its discretion when it modified custody of K.C. in favor of Father.
3. Whether the trial court abused its discretion when it ordered Mother to pay $5,406 of Father's attorney's fees.
4. Whether the trial court abused its discretion when it found Mother to be in contempt.
5. Whether the trial court clearly erred when it ordered Mother to pay $123 per week in child support.

Facts

[3] K.C. was born in September 2014. Mother and Father never married but lived together at Father's home in Logansport with K.C. and Mother's son from a prior marriage. At some point, the parties ended their relationship, and, in August 2017, Father filed a petition to establish paternity of K.C.

[4] In March 2018, the parties entered into an agreed paternity order. Pursuant to the terms of this order, the parties agreed that they would share legal custody of K.C. and that Mother would have physical custody of the child. The parties further agreed that Father would exercise overnight parenting time every Wednesday night and on alternate weekends. The parties also agreed that the Indiana Parenting Time Guidelines ("the Guidelines") would apply in all other respects. In addition, Father agreed to pay $50.00 per week in child support.

[5] Four months later, in July 2018, Mother married Alexander Boonstra ("Stepfather"), who also lived in Logansport. In September 2018, Stepfather enlisted in the United States Air Force. Mother and Stepfather's son was born in February 2019.

[6] One month later, in March 2019, Mother filed a handwritten notice, wherein she advised the trial court that, in May 2019, Stepfather would be stationed at Langley Air Force Base near Norfolk, Virginia. Norfolk is located 800 miles from Logansport. Mother further told the trial court that she intended to relocate to Virginia as soon as she and Stepfather had obtained housing and that she would notify Father of her new address as soon as she knew it. The trial court treated Mother's notice as a petition to relocate.

[7] In April 2019, Father filed an objection to Mother's petition to relocate. In June 2019, the trial court held a hearing on Mother's petition to relocate and Father's objection. At the hearing, Mother told the trial court that, if it did not

grant her petition to relocate, she would remain in Logansport with her three children while Stepfather moved to Virginia.

[8] On June 26, 2019, the trial court issued a detailed nine-page order denying Mother's petition to relocate. In its order, the trial court concluded that Mother had a legitimate reason for the relocation and that her request had been made in good faith because Stepfather had been assigned to a military base in Virginia. Thereafter, the trial court applied the facts of the case to the relevant factors set forth in the relocation statute, INDIANA CODE § 31-17-2.2-1(b), and found as follows:

> 1. The distance between Logansport, Indiana, and Norfolk, Virginia, is 800 miles, a drive of twelve to thirteen hours.
>
> 2. [Father] states that he has recently changed employment, due to his previous position requiring weekend hours that precluded Parenting Time, and is now working at a job that pays less but is stable and does not create this conflict. Because of the age of [K.C.], an exchange for Parenting Time would require either someone flying back and forth from Virginia to Indiana with [K.C.], or four days of driving to exchange [him]. This means that a significant a[m]ount of time spent with [K.C.] would be time spent in transit. Neither option is inexpensive, nor is either party demonstrably affluent.
>
> 3. [K.C.] is too young to engage with [Father] via social media in any meaningful way.

(App. Vol. 2 at 22).

[9] As required by the relocation statute, the trial court also considered other factors affecting K.C.'s best interest, including factors applicable in an initial custody determination as set out in INDIANA CODE § 31-17-2-8. Applying those factors to the facts of this case, the trial court found, in relevant part, as follows:

> d. Here, with respect to the "interaction and interrelationship of the child with . . . any other person who may significantly affect the child's best interests," is the part of the analysis most adverse to [Mother's] position. . .
>
> i. [K.C.'s] entire family tree is located in Cass County, Indiana. [Father], both sets of grandparents, cousins, etc., are apparently either located in Cass County or its immediate vicinity.
>
> ii. Not only are grandparents available for immediate support of [Father], [Mother], and all of the children in Cass County, [Father's] property is physically adjacent to his father's; support for [Father] is literally next door.

(App. Vol. 2 at 22).

[10] Based on its analysis of the relevant statutory factors, the trial court concluded as follows:

> [Father] and [Mother] *formally* propose the following scenarios to [the]Court:
>
> A. [K.C.] relocate to Norfolk, Virginia with [Mother], [S]tepfather, and two half-siblings, where [Stepfather], newly inducted and newly assigned, is stationed *at this time*, and where [Mother] *may* attempt to continue her education around childcare for three children, including preschool children, *if it is accessible*, and without any support from family, because the

> entire family tree is twelve hours away, requiring that a four-year-old engage in days of travel in order for [Father] to exercise any Parenting Time[.]
>
> Or:
>
> B. [K.C.] remain in Logansport, where [Father], who has stable housing and employment, is surrounded by his immediate family, *and* [*Mother's*] *immediate family*, and the families' support.
>
> At the hearing, [Mother] essentially also offered a third solution: that she simply remain in Logansport with all three children, while [Stepfather] remains in Virginia. Given the needs of [K.C.], let alone all three, the Court considers this the most appropriate solution[.]
>
> Whether [Mother] adopts her own alternative is not for the Court to decide. [Mother's] fundamental right to travel remains within her discretion. The Court merely states its position that, between the given alternatives, [Mother's] preferred solution [to relocate with K.C. to Virginia] is not in the best interests of [K.C.]
>
> [Mother's] Petition is therefore DENIED.

(App. Vol. 2 at 23-24) (italics in the original).

[11] On July 1, 2019, Stepfather signed a lease to rent a house in Virginia. Two weeks later, on July 15, 2019, Mother filed a motion to correct error. While her motion was pending, Mother relocated to Virginia without K.C. On July 22, 2019, the trial court denied Mother's motion to correct error. Mother did not appeal the trial court's denials of her petition to relocate or her motion to correct error.

