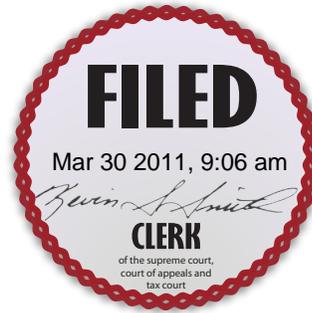


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

Ro.C.,)
)
Appellant-Petitioner,)
)
vs.) No. 32A01-1009-DR-435
)
Ry.C.,)
)
Appellee-Respondent.)

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable Jeffrey V. Boles, Judge
Cause No. 32C01-0710-DR-115

March 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Ro.C. (“Mother”) filed a post-dissolution notice of intent to relocate to New York with her children. Ry.C. (“Father”) filed his objection to Mother’s notice of intent to relocate and a motion to modify custody. Mother then filed a motion to modify child support. Following an evidentiary hearing, the dissolution court denied Mother’s request to relocate. Mother presents the following restated issues on appeal:

1. Whether the trial court clearly erred when it denied her request to relocate with the children to New York.
2. Whether the trial court abused its discretion when it impliedly denied her motion to modify child support.

We affirm in part and dismiss in part.

FACTS AND PROCEDURAL HISTORY

Four children were born to Mother and Father during their marriage: K.C.1, born March 27, 1996; K.C.2, born January 5, 2001; Kr.C., born August 9, 2002; and A.C., born March 15, 2004 (collectively “the children”). On June 19, 2008, the parties entered into an Agreement of Property Settlement and for Child Custody and Support (“Agreement”). Under the Agreement, the parties were awarded joint legal custody of the children. The Agreement also awarded Mother primary physical custody and gave Father “reasonable parenting time with the minor children as the parties agree, but not less than that provided in the Indiana Parenting Time Guidelines.” Appellant’s App. at 23. And the Agreement provides, in relevant part:

6. Parenting Time Journal: The parties understand that the Court requires each party to make complete, contemporaneous notes of all parenting time exchanges and/or issues, and to exchange these notes with the other parent prior to initiating any request for a court-ordered

modification of parenting time (as opposed to the submission of a written agreement for Court approval). The parties understand that this requirement is JURISDICTIONAL to any request for court intervention regarding parenting time and custody issues.

Appellant's App. at 26 (emphasis in original). Also on June 19, the dissolution court approved the Agreement and entered a decree dissolving the marriage ("Decree").¹

At all relevant times, Father has been employed at Eli Lilly in Indianapolis, and Mother has been unemployed. At the time of the dissolution, Mother was completing coursework to become a medical transcriptionist. Under the Agreement, the parties agreed that Father's bonus income would not be considered in determining child support because that income "is not regular and substantial enough to be considered as income for child support purposes." Id. Further, the parties "agree[d] that [Father's] income is greatly reduced by the fact that [he] is assuming all of the marital debt, and they [took] that into consideration in determining never to use [his] contingent compensation as income for child support purposes." Id. As a result, the child support worksheet applied only Father's non-contingent income and imputed to Mother income for a medical transcriptionist at \$215 per week. Based on those salary figures, Father was ordered to pay \$405 weekly child support under the Indiana Child Support Guidelines ("Guidelines").

¹ The record on appeal does not contain a copy of the Decree, and the parties do not explicitly state that the court incorporated the Agreement into the Decree. Because the parties rely on the Agreement as if it had been incorporated in the Decree, we assume such to be the case. But we remind the parties that the appendix must include, in part, "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal." Ind. Appellate Rule 50(A)(f). The Decree is material to the issues raised on appeal and would have aided our review.

On May 28, 2010, Mother filed a pro se Notice of Intent to Move, requesting permission to relocate with the children to Stockton, New York. In that motion, Mother stated that the move was necessary so that she could go to nursing school in New York, where she had been accepted into a program, and accept an offer of part-time employment in a company where her mother was vice president. On June 22, Father filed his objection to Mother's request for permission to relocate, a motion to modify physical custody, and a motion for an order prohibiting Mother from relocating until after a hearing on the matter. On that same date, the dissolution court entered an ex parte order prohibiting Mother from relocating pending a hearing. And on July 6, Mother filed a motion to modify child support.

On July 20, the court held an evidentiary hearing on Mother's notice of intent to relocate, Father's objection to relocation, and Mother's motion to modify child support. And on August 10, the court entered its order with findings and conclusions thereon ("Order"), pursuant to Mother's written request. The court denied Mother's request to relocate with the children to New York, stating, in relevant part:

2. At the trial in this case, [Mother] failed to comply with the Agreement of Property Settlement and for Child Custody and Support ordered 19 June, 2008, requiring complete contemporaneously[]made written records. [Father] did comply with [that order].

3. The evidence of the trial presented [sic] proved [Mother] has been unemployed since the date of dissolution and up until her filing of [the] Petition to Relocate to Western New York to work in a company where her [m]other is the Vice-President and that [Mother] never obtained employment and is living on the current child support that [Father] pays. [Mother] seeks to move to Stockton, New York, and claims to have been accepted at Jamestown [Community College] to study nursing. She has testified that she is eligible for a Pell Grant and Obama Grant and can

receive nursing school free books and tuition in the fall. [Mother] claims she will work for \$12 per hour on a part-time basis in Stockton, New York.

4. Stockton, New York, is an approximately 8[-]hour drive from Plainfield, Indiana.

5. Both [Mother] and [Father] came to Indiana from the New York area.

6. [Mother] and [Father] have lived in the Plainfield area since 2003. Their children attend schools [in] Plainfield and church at St. Thomas Moore.

7. [Father] has [overnight] parenting time approximately 110 days per year and [] total parenting time of 200 time[s] per year.

8. [Mother] has a boyfriend in Findley, Ohio.

9. It goes without saying that any attempt to move is a matter that directly affects parenting time.

10. The evidence at trial proved that her proposal to move is not in good faith or for [a] legitimate purpose because she desires to move near her family to do some [sic] education.

11. At trial [Father] showed that it was not in the best interest for the children to move, which would be a complete alienation from their father who visits regularly and pays current support. Removal from Plainfield, friends, church and school activities is not in the children's best interest[s].

LAW

A relocating parent has the burden to show the Court that relocation is planned in good faith and for [a] legitimate purpose. The non-relocating parent must show that the relocation is not in the children's best interest[s]. I.C. [§] 31-17-2.2-5.

ORDER

Because [Mother] failed to prove by a preponderance of the evidence in this case that her relocation is in good faith and for a legitimate purpose and the fact that [Mother] failed to comply with the order of 19 June, 2008, by keeping complete contemporaneously made written notes and exchanging notes before any proceedings were had in Court, the Court

specifically DENIES [Mother's] Notice of Intent to Move, her failure to comply with the order having no explanation or excuse.

Appellant's App. at 7-8. Mother now appeals.

DISCUSSION AND DECISION

Standard of Review

We initially observe that the trial court entered findings and conclusions thereon at Mother's request. Our standard of review of special findings pursuant to Indiana Trial Rule 52(A) mandates that we first determine whether the evidence supports the findings and then whether the findings support the judgment. Borth v. Borth, 806 N.E.2d 866, 869 (Ind. Ct. App. 2004). Because the trial court is charged with determining the credibility of the witnesses, the findings or judgment will not be set aside unless clearly erroneous. Id. Clear error exists where the record does not offer facts or inferences to support the trial court's findings or conclusions thereon. See id. We will not reweigh the evidence or assess the credibility of witnesses. Pramco III, LLC v. Yoder, 874 N.E.2d 1006, 1010 (Ind. Ct. App. 2007).

Where, as here, a trial court has made special findings pursuant to a party's request under Indiana Trial Rule 52(A), the reviewing court may affirm the judgment on any legal theory supported by the findings. See Mitchell v. Mitchell, 695 N.E.2d 920, 923 (Ind. 1998). Before affirming on a legal theory supported by the findings but not espoused by the trial court, the reviewing court should be confident that its affirmance is consistent with all of the trial court's findings of fact and inferences drawn from the findings. Id.