[12] Three months later, in October 2019, Father filed a motion to modify custody of K.C. In his motion, Father alleged that, after the trial court had issued its

order denying Mother's petition to relocate, "Mother [had] relocated [to Virginia] and surrendered the care and custody of [K.C.] to Father." (App. Vol. 2 at 50). Father alleged that "there [had] been a substantial and continuing change in circumstances such that it [was] in [K.C.'s] best interest that custody of [K.C.] be modified in favor of Father." (App. Vol. 2 at 50). Father also requested a modification of child support and parenting time.

[13] The following week, Mother obtained a new attorney and filed a motion requesting a change of judge. The trial court granted Mother's motion, and the parties agreed to the selection of a Carroll Circuit Court judge as a special judge. The day that the Carroll Circuit Court judge accepted the special judge appointment, Mother filed a second petition to relocate to Virginia.

[14] In this November 2019 petition, Mother alleged that, in June 2019, the trial court had denied her petition to relocate "based upon Mother's testimony that she could maintain two (2) separate living arrangements, with Mother staying [in Logansport] and raising three children, and [Stepfather] relocating to Virginia as part of his military employment." (App. Vol. 2 at 55). According to Mother, she had been unable to maintain two separate households and had been "forced" to move to Virginia. (App. Vol. 2 at 55). Mother further alleged that K.C. was "not prospering with . . . Father being responsible for his care[.]" (App. Vol. 2 at 55).

[15] During the 2019 holiday season, while Father's petition to modify custody and Mother's second petition to relocate were pending, Mother attempted to assign

her parenting time to her parents ("Maternal Grandparents"). Specifically, Mother sent Father the following text:

> My parents will have [K.C.] for Christmas Day as referred to in the parenting guidelines. My mom can't bring him here until the 30th so that's when he will be coming here. I will bring him back to Indiana. I already know you have an issue[] with it and I don't care to hear your response. I'm telling you this is the plan[.] If you don't plan to pick [K.C.] up [in Virginia] then he will return to Indiana [on] Jan. 14th. If you have an issue with this, you could contact your attorney.

(Trial Court's Chronological Case Summary ("CCS"), January 9, 2020 entry, Father's Contempt Citation).[1]

[16] Father responded to Mother that the Guidelines did not "say [Maternal Grandparents] c[ould] have [K.C.] for [Mother's parenting] time." (Trial Court's CCS, January 9, 2020 entry, Father's Contempt Citation). Father also contacted his attorney. Thereafter, the parties agreed that Maternal Grandmother would pick up K.C. on December 28, 2019 and that K.C. would visit Mother in Virginia. The parties further agreed that they would exchange K.C. in Charleston, West Virginia, which is midway between Logansport and Norfolk, on January 6, 2020.

[17] However, on the evening of January 5, 2020, Mother texted Father and told him that she would be unable to meet him and exchange K.C. the following

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[1] Mother did not include a copy of Father's January 9, 2020 Contempt Citation in her Appendix.

day because she was sick. Mother told Father that he could drive to Norfolk to pick up K.C. However, Father did not have enough time to drive twelve hours to Norfolk and then another twelve hours back to Logansport because of his employment. Father offered to wait a day or two until Mother felt better to meet in West Virginia. However, Mother told Father that she would be in Indiana on January 14.

[18] On January 9, 2020, Father filed a contempt citation requesting that the trial court require Mother to show cause why she should not be held in contempt for failing to comply with the parenting time set forth in the March 2018 agreed parenting order. Mother returned K.C. to Indiana on January 14, 2020.

[19] On April 20, 2020, Mother's attorney emailed Father's attorney and advised him that Mother would like to make arrangements for K.C. to visit her again in Virginia. Mother proposed that Stepfather's father drive K.C. to Virginia on April 24 or 25. Father was concerned that Mother's email contained no information regarding the specifics of the exchange, the length of time that K.C. would stay with Mother, and the date that K.C. would be returned to Father. In addition, Father was concerned about Stepfather's father providing K.C.'s transportation to Virginia.

[20] The following day, April 21, 2020, Mother filed a rule to show cause requesting that the trial court order Father to show why he should not be held in contempt of court for denying Mother and her family in Logansport visitation and/or contact with K.C. In support of her rule to show cause, Mother referred to

specific incidents where Father had refused to allow Mother to assign her parenting time to Maternal Grandparents. Mother also complained that Father had not responded to Stepfather's parents' request to see K.C.

[21] Two days later, on April 23, 2020, Father's attorney emailed Mother's attorney and advised him that Father was willing to allow K.C. to make another trip to Virginia. Father proposed exchanging K.C. in West Virginia on May 16, 2020. Father also proposed that Mother return K.C. to Indiana on June 21, 2020. Mother's counsel did not respond to Father's counsel's email.

[22] Instead, the following day, April 24, 2020, Mother texted Father at 3:30 p.m. and told him that she was in Indiana to pick up K.C. Ten to fifteen minutes later, Mother texted Father that she had picked up K.C. at Paternal Grandparents' home. Shortly thereafter, Mother and K.C. boarded an airplane to Virginia. Neither K.C. nor Father knew that K.C. would be traveling to Virginia. That evening, Mother gave Father no additional information and did not respond to Father's text messages inquiring about K.C.

[23] The following day, April 25, 2020, Mother texted Father and told him that K.C. was in Virginia and would be staying with Mother for the summer. On Monday, April 27, 2020, Father filed a second contempt citation and a request for an emergency hearing concerning K.C.'s return to Indiana. In the contempt citation, Father stated that he had not consented to K.C.'s removal to Virginia and that there had been no arrangement between the parties and their attorneys regarding a parenting time schedule. Father alleged that Mother had essentially

relocated K.C. to Virginia in violation of the June 2019 order that had denied her petition to relocate. "Most significantly," Father asked the trial court to "schedule an emergency hearing, . . . and after hearing evidence, direct . . . Mother to return [K.C.] to the State of Indiana immediately." (App. Vol. 2 at 60).