We also observe that our supreme court has expressed a “ ‘preference for granting latitude and deference to our trial judges in family law matters.’ ” Garnet E.S. v. Wess A. J. (In re J.J.), 911 N.E.2d 725, 728 (Ind. Ct. App. 2009) (citing In re Marriage of Richardson, 622 N.E.2d 178, 178 (Ind. 1993)). The rationale for this deference is that appellate courts “ ‘are in a poor position to look at a cold transcript of the record, and conclude that the trial judge . . . did not properly understand the significance of the evidence, or that he should have found its preponderance or the inferences therefrom to be different from what he did.’ ” Id. (citing Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002)) (citation omitted). Therefore, “ ‘[o]n 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.’ ” Kirk, 770 N.E.2d at 307 (quoting Brickley v. Brickley, 247 Ind. 201, 210 N.E.2d 850, 852 (1965)).

Issue One: Relocation

Mother contends that the trial court erred when it denied her request to relocate with the children to Stockton, New York. Under the relocation statutes enacted in 2006, a relocating parent must file a notice with the clerk of the court having jurisdiction over custody or parenting time and send a copy of the notice to the nonrelocating individual. Ind. Code § 31-17-2.2-1(a). “There are two ways to object to a proposed relocation under the relocation chapter: a motion to modify a custody order, [Ind. Code Section] 31-17-2.2-1(b), and a motion to prevent relocation of the child[, Indiana Code Section 31-17-2.2-5-(a)].” Baxendale v. Raich, 878 N.E.2d 1252, 1256 n.5 (Ind. 2008). “On the request of either party, the court shall hold a full evidentiary hearing to grant or deny a relocation

motion under [Indiana Code Section 31-17-2.2-5(a), objecting to a proposed relocation].” Ind. Code § 31-17-2.2-5(c).

Where a custodial parent has given notice of her intent to relocate, that parent has the “burden of proof that the proposed relocation is made in good faith and for a legitimate reason.” Ind. Code § 31-17-2.2-5(c). “If the relocating individual meets the burden of proof under [Indiana Code Section 31-17-2.2-5(c)], the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child.” Ind. Code § 31-17-2.2-5(d). Under either a motion to prevent relocation or a motion to modify custody, if the relocation is made in good faith, “both analyses ultimately turn on the ‘best interests of the child.’ ” Baxendale, 878 N.E.2d at 1256 n.5.

Mother first contends that the trial court “relied upon the incorrect legal standard when it concluded that Mother’s proposed relocation was not made in good faith and for a legitimate purpose.” Appellant’s Brief at 16. But Mother does not explain what other standard she believes the trial court should have used. And, in any event, she asks this court to “remand to the trial court for it to enter a finding that Mother’s proposed relocation is made in good faith and for a legitimate purpose.” Appellant’s Brief 16. Mother’s contention is without merit because Section 31-17-2.2-5(c) clearly establishes that she must show that her request to relocate is made in good faith and for a legitimate reason. The trial court applied the correct legal standard when it considered whether she had met that burden of proof.

Good Faith and Legitimate Reason

Mother next challenges the trial court's findings in support of its conclusion that she did not meet her burden of showing that her request to relocate with the children was made in good faith and for a legitimate reason. On this point, the trial court found and concluded, in relevant part, as follows:

3. The evidence of the trial presented [sic] proved [Mother] has been unemployed since the date of dissolution and up until her filing of [the] Petition to Relocate to Western New York to work in a company where her [m]other is the Vice-President and that [Mother] never obtained employment and is living on the current child support that [Father] pays. [Mother] seeks to move to Stockton, New York, and claims to have been accepted at Jamestown [Community College] to study nursing. She has testified that she is eligible for a Pell Grant and Obama Grant and can receive nursing school free books and tuition in the fall. [Mother] claims she will work for \$12 per hour on a part-time basis in Stockton, New York.
4. Stockton, New York, is an approximately 8[-]hour drive from Plainfield, Indiana.
5. Both [Mother] and [Father] came to Indiana from the New York area.
6. [Mother] and [Father] have lived in the Plainfield area since 2003. Their children attend schools [in] Plainfield and church at St. Thomas Moore.
7. [Father] has [overnight] parenting time approximately 110 days per year and [] total parenting time of 200 time[s] per year.
8. [Mother] has a boyfriend in Findley, Ohio.
9. It goes without saying that any attempt to move is a matter that directly affects parenting time.
10. The evidence at trial proved that her proposal to move is not in good faith or for [a] legitimate purpose because she desires to move near her family to do some [sic] education.