[24] The following day, Mother filed an objection to Father's contempt petition. She argued that she was "simply exercising [the] visitation [to which she was] entitled." (App. Vol. 2 at 61). She further argued that there was "no requirement that the parties reach an Agreement before Mother could have any visitation." (App. Vol. 2 at 61).

[25] One month later, in May 2020, Mother filed a second petition for rule to show cause because Father had enrolled K.C., who was still in Virginia, in Kindergarten in Logansport. Mother argued that she was the custodial parent and that Father had not had her approval to register their son in school. She asked the trial court to order Father to show cause why he should not be held in contempt for his actions. In June 2020, Mother filed a motion requesting that the trial court enter findings of fact and conclusions thereon when ruling on the merits of the parties' pending motions.

[26] On June 22, 2020, the trial court held the first of a two-day hearing on the parties' pending motions. Specifically, the trial court heard evidence on the following motions: (1) Father's October 2019 motion to modify custody, support, and parenting time; (2) Mother's second motion to relocate, which was

filed in November 2019; (3) Father's January 2020 contempt citation; (4) Mother's April 2020 motion for rule to show cause; (5) Father's April 2020 contempt citation and emergency order for the return of K.C.; and (6) Mother's May 2020 rule to show cause.

[27] At the beginning of the hearing, Father's counsel told the trial court that he intended "to narrow or limit the [relocation] evidence to things that occurred" between the trial court's June 2019 denial of Mother's first petition to relocate and the filing of Mother's second petition to relocate in November 2019. (Tr. Vol. 2 at 11). According to Father's counsel, he was "not [t]here to relitigate." (Tr. Vol. 2 at 11). The trial court agreed with Father's counsel and stated that, "[a]s far as it relate[d] to any motion filed by [M]other to reattempt to modify based on the relocation, the Court w[ould] limit the evidence for change of circumstances from the June 26, 2019 Order[.]" (Tr. Vol. 2 at 13).

[28] At the hearing, the trial court heard testimony about the facts as set forth above. In addition, the trial court took judicial notice of the parties' 2018 agreed paternity order and the previous trial court's June 2019 order denying Mother's petition to relocate to Virginia.

[29] Additional testimony at the hearing revealed that thirty-three-year-old Father has been a construction worker for the past fourteen years. He works Monday through Friday from 7:00 a.m. until 3:30 p.m. Father earns $21.50 per hour. In addition, Father lives in a rural area on a nine-acre property, and Paternal Grandparents live next door on a ten-acre property. K.C. and Father ride three-

wheelers and camp on the property. K.C. sees Paternal Grandparents almost every day and likes to ride in Paternal Grandfather's golfcart. In addition, Father has a large extended family, which includes aunts, uncles, cousins, and cousins' children, who live in the Logansport area. Mother also has a large extended family in the Logansport area.

[30] At the hearing, Father explained that, after Mother had relocated to Virginia, Mother had begun expressing concerns about K.C.'s hygiene because K.C. had had dirt under his fingernails. Mother had also told Father that she had concerns that K.C. was not gaining weight. Mother advised Father that she was going to schedule an appointment with K.C.'s pediatrician in Logansport to discuss her concerns about K.C.'s hygiene and weight. Father pointed out that Mother had raised these concerns when "they were getting ready to go to court." (Tr. Vol. 2 at 64). Father also explained that he had previously attempted to talk to Mother about registering K.C. for Kindergarten in Logansport. After Mother had told Father that she would not discuss K.C.'s school options with Father, he had registered K.C. for Kindergarten in Logansport.

[31] Father asked the trial court to award him legal and physical custody of K.C. and to award Mother parenting time pursuant to the Guidelines for long-distance travel. Father also asked the trial court to order Mother to pay for part of his attorney's fees.

[32] At the time of the hearing, K.C. had just completed pre-school and was scheduled to begin Kindergarten in the fall. K.C.'s pre-school teacher, Cindy Byers ("Byers"), who had been teaching at the pre-school for twenty-two years, testified at the hearing that K.C. had entered the pre-school in August 2019, when he began living with Father. At that time, K.C. did not know the letters of the alphabet or colors, but during the course of the academic year, K.C. had "done miraculously a 180 . . . [and] . . . [had] really excelled." (Tr. Vol. 2 at 21, 22). Byers further testified that K.C. was a "good kid all the way around." (Tr. Vol. 2 at 18). According to Byers, she had never had any concerns about K.C.'s hygiene, and he had always been properly dressed. Byers further testified that she had talked to Father daily when he had picked up K.C. from pre-school and that Father had been engaged in K.C.'s educational progress.

[33] Stepfather testified that he was aware that, at the first relocation hearing, Mother had testified that she could afford to stay in Indiana while Stepfather relocated to Virginia. When asked "why [M]other [had] said that," Stepfather responded that it "was the heat of the moment." (Tr. Vol. 2 at 137). According to Stepfather, Mother "just want[ed] to be with [K.C.] and wasn't thinking that a judge would deny her the ability to take [K.C.] with her [to Virginia]." (Tr. Vol. 2 at 137). Stepfather further testified that he and Mother had never discussed whether it was feasible for Mother to remain in Indiana while Stepfather relocated to Virginia and that it was "not at all" a feasible alternative. (Tr. Vol. 2 at 138).

[34] At the end of the first day of the hearing, the trial court, with the agreement of the parties, scheduled the second day of the hearing for one month later, in July 2020. In addition, the trial told the parties as follows:

> Given the date between now and then and the parties circumstances, the guidance I'm giving [the] parties is to treat the custodial order as if Father is primary physical custodian and Mother is entitled to parenting time when distance is a major factor, which would allow her to see the child when she is in this area, or at other times permitted by that order, which I don't think will be triggered in that month interim, but that is the guidance I'm giving the parties as that is the reality after the last order and after Mother chose to relocate, that is the default status of the parties by their own choosing, is that Father's got primary physical custody of the child and Mother is now the secondary physical custodian pending further court order. That is the just the reality of the circumstances. So, I am not going to sit here and say the parties still have joint legal custody and Mother is primary physical custodian when Mother has voluntarily relinquished primary physical custody by moving to Virginia. Now that is not the Court ordering that, this is just acknowledging the reality of the circumstances between now and the next hearing. So that is what the Court is saying. We will continue these proceedings and finish evidence at which time the Court will enter an official order based on the evidence presented, but for now until then treat Father like primary physical custodian.

(Tr. Vol. 2 at 157-58).

[35] Father's counsel pointed out that Mother had had K.C. for the past two months, since she had picked him up in Logansport on April 24, 2020. According to Father's counsel, Father had just seen K.C. for the first time the

previous day and should have K.C. for the rest of the summer. The trial court responded that it was not going to issue any orders but that it "would just let [the] parties know that whatever happen[ed] between [then] and the next hearing w[ould] be fair game to bring up at the next hearing and [the parties'] actions good or bad w[ould] be heavily weighed by the Court." (Tr. Vol. 2 at 159). Following the hearing, Mother returned to Virginia with K.C.

[36] At the beginning of the second day of the hearing in July 2020, Mother's counsel asked her what had changed since the previous trial court had denied her first motion to relocate in June 2019. Mother responded that she had not been able to sustain two households, one in Indiana and another in Virginia, and that she had been forced to move to Virginia. However, when later asked why she had testified in June 2019 that she could remain in Indiana while Stepfather relocated to Virginia, Mother responded that she had "said whatever [she] c[ould] to keep [her] kids together." (Tr. Vol. 2 at 169). Mother also testified that she was a medical assistant in Virginia. According to Mother, she earned $14.65 an hour and worked forty hours per week.

[37] Mother further testified that she had had K.C. in her care for the past eighty-four days, since April 24, 2020 when she picked him up at Paternal Grandparents' house in Logansport. Father's counsel objected when Mother began testifying about K.C.'s adjustment to Virginia during the past eighty-four days, and the trial court responded as follows:

> I am not going to get down to the weeds as far as what is going on in Virginia. I am just not going to do it[.] So, you are asking

> me to undo what [the previous trial court] did[.] And so, I am entertaining as much evidence as I can, but we are getting too far in the weeds[.] [K.C.] is visiting [Virginia]. So, if you want to talk about things you witnessed while the child has been visiting, but we are not going to get into doctor's appointments, schooling, things that are of legal sediments because the child is not legally settled in Virginia. So, none of that stuff, it is not relevant. I know that you want it to be relevant based on your renewed motion. Your renewed motion is probably not even a valid motion, but we are just doing what we can to make the record so that when either of you are aggrieved you can take it above me[.]

(Tr. Vol. 2 at 177-78).

[38] Mother further testified that she had been sick in January 2020 when she had been scheduled to meet Father in West Virginia to exchange K.C. According to Mother, she had not "knowingly tried to keep [K.C.] from returning to the State of Indiana." (Tr. Vol. 2 at 180). Mother also testified that she had filed the April 2020 contempt citation because Father had not allowed her to Skype every day with K.C. When asked why she had filed the contempt citation after Father had enrolled K.C. in Kindergarten in Logansport, Mother responded that she did not think that Father "had the right to do that without [her][.]" (Tr. Vol. 2 at 184). Mother further testified that she did not want K.C. to attend school in Logansport and that she did not believe that K.C. was "doing very well" in Father's care. (Tr. Vol. 2 at 188). According to Mother, K.C. was not progressing in preschool, and she believed that K.C. would "do a lot better" in her care. (Tr. Vol. 2 at 189).

[39] Mother admitted that she had picked K.C. up in Logansport on April 24, 2020 and taken him to Virginia. She had allowed Father to have two overnight visits with K.C. while she and K.C. were in Indiana for the first day of the hearing in June 2020. However, following the hearing, Mother had immediately returned to Virginia with K.C. When Mother and K.C. had recently returned to Indiana for the second day of the hearing, Father had asked to see K.C. Mother admitted that, even though K.C. had been in her care for the past three months, she had told Father that "the judge said that while I am in the area, I get him." (Tr. Vol. 2 at 220). Mother explained that Father would be able to see K.C. that day after the hearing.

[40] Mother also acknowledged that the 2018 agreed paternity order had given Father parenting time for five out of every fourteen days. Father's counsel asked Mother what court order entitled her to have K.C. for the past eighty-four days, since April 24, 2020. Mother responded, "[n]one. I am his mom. I am entitled to parenting time." (Tr. Vol. 2 at 221). Father's counsel then asked Mother if it was fair to say that "taking [K.C.] to Virginia for really what [was] then almost three full months, [was] basically the equivalent of relocating [K.C.]" (Tr. Vol. 2 at 221). Mother responded that it was not because she had not enrolled K.C. in school.

[41] During Father's closing argument, Father argued, in relevant part as follows:

> And then, the only other thing I would say is that [Father] requests today that [K.C.] be returned to him[.] I think it is fair to argue that the child has been relocated. 82 out of 84 days in

> Virginia far exceeds, even if we were to give her the benefit of the doubt and she got parenting time pursuant to the guidelines, a seven-week summer . . . 49 days. She has had [K.C.] for almost twice that long. I am asking the court to order her to return [K.C.] and also order her in the interim not to remove [K.C.] again from the State of Indiana. Beyond that judge, the attorney['s] fee request in this case is more than reasonable. My client is asking for his [attorney's] fees . . . to be paid based on the conduct of the parties[.] [Mother's] actions have complicated this case significantly[.] [Father] just wants [K.C.] back. He wants to put [K.C.] in school and get on with his life[.]