Appellant's App. at 7-8.

We first consider paragraph 3 of the Order, which is the most relevant finding on the issue of Mother's asserted good faith and legitimate reason. In that paragraph, the trial court found that Mother has been unemployed since the date of dissolution and is "living on the current child support order that [Father] pays." Appellant's App. at 7. Mother does not challenge that finding. That paragraph also provides that Mother "seeks to move to Stockton, New York, and claims to have been accepted at Jamestown [Community College] to study nursing" and that Mother "claims she will work for \$12 per hour on a part-time basis in Stockton, New York." Id. at 7-8 (emphases added). Mother challenges the implication that she has not been accepted into a school and that she does not have a job offer in New York.

Under a literal reading of the trial court's statements regarding Mother's "claims," the trial court merely restated Mother's testimony. This court has discussed the effect of such purported findings:

Findings of fact are a mechanism by which a trial court completes its function of weighing the evidence and judging witnesses' credibility. Therefore, "the trier of fact must adopt the testimony of the witness before the 'finding' may be considered a finding of fact." When a trial court enters purported findings that merely restate testimony, this court will not "cloak the trial court recitations in the garb of true factual determinations and specific findings as to those facts." Instead, we treat these purported findings as surplusage.

Garriott v. Peters, 878 N.E.2d 431, 438 (Ind. Ct. App. 2007) (citations omitted). Here, because the purported finding merely restated Mother's testimony about the reasons behind her desire to relocate to New York. In other words, those parts of paragraph 3 are recitations and not findings and, as such, are surplusage. See id.

The trial court was entitled to disbelieve Mother. The trial court's use of the word "claims" suggests that the trial court did not, in fact, believe her. To the extent paragraph 3 was intended to show that the trial court did not believe Mother's reasons for relocating, again, the finding is insufficient because it is not in proper form. As discussed above, it merely recites Mother's testimony and does not clearly indicate whether the trial court gave her credence. We cannot consider paragraph 3 as a finding.

Considering the remainder of the trial court's findings, Mother does not challenge the findings in paragraphs 4 through 10. But those paragraphs do not address the reasons Mother gave for wanting to relocate to New York. As a result, we are left with no findings on Mother's reasons for relocating.

Mother and Father are originally from New York. Both have extended family there, and Mother's family lives in the immediate area where she wishes to relocate. Mother has applied for jobs with more than twenty local employers, without success. However, she has been offered a part-time, \$12-per-hour job in a drug and alcohol testing facility where her mother is vice president. Further, Mother has been accepted at Jamestown Community College, which offers in relevant part a "Science Pre-Nursing program." Exhibit Book at 18 (Exhibit 7). Mother testified that she wished to relocate in order to accept the position at the drug and alcohol testing facility and to attend nursing school. The evidence shows that Mother satisfied her burden of proof that the proposed relocation was made in good faith and for a legitimate reason. But our inquiry does not end there.

Best Interests of the Children

Mother also argues that the trial court clearly erred when it concluded that the proposed relocation is not in the best interests of the children. In particular, Mother argues, again, that the trial court applied an incorrect legal standard. But, again, Mother has not supported that argument with cogent reasoning. Thus, the argument is waived. See App. R. 46(A)(8)(a). Mother further contends that, when determining the best interests of the children, the trial court did not consider all of the required statutory factors and that its findings on this issue are clearly erroneous. We consider each issue in turn.

Indiana Code Section 31-17-2.2-1 governs when a nonrelocating parent objects to a proposed relocation. And Section 31-17-2.2-5(b) governs when the nonrelocating parent files a motion to modify custody in response to a notice of intent to relocate. Here, Father filed both an objection to relocation and a motion to modify custody, but the trial court ruled only on the relocation issue. Still, as our supreme court said in Baxendale, under either a motion to prevent relocation or a motion to modify custody, if the relocation is made in good faith, “both analyses ultimately turn on the ‘best interests of the child.’ ” 878 N.E.2d at 1256 n.5. Although Section 31-17-2.2-1(b) on its face applies to a motion to modify custody, an issue not decided here, the factors listed in that subsection are relevant to determining the best interests of the children. Thus, we consider the factors listed in Section 31-17-2.2-1(b) when reviewing Mother’s contentions regarding the best interests of the children.