(Tr. Vol. 2 at 233-34).

[42] During Mother's closing argument, Mother argued, in relevant part, as follows:

> This is mother's second bite at the apple for relocation, but the statute and case law you can file it every day of every week if circumstances are different or here, if you read the court's order the basis for the denial was that [M]other believed that she could live in both Indiana and in Virginia and maintain two separate households. She quickly figured out that she could not do that. That is a change in circumstances. She was forced to move to Virginia because her husband had to relocate and she could not maintain two separate residences[.]

(Tr. Vol. 2 at 234-35).

[43] After hearing the evidence and the parties' arguments, the trial court stated as follows:

> The Court will issue written Findings and Conclusions to support its order. The oral order from the bench is not to be construed as the court's order. The written order will be the court's order[.]

> The parties are seeking clarity and I will try to be as clear as I can without being overtly rude, but some rudeness is necessary. Mother . . . I've been on the bench eight years. This is the clearest case of facts and law I've seen. There is just no question that at every stage where you have an opportunity to make a decision, you are making the wrong decision. And you are justifying it by saying that I am the mother, the child is best with me and whatever I do is best for the child[.] [B]ut that is not how the law in Indiana is structured and that is not how the law in Indiana works[.] You had no legal basis to have the child from April 'til now under any court order, under any set of reality, under [any] set of circumstances you would not be authorized to have the child eighty some days out of ninety-two days[.] I am not going to pronounce from the bench what the legal custody determination will be, but the physical custody determination will be with [F]ather. And the child will be returned today. And mother's parenting time with the child shall occur in Indiana. Not in Virginia because you keep taking the child and not bringing the child back, and not following the court's orders, so until we have some clarity that you understand that the orders are meant to be followed, the child is not leaving Indiana, and if it does, someone is going to file criminal charges. And, so, that is the order of the court for now and that will provide some stability for this child who should have had stability for the past year[.] So the court will pronounce its order in written form with potentially citations to the record, and you may appeal that if you chose[.] I can only enter an order based on the evidence presented and it is expected to be followed. That will be the order of the court. We will address support in the order based on the evidence presented. Until then the immediate actions are [that the] child [is to be] returned to [F]ather today[.] Thank you. That is the order of the court.

(Tr. Vol. 2 at 236-39).

[44] In August 2020, the trial court issued a detailed fourteen-page order addressing the parties' pending motions. That order provides, in relevant part, as follows:

> 23. Mother testified, under oath, at the [June 2019] relocation hearing that she could stay in Indiana with [K.C.] if she was not permitted to relocate [K.C.] to Virginia.
>
> 24. Though not likely rising to the level of perjury, Mother had no intention of staying in Indiana, nor was the same financially viable to her and her family.
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> * * * * *
>
> 102. Mother's initial request to relocate was DENIED [on] June 26, 2019.
>
> 103. Mother relocated to Virginia . . . before July 22, 2019[.]
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> 104. This entire round of litigation was unnecessary and should have been avoided.
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> 105. Father should not have had to expend funds to re-litigate the relocation issue.
>
> 106. All costs associated with the relocation re-litigation should be borne by Mother.
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> 107. As permitted by IND. CODE § 31-17-2.2-1, Mother is ORDERED to pay Father's reasonable attorney's fees of five thousand four hundred and six ($5,406.00) dollars as supported by [Father's] Exhibit 8 after allotting two (2) additional hours for travel to and from and attendance at the July 17, 2020 conclusion to the proceedings.
>
> 108. Judgment is entered against Mother for the benefit of Father in the sum of five thousand four hundred and six ($5,406.00) dollars and shall accrue interest at the statutory rate.
>
> * * * * *

> 116. On April 24, 2020, Mother removed [K.C.] from Indiana . . . and kept [K.C.] until July 17, 2020 except for a brief visit with Father on June 22, 2020.
>
> 117. Mother has intentionally or willfully violated the Court's order from June 26, 2019 which prohibited Mother from relocating to Virginia with [K.C.]
>
> Accordingly, Mother is ADMONISHED and ORDERED to strictly comply with this Court's orders.

(App. Vol. 2 at 77, 85-86).

[45] In addition to denying Mother's second petition to relocate, the trial court further concluded that Father had demonstrated: (1) substantial changes in many of the statutory factors that the Court may consider in INDIANA CODE § 31-14-13-6; and (2) a modification of custody in favor of Father was in K.C.'s best interest. Accordingly, the trial court granted Father's motion to modify custody, support, and parenting time. The trial court also ordered that Mother was entitled to parenting time in accordance with the Guidelines where distance is a factor. In addition, pursuant to a Child Support Obligation Worksheet that the trial court had completed with the parties' reported incomes and attached to its order, the trial court ordered Mother to pay $123 per week in child support. Lastly, the trial court denied Father's January 2020 contempt citation, Mother's April 2020 rule to show cause, and Mother's May 2020 rule to show cause.

[46] Mother now appeals.

Decision

[47] Mother argues that the trial court: (1) clearly erred when it denied her second petition to relocate; (2) abused its discretion when it modified custody of K.C. in favor of Father; (3) abused its discretion when it ordered her to pay $5,406 of Father's attorney's fees; (4) abused its discretion when it found her to be in contempt; and (5) clearly erred when it ordered her to pay $123.00 per week in child support. We address each of Mother's contentions in turn.