Following the filing of notice of intent to relocate, the trial court shall take into account the following in determining whether to modify a custody or visitation order:

- (1) The distance involved in the proposed change of residence.
- (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation.
- (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation 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.

Ind. Code § 31-17-2.2-1(b). The “other factors” listed in Section 31-17-2.2-1(b)(6) include the factors considered for change of custody under Indiana Code Section 31-17-2-8. See Baxendale, 878 N.E.2d at 1257.

Mother contends that the trial court's decision is clearly erroneous because the court did not consider all of the factors in Section 31-17-2.2-1(b), as evidenced by the fact that the court did not make findings on each of those factors. Mother is mistaken. First, the court must consider each of those statutory factors, but it is not required to make a finding on each factor. Wolljung v. Sidell, 891 N.E.2d 1109, 1113 (Ind. Ct. App. 2008) (relocation statutes do not require findings of fact, but, at a minimum, there must be

evidence in the record on each of the factors listed in Indiana Code Section 31-17-2.2-1(b)). Second, as explained below, there is evidence in the record on each of the factors. We proceed to consider the evidence on each factor and Mother's challenge to certain findings in turn.

Under Indiana Code Section 31-17-2.2-1(b)(1), the trial court was required to consider the distance of the proposed relocation. The evidence shows that Mother wishes to relocate to Stockton, New York, which is an eight-hour drive from Plainfield, Indiana. Mother concedes that the trial court considered this factor, and she does not challenge the trial court's finding on this point.

The next factor is the hardship and expense for Father to exercise parenting time following the proposed relocation. See Ind. Code § 31-17-2.2-1(b)(2). Father testified that mileage, meals, lodging, childcare, and the expense of purchasing additional vacation time from his employer in order to be able to exercise visitation according to the schedule Mother proposed would cost him between \$22,000 and \$31,000 annually. Thus, there is evidence of the hardship and expense Father would incur in exercising parenting time following the proposed relocation.

Mother challenges Father's estimate of the costs for him to exercise parenting time according to the proposed post-relocation visitation. Specifically, Mother claims that Father has plenty of places to stay without cost in New York, such as staying with his family, with her family, or in her future home. She also argues that he does not need to eat meals out. Although she does not address Father's testimony that he would need to

purchase additional vacation time from his employer, she argues that the court should consider only the fuel costs Father would incur in exercising visitation.

Mother asks that we reweigh the evidence in her favor, which we will not do. The trial court had before it evidence that Father would sustain a drastic increase in costs in order to follow the parenting time schedule Mother proposed. Such evidence is not contrary to other findings by the trial court and, along with other factors, supports the trial court's ultimate determination that relocation was not in the best interests of the children. See id.

There is also evidence on the feasibility of preserving a relationship between Father and the children. See Ind. Code § 31-17-2.2-1(b)(3). Father testified that his extensive involvement with the children, currently 200 days per year, would not be possible if the children were to relocate eight hours away. We observe that Father has not exercised casual or minimum visitation. Rather, he is thoroughly invested in exercising his parenting time, well in excess of the Guidelines. He attends his daughters' cheer practice, which occurs two to three times per week, and has attended nearly all of their cheerleading competitions, ninety percent of them on the weekends, even if the practices or competitions do not fall during his scheduled parenting time. Father has also attended "every practice and game" when two of his daughters played soccer, and he coached his son's soccer team. Additionally, the children attend church with Father when he has weekend visitation. And Father dutifully kept a journal of his parenting

time, as required by the trial court.² The evidence shows that Father is integrally involved with his children beyond the time allotted to him under the parenting time schedule.

The trial court found in relevant part that “[i]t goes without saying that [Mother’s] proposal to move is a matter that directly affects parenting time.” Appellant’s App. at 8. Mother does not challenge that finding, but she takes issue with the finding that her relocation with the children would result in “a complete alienation from their father[.]” Id. The evidence shows that Mother proposed a new parenting time schedule in which Father was to have the children for spring break; the holiday weekends for Martin Luther King, Jr., President’s Day, Memorial Day, Father’s Day, and Labor Day; six weeks in the summer; fall break; the “Thanksgiving Holiday,” Exhibit Book at 20 (Exhibit 8 at 1); one-half of Christmas break; and “[a]ny time Father is in New York visiting his family,” with certain exceptions, id. In addition, there is no evidence to show that Father would be prohibited from contacting the children by phone or other electronic means. As such, the evidence does not support the trial court’s finding that the children’s relocation “would be a complete alienation from [F]ather[.]” Appellant’s App. at 8. That finding in paragraph 11 of the Order is clearly erroneous.