[48] At the outset, we note that Mother requested the trial court to enter findings of fact and conclusions thereon pursuant to Trial Rule 52(A). We, therefore, apply a two-tiered standard of review. *Maddux v. Maddux*, 40 N.E.3d 971, 974 (Ind. Ct. App. 2015). First, we determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* The trial court's findings are controlling unless the record includes no facts to support them either directly or by inference. *Id.* Legal conclusions, however, are reviewed de novo. *Id.* at 975. We set aside a trial court's judgment only if it is clearly erroneous. *Id.* at 974. "Clear error occurs when our review of the evidence most favorable to the judgment leaves us firmly convinced that a mistake has been made." *Id.* at 974-75.

[49] We further note that there is a well-established preference in Indiana "'for granting latitude and deference to our trial judges in family law matters.'" *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016) (quoting *In re Marriage of*

Richardson, 622 N.E.2d 178, 178 (Ind. 1993)). In this regard, the Indiana Supreme Court has explained as follows:

> 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. Thus enabled to assess credibility and character through both factual testimony and intuitive discernment, 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.

Best v. Best, 941 N.E.2d 499, 502 (Ind. 2011).

1. Denial of Mother's Second Relocation Petition

[50] Mother first argues that the trial court clearly erred when it denied her second petition to relocate. The gravamen of her argument is that the trial court erred when it concluded that she had failed to show a substantial change in one or more of the statutory factors found in the relocation statute.

[51] Under certain circumstances, such as those in the present case, a parent intending to move residences must file a notice of that intention. *See* IND. CODE § 31-17-2.2-1. The relocating parent has the burden to establish that the proposed relocation is made in good faith and for a legitimate reason. *See* IND. CODE § 31-17-2.2-5(e). If that burden is met, the burden then shifts to the nonrelocating parent to show that the proposed relocation is not in the best interests of the child. *See* IND. CODE § 31-17-2.2-5(f).

[52] Although the relocation statute does not address the modification of an existing relocation order, we agree with the parties that the trial court may modify an existing relocation order where there has been a substantial change in one or more of the statutory factors that are outlined in INDIANA CODE § 31-17-2.2-1(c)[2] and where the modification is in the best interests of the child. *See e.g.,* INDIANA CODE § 31-17-2-21 (providing that a trial court may modify an existing child custody order where there has been a substantial change in one or more of the statutory factors that are outlined in INDIANA CODE § 31-17-2-8 and where the modification is in the best interests of the child). We further note that the parent seeking modification of the relocation order bears the burden of

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[2] Those factors include:

(1) The distance involved in the proposed change of residence.

(2) The hardship and expense involved for the nonrelocating individual to exercise parenting time[.]

(3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time . . . arrangements, including consideration of the financial circumstances of the parties.

(4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual's contact with the child.

(5) The reasons provided by the:

(A) relocating individual for seeking relocation; and
(B) nonrelocating parent for opposing the relocation of the child.

(6) Other factors affecting the best interest of the child.

demonstrating that the existing order should be modified. *See e.g., M.G. v. S.K.* 162 N.E.3d 544, 547 (Ind. Ct. App. 2020) (explaining that the party seeking a modification of custody bears of the burden of demonstrating that the existing order should be modified).

[53] Here, Mother argues that the previous trial court denied her first petition to relocate because she had offered to stay in Indiana with her three children while Stepfather relocated to Virginia. According to Mother, a single substantial change of circumstances occurred when she was forced to relocate to Virginia because she and Stepfather could not afford to maintain two households.

[54] However, our review of the evidence reveals that, at the hearing on the second relocation petition, Stepfather was asked why Mother had testified that she could afford to stay in Indiana while Stepfather relocated to Virginia. Stepfather responded that Mother made this statement in "the heat of the moment[]" because she "just want[ed] to be with [K.C.] and wasn't thinking that a judge would deny her the ability to take [K.C.] with her [to Virginia]." (Tr. Vol. 2 at 137). Stepfather further testified that he and Mother had never discussed whether it was feasible for Mother to remain in Indiana while Stepfather relocated to Virginia and that it was "not at all" a feasible alternative. (Tr. Vol. 2 at 138).

[55] Mother's response to the same question was that she had simply said whatever she could to keep her kids together. We further note that Mother immediately relocated to Virginia without K.C. following the hearing on her first relocation

petition and did not raise this alleged changed circumstance in her motion to correct error.

[56] Here, the trial court found that, "[t]hough not likely rising to the level of perjury, Mother had no intention of staying in Indiana, nor was the same financially viable to her and her family." (App. Vol. 2 at 77). The evidence supports this finding. Further, because Mother had never planned to stay in Indiana with her three children and had always intended to relocate to Virginia with Stepfather, Mother has failed to meet her burden to demonstrate that her relocation to Virginia was a substantial change in one or more of the relocation factors. Accordingly, the trial court did not err in denying Mother's second petition to relocate.

2. Child Custody Modification

[57] Mother next argues that the trial court abused its discretion in modifying custody of K.C. in favor of Father. We review custody modifications for an abuse of discretion. *In re Paternity of C.S.*, 964 N.E.2d 879, 883 (Ind. Ct. App. 2012), *trans. denied*. We will not reweigh the evidence or judge the credibility of witnesses. *Id*. Rather, we will reverse the trial court's custody determination only where the trial court's decision is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom.

[58] INDIANA CODE § 31-14-13-6 provides that a trial court may not modify an existing child custody order unless: (1) the modification is in the best interests

of the child; and (2) there has been a substantial change in one or more of the statutory factors that the trial court may consider under INDIANA CODE § 31-14-13-2. These factors include:

> (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[.]

IND. CODE § 31-14-13-2. A change in conditions must be judged in the context of the whole environment, and it is the effect upon the child that renders a change substantial or inconsequential. *In re Winkler*, 725 N.E.2d 124, 128 (Ind. Ct. App. 2000). Further, whether a custodial parent's move out of state causes substantial change in the statutory factors depends upon the facts of each case. *Hanks v. Arnold*, 674 N.E.2d 1005, 1008 (Ind. Ct. App. 1996).

[59] Here, our review of the evidence reveals that Mother relocated 800 miles to Norfolk, Virginia and left five-year-old K.C. with Father. The drive from Logansport to Norfolk is twelve to thirteen hours. Because of K.C.'s young age, an exchange for parenting time would require a parent or other relative to either fly back and forth from Virginia to Indiana with K.C. or make a very long car ride with a significant amount of the visit spent in transit. K.C.'s young age precludes meaningful visits on social media. This evidence supports the trial court's finding that there was a substantial change in one or more of the factors listed in INDIANA CODE § 31-14-13-2.

[60] The trial court also found that a modification of custody was in K.C.'s best interests. Our review of the record reveals that K.C. has a close relationship with Father and Paternal Grandparents, who live next door to Father. K.C. attended preschool in Indiana, and his teacher testified that Father had been engaged in K.C.'s educational progress. We further note that Mother's act of keeping K.C. in Virginia for three months undermined K.C.'s relationship with Father. The totality of this evidence supports the trial court's determination that a modification of custody was in K.C.'s best interests. Mother's argument is an invitation for us to judge the credibility of witnesses and reweigh the evidence, which we cannot do. *See Paternity of C.S.*, 964 N.E.2d at 883. The trial court did not abuse its discretion in modifying custody of K.C. in favor of Father.

3. Attorney's Fees

[61] Mother further argues that the trial court abused its discretion in ordering her to pay $5,406 of Father's attorney's fees. Mother specifically argues that she "presumes that the Court [was] suggesting that her litigation was in bad faith. Mother contends that this finding is . . . egregious in that there had been a change of circumstances from the original hearing of June 2019, in that she determined that she could not have maintained two (2) separate residences in Logansport, Indiana and Norfolk, Virginia[.]" (Mother's Br. 24-25).

[62] The trial court ordered Mother to pay Father's attorney's fees pursuant to INDIANA CODE § 31-17-2.2-1(f), which provides that the trial court "may award reasonable attorney's fees for a motion filed under this [relocation] section in accordance with IC 31-15-10 and IC 34-52-1-1(b)." INDIANA CODE § 34-52-1-1(b) provides as follows:

> (b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
>
> > (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
> >
> > (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
> >
> > (3) litigated the action in bad faith.

[63] The trial court's decision to award attorney's fees pursuant to INDIANA CODE § 34-52-1-1 is subject to a multi-level review. *In re Moeder*, 27 N.E.3d 1089, 1101 (Ind. Ct. App. 2015). First, we review the trial court's findings of fact under the

clearly erroneous standard. *Id.* Next, we review *de novo* the court's legal conclusions regarding whether the parties' claim was frivolous, unreasonable, or groundless. *Id*. Finally, we review the trial court's decision to award attorney's fees for an abuse of discretion. *Id*. at 1101-02. A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances or if the trial court has misinterpreted the law. *Id*. at 1102.

[64] A claim or defense is "frivolous" if it is taken primarily for the purpose of harassment, if the attorney is unable to make a good faith and rational argument on the merits of the action, or if the lawyer is unable to support the action taken by a good faith and rational argument for an extension, modification, or reversal of existing law. *Id*. A claim or defense is "unreasonable" if, based on the totality of the circumstances, including the law and facts known at the time of filing, no reasonable attorney would consider that claim or defense was worthy of litigation. *Id*. A claim or defense is "groundless" if no facts exist which support the legal claim presented by the losing party. *Id.* Bad faith is demonstrated where the party presenting the claim is affirmatively operating with furtive design or ill will. *Id*. A claim or defense is not groundless or frivolous merely because a party loses on the merits. *Id.*

[65] Broadly stated, INDIANA CODE § 34-52-1-1 strikes a balance between respect for an attorney's duty of zealous advocacy and the important policy of discouraging unnecessary and unwarranted litigation. *Mitchell v. Mitchell*, 695 N.E.2d 920, 924 (Ind. 1998) (citing a prior version of the statute). Subsections (b)(1) and (b)(2) of the statute focus on the legal and factual basis of the claim or

defense and the arguments supporting the claim or defense. *Id.* On the other hand, subsection (b)(3), by its terms, requires scrutiny of the motive or purpose of the non-prevailing party. *Id.* Further, because the statute lists the grounds for awarding attorney's fees in the disjunctive, a party is required to demonstrate the existence of only one ground in order to justify an award of attorney's fees. *In re Moeder*, 27 N.E.3d at 1102.

[66] Here, the trial court did not specify the statutory subsection that it relied upon to award the attorney's fees. However, our review of the trial court's order reveals that the trial court concluded that Mother had brought a groundless action because no facts existed to support her claim. Specifically, the trial court found that, although not likely rising to the level of perjury, Mother had no intention of staying in Indiana when she had testified to that fact at the hearing on her first petition to relocate. Because Mother had never planned to stay in Indiana with her three children and had always intended to relocate to Virginia with Stepfather, there were no facts to support her claim that there had been a substantial change in one or more of the statutory factors that are outlined in the relocation statute when she relocated to Virginia. As Mother presented no evidence to support her claim, the trial court did not err in concluding that Mother's claim was groundless. Accordingly, the trial court did not abuse its discretion when it ordered Mother to pay $5,406 of Father's attorney's fees.[3]

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[3] Mother also argues that the trial court abused its discretion when it ordered her to pay $5,406 of Father's attorney's fees because Father earns $7.00 an hour more than she does and is, therefore, in a better position

4. Contempt

[67] Mother also argues that the trial court abused it discretion when it granted Father's April 2020 contempt citation and found her in contempt for relocating K.C. to Virginia in willful violation of the previous trial court's June 26, 2019 denying her first petition to relocate. She specifically argues that "there is no evidence before the Trial Court that Mother ever relocated [K.C.] to Virginia in contravention of the Court's June 26, 2019 Order." (Mother's Br. 23).