Next, under Section 31-17-2.2-1(b)(4), we consider whether there is an established pattern of conduct by Mother, including actions by Mother either to promote or thwart Father’s contact with the children. As Mother points out, there is no evidence of an established pattern of conduct by Mother to thwart Father’s contact with the children. To the contrary, the evidence shows that the parties have worked well in co-parenting the

² As discussed below, we do not believe Mother’s failure to keep a similar journal, as ordered by the trial court, should have much if any bearing on whether to permit her relocation with the children, nor is it jurisdictional to maintain a journal prior to requesting court intervention.

children, with the result that Father sees the children in excess of the schedule set out in the parties' Agreement. That evidence supports the trial court's finding on the parenting time Father exercises and that "any attempt [by Mother] to move is a matter that directly affects parenting time." Appellant's App. at 8.

Regarding the reasons for and objections to the proposed relocation, as discussed above, there is no question that Mother presented evidence on her stated reasons for wishing to relocate to New York. See Ind. Code § 31-17-2.2-1(b)(5). And Father testified regarding his objections to relocation. Specifically, he said that the children have lived in Plainfield since 2003, have many friends there, are involved in cheer and soccer activities, and attend church in Plainfield on the weekends Father has visitation. Father also testified that the schools in the district where Mother proposes to move are not highly rated;³ that the extracurricular activities there are more limited than in Plainfield; that the Stockton, New York, area is economically depressed, which lowers the tax base and in turn limits recreational activities; and that Stockton is further than Plainfield from major metropolitan areas where certain recreational activities not available near Stockton might be found. Father testified further that his current parenting time schedule, seeing the children two hundred days per year with one hundred ten scheduled days, could not continue following relocation. As a result, while not a "complete alienation," his close relationship with the children would undoubtedly change.

³ Father testified that he had researched the school districts on greatschools.org, an organization funded by the Bill and Melinda Gates Foundation.

There is evidence in the record on both Mother's reasons for relocating and Father's objections to relocation. Again, to the extent the trial court found that Mother's proposed relocation with the children was not made in good faith and for a legitimate reason, we conclude that the trial court erred. However, Father testified that the children's relocation to New York would remove them from their long-time home and schools, their friends, their regular extracurricular activities, and frequent time with Father. The trial court made no finding on this factor inconsistent with a determination that relocation was not in the children's best interests.

We also consider evidence on additional factors under Section 31-17-2.2-1(b)(6). Specifically, Mother argues that the trial court did not consider the testimony of the parties' oldest child, K.C.1, who testified that she wished to move to New York with Mother, and that the trial court erroneously considered Mother's failure to maintain and exchange a record of parental visitation as required in the Decree. Regarding the child's wishes, K.C.1 testified in open court that she would like to move to New York with Mother. In light of this evidence in the record, and the lack of any contrary finding, Mother has not shown that the trial court did not consider the child's wishes.

As to the weight of K.C.1's wishes, "it is 'our longstanding rule that a change in the child's wishes, standing alone, cannot support a change in custody.'" Parks v. Grube, 934 N.E.2d 111, 117 (Ind. Ct. App. 2010) (quoting Williamson v. Williamson, 825 N.E.2d 33, 40 (Ind. Ct. App. 2005)). Similarly, the wishes of the child are not dispositive in relocation cases. Instead, the child's wishes may be considered as one of

the factors in determining whether to grant a party's request to relocate with that child. See id. Such was the case here.