[68] Contempt of court "'involves disobedience of a court which undermines the court's authority, justice, and dignity.'" *Henderson v. Henderson*, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010) (quoting *Srivastava v. Indianapolis Hebrew Congregation, Inc.*, 779 N.E.2d 52, 60 (Ind. Ct. App. 2002), *trans. denied*.) "'Willful disobedience of any lawfully entered court order of which the offender had notice is indirect contempt.'" *Henderson*, 919 N.E.2d at 1210 (quoting *Francies v. Francies*, 759 N.E.2d 1106, 1118 (Ind. Ct. App. 2001), *trans. denied*.)

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to pay his own attorney's fees. In support of her argument, Mother directs us to *Haley v. Haley*, 771 N.E.2d 743 (Ind. Ct. App. 2002. In the *Haley* case, we discussed INDIANA CODE § 31-17-7-1, which authorizes the trial court to order a party to pay a reasonable amount for the cost of the other party maintaining an action for a custody modification and for attorney's fees. *Id.* at 753. When awarding attorney's fees pursuant to INDIANA CODE § 31-17-7-1, the trial court may consider the economic resources and relative earning ability of the parties. *Id.* When one party is in a superior position to pay fees over the other party, an award of attorney's fees is proper. *Id.* Here, however, the trial court did not order Mother to pay Father's attorney's fees pursuant to INDIANA CODE §31-17-7-1, Rather, the trial court ordered Mother to pay Father's attorney's fees pursuant to INDIANA CODE § 34-52-1-1. Mother's argument therefore fails.

We further note that we need not review the amount of the award because Mother challenges only the trial court's decision to award attorney's fees. *See Mitchell v. Mitchell*, 695 N.E.2d 920, 924 (Ind. 1998). She does not challenge the computation method or the amount awarded.

[69] The determination of whether a party is in contempt of court is a matter within the trial court's discretion, and the trial court's decision will only be reversed for an abuse of that discretion. *Williamson v. Creamer*, 722 N.E.2d 863, 865 (Ind. Ct. App. 2000). A trial court has abused its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. *Id.* When reviewing a contempt order, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Rather, our review is limited to considering the evidence and the reasonable inferences to be drawn therefrom that support the trial court's judgment. *Id*. "'Unless after a review of the entire record we have a firm and definite belief a mistake has been made by the trial court, the trial court's judgment will be affirmed.'" *Id*. (quoting *In re Marriage of Glendenning*, 684 N.E.2d 1175, 1179 (Ind. Ct. App. 1997), *trans. denied*). Further, this Court will only reverse a trial court's contempt judgment if there is not evidence to support it. *Williamson*, 722 N.E.2d at 865.

[70] Here, in June 2019, the previous trial court denied Mother's first petition to relocate to Virginia. Mother subsequently absconded with K.C. to Virginia and kept him there for three months, from April 2020 until July 2020, even though Father had filed a contempt citation and a request for an emergency hearing concerning K.C.'s return to Indiana. The trial court in this case concluded that Mother's act of keeping K.C. in Virginia for three months constituted a relocation. After reviewing the entire record in this case, we do not have a firm and definite belief that the trial court has a made mistake. *See Williamson*, 722 N.E.2d at 865. Mother's argument that she had not relocated K.C. to Virginia

and was merely exercising parenting time with him for three months is a request that we reweigh the evidence. This we cannot do. *See id*. The trial court did not abuse its discretion when it found Mother to be in contempt.[4]

5. Child Support

[71] Lastly, Mother argues that the trial court clearly erred when it ordered her to pay $123.00 per week in child support. Specifically, she argues that the trial court clearly erred because it failed to award her parenting time credit.

[72] A trial court's calculation of a child support obligation is presumptively valid and will be reversed only if it is clearly erroneous or contrary to law. *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* In conducting our review, we will not reweigh the evidence and will consider only the evidence most favorable to the judgment. *Saalfrank v. Saalfrank*, 899 N.E.2d 671, 674 (Ind. Ct. App. 2008).

[73] The commentary to the Child Support Guidelines provides that, "[t]he computation of the parenting time credit will require a determination of the annual number of overnights of parenting time exercised by the parent who is to pay child support, the use of the standard Child Support Obligation Worksheet,

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[4] We further note that Mother's brief and conclusory argument that she did not have notice of the contempt or the opportunity to be heard because the trial court did not follow the proper procedure also fails. Mother had notice that Father's contempt citation would be addressed at the hearing along with several other motions, and she also admitted to the actions that formed the basis of the contempt citation. We find no error here. *See Mitchell v. Stevenson*, 677 N.E.2d 551, 561 (Ind. Ct. App. 1997).

a Parenting Time Table, and a Parenting Time Credit Worksheet." Ind. Child Support Guideline 6. Here, however, Mother failed to provide the trial court with a Parenting Time Credit Worksheet. Indeed, Mother also failed to provide the trial court with a Child Support Obligation Worksheet, and her only testimony relevant to child support was that she earned $14.65 per hour and that she worked forty hours per week. The trial court applied this figure when it completed the Child Support Obligation Worksheet that it attached to its order. The trial court's child support determination is not clearly against the logic and effect of the facts and circumstances before it. Accordingly, the trial court did not clearly err when it ordered Mother to pay $123 per week in child support.

[74] Affirmed.

Najam, J., and Tavitas, J., concur.