Finally, Mother contends that the trial court erred when it based its Order in any part on her failure to comply with the requirement in the Decree that she maintain parenting time records. We must agree. Mother does not challenge the accuracy of Father's parenting time records, and she only requests a change in parenting time to accommodate her request to relocate with the children. Still, the trial court based the Order at least in part on Mother's failure to maintain and exchange such records. The trial court may have considered Mother's failure to keep the records ordered to be a deliberate violation of the Decree. But the court made no findings to show how Mother's failure to keep records was relevant to her good faith and legitimate reason for wishing to move or to the best interests of the children. Such records are indeed helpful evidentiary material in cases involving requests to modify custody or parenting time. But the trial court did not rule on custody, and it gave no reason for denying the request to relocate, which would have involved a change in parenting time, based on Mother's failure to keep a parenting time journal. Thus, to the extent the trial court based its denial of Mother's request to relocate on her failure to maintain and exchange parenting time records, the trial court erred.

In sum, Mother has not shown that the trial court failed to consider any of the factors under Indiana Code Section 31-17-2.2-1(b) in determining the best interests of the children. Although the trial court erred in finding that Mother's relocation with the children to New York would be a complete alienation from their Father and in relying on

Mother's failure to keep parenting time records, there is sufficient other evidence in the record to support the trial court's conclusion that relocation is not in the best interests of the children. To the extent Mother points to evidence to show that relocation was in the best interests of the children, Mother's argument amounts to a request that we reweigh the conflicting evidence. This we cannot do. Thus, we cannot say that the trial court erred in reaching the conclusion that Mother's proposed relocation was not in the children's best interests.

Issue Two: Modification of Child Support

Mother next contends that the trial court erred when it failed to modify child support. However, Mother and Father concede that the trial court did not rule on Mother's motion to modify support. Mother interprets the trial court's failure to enter an order as an implicit denial. But Mother does not point to any rule or statute in support of the premise that a trial court's failure to rule on a motion to modify support is deemed a denial of that motion, nor have we found any such rule of law.

Mother filed her motion to modify support on July 6, 2010.⁴ On July 20, the parties appeared in person and by counsel for a hearing. When the hearing began, Father's counsel confirmed the purpose of the hearing:

[Father's counsel]: Your Honor, we're here, [sic] Mother filed her petition to relocate. Father filed his objection. Mother then filed a motion to modify, uh, child support. So we're here on.

Court: Petition to relocate and petition on child support?

[Father's counsel]: Yes, Your Honor.

⁴ The filing of Mother's motion to modify support is recorded on the Chronological Case Summary, but she has not included a copy of that motion in her appendix.

Transcript at 4. At the hearing the parties presented testimony and evidence on the issue of child support. But the trial court did not rule on Mother's motion.

According to Indiana Appellate Rule 5, this court has jurisdiction "in all appeals from Final Judgments of Circuit, Superior, Probate, and County Courts," as well as "over appeals of interlocutory orders under Rule 14." Indiana Appellate Rule 2(H) describes a "final judgment" in this context as including the following:

- (1) it disposes of all claims as to all parties;
- (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
- (3) it is deemed final under Trial Rule 60(C);
- (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
- (5) it is otherwise deemed final by law.

The trial court did not make any ruling on Mother's motion to modify child support. Because there is no final judgment regarding Mother's motion to modify child support, we lack jurisdiction to consider her appeal on the issue of child support and must dismiss her appeal on this issue.⁵

⁵ The trial court held a single hearing on both the notice of intent to relocate and the motion to modify child support, but there is no indication that the parties moved to consolidate the issues or that the trial court did so sua sponte. Because the trial court issued an order on Mother's notice of intent to relocate, we have jurisdiction to consider Mother's appeal from that order. But due to the lack of an order on the motion to modify child support, we lack jurisdiction to consider Mother's appeal on that issue.

Conclusion

The trial court erred when it found that Mother had not met her burden of showing that her request to relocate was made in good faith and for a legitimate purpose. However, the trial court did not err when it found that Father had met his burden to show that relocation was not in the children's best interests. While the evidence might also support some other conclusion, it does not positively require the conclusion contended for by Mother. See Kirk, 770 N.E.2d at 307. Thus, we affirm the trial court's Order denying her request to relocate with the parties' children to New York.

We also conclude that we are without jurisdiction to entertain Mother's appeal regarding her motion to modify child support. The trial court did not rule on Mother's motion, and the failure to rule is not to be deemed an implicit denial. Thus, the modification of child support remains in the trial court, and we dismiss Mother's appeal on this issue.

Affirmed in part and dismissed in part.

DARDEN, J., and BAILEY, J., concur.