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IN THE
COURT OF APPEALS OF INDIANA

KYLE SHEETS,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 48A02-1004-DR-419
	)	
KANDIE SHEETS,	)	
	)	
Appellee.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0909-DR-1099

November 23, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Following the divorce of Kyle Sheets ("Father") and Kandie Sheets ("Mother"), Mother petitioned the trial court for permission to move with the parties' children to Oklahoma. The trial court held a hearing and granted her request. Father contends on appeal that the trial court erred in finding that Mother established that the relocation was made in good faith and for a legitimate purpose and that Father failed to establish that the relocation was not in the children's best interests. Finding no error, we affirm.

Facts and Procedural History

Mother and Father had two children during their marriage: K.P.S., born June 24, 2007, and K.L.S., born October 21, 2005. On September 21, 2009, Father filed a petition for marriage dissolution. The parties waived final hearing, and on January 12, 2010, they were divorced pursuant to a Settlement Agreement, in which they agreed to share joint legal custody of their minor children, with Mother having physical custody. Appellant's App. at 18-23. The Settlement Agreement also provided, "Neither party shall move the children out of the State of Indiana without the written consent of the other parent." *Id*. at 20.

On February 16, 2010, Mother filed a request to relocate with the parties' minor children to Oklahoma. She indicated that she could not afford to live by herself in Indiana and that she had a new job in Oklahoma and would live with a family with whom she had a firm relationship. On February 19, 2010, Father filed an objection to Mother's request to relocate, stating, inter alia, that (1) the Settlement Agreement required written consent from the nonrelocating parent to move the children out of Indiana; (2) Mother was going to live

with a man who has a criminal history and an active warrant for failure to pay child support; and (3) the children have a stable and loving home in Indiana with Father.

On March 25, 2010, the trial court held a hearing on Mother's request to relocate. Father was represented by counsel, and Mother appeared pro se. Following the hearing, the trial court issued a ruling, which stated in pertinent part:

> After the hearing in this matter, the Court listened to the hearing recording and determined that it had not admonished the potential witnesses not to talk about the case before and after testifying. Initially Father's attorney had announced she intended to only call one witness. The Court did not see a need to admonish that one witness. But, after the proceeding started, Father's attorney noticed that she would possibly call other witnesses and she excused them from the courtroom. As they were leaving, during the proceedings, the Court did not admonish them. The Court had conducted an earlier hearing this date and in fact did admonish separated witnesses at that hearing.
>
> Mother has established that her proposed relocation is made in good faith and for a legitimate purpose.
>
> Father has failed to show that the proposed move is not in the children's best interests.
>
> The Mother's request to relocate with the parties' children is granted.

Id. at 5. Father appeals.

Discussion and Decision

Father challenges the trial court's grant of Mother's request to relocate. Our supreme court has expressed a "preference for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993). Such deference is based on the rationale 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." *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (citation omitted).

Trial Rule 52 provides, "On appeal of claims tried by the court without a jury or with an advisory jury, at law or in equity, the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Thus, in reviewing Father's appeal,

> [w]e do not weigh the evidence nor judge the credibility of witnesses, but rather consider only that evidence most favorable to the judgment, together with reasonable inferences which can be drawn therefrom. If, from that viewpoint, there is substantial evidence to support the finding of the trial court, it will not be disturbed, even though we might have reached a different conclusion if we had been the triers of fact. If there is any evidence or legitimate inferences to support the finding and judgment of the trial court, this Court will not intercede and use its judgment as a substitute for that of the trial court.

Richardson, 622 N.E.2d at 179 (citation omitted).

In addition, we observe that Mother has not filed an appellee's brief.

> When an appellee fails to submit a brief, we will not undertake the burden of developing arguments for the appellee. In these situations, we apply a less stringent standard of review with respect to showings of reversible error, and we may reverse the trial court's decision if the appellant can establish prima facie error. In this context, prima facie error is defined as at first sight, on first appearance, or on the face of it.

Ramsey v. Ramsey, 863 N.E.2d 1232, 1237 (Ind. Ct. App. 2007) (citations, quotation marks, and brackets omitted).

Father argues that Mother failed to carry her burden to show that the relocation is made in good faith and for a legitimate reason.[1] *See* Ind. Code § 31-17-2.2-5(c) ("The relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason."). We disagree. Mother testified that she would have a job as a hair stylist with Headquarters, a beauty salon, once she passed the Oklahoma licensing test. She also testified that she knew people in Oklahoma and had a place to live with a family she had known for twenty-five years. Father attempts to compare the profitability of her new job with her old job, but this is merely an invitation to reweigh the evidence, which we must decline. We conclude that the trial court did not err in finding that Mother established that the relocation is made in good faith and for a legitimate reason.

Father also argues that the trial court erred in finding that he did not carry his burden to show that the move to Oklahoma is not in the children's best interest. *See* Ind. Code § 31-17-2.2-5(d) ("If the relocating individual meets the burden of proof under subsection (c), the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child."). Father contends that he established that (1) Mother's boyfriend has a criminal record; (2) the children have no family in Oklahoma, (3) the children have a

[1] Father also argues that the trial court erred in granting Mother's request to relocate because he did not provide his written consent as required by the Settlement Agreement. Although Father noted this provision in his objection to Mother's petition to relocate and questioned Mother regarding it at the hearing on Mother's petition, he made no argument to the trial court that the Settlement Agreement was an enforceable, binding contract that controlled the terms and conditions upon which either could relocate out of state with the children. As such, he has waived this argument for our review. *See Smith v. King*, 902 N.E.2d 878, 883 (Ind. Ct. App. 2009) ("A party generally waives appellate review of an issue or argument unless that party presented that issue or argument before the trial court.") (citation omitted).

Likewise, having failed to present it at trial, Father waived his argument that the trial court erred in granting Mother's request to relocate because she did not satisfy the requirements of Indiana Code Section 31-17-2.2-3. *See Smith*, 902 N.E.2d at 883.

large family support system in Indiana; (4) he is actively engaged with the children; and (5) Mother's new address is 650 miles away, and the distance would interfere with the children's relationships with him and their extended family.

We observe that when Mother cross-examined Father at the hearing, he admitted that he screamed at her in the presence of the children and said that he wanted to blow his brains out. Tr. at 19. In addition, there is evidence from which the trial court could have reasonably concluded that the children would be loved, well cared for, and provided with a solid support system in Oklahoma. Mother testified that she had known the family with which she and the children would live for twenty-five years, that her family was very good friends with that family, and that she spent holidays with them when she was younger. She also informed the trial court that even though the children had not been to Oklahoma, the family they would live with had traveled to Indiana and had met the children on several occasions. In addition, she stated that she had researched schools and physicians for the children. Mother acknowledged that Father was current in his child support payments, but testified that he had not been a significant part of the children's lives, other than financially. *Id*. at 10. Mother stated that she wanted Father to be involved with the children. *Id*. at 46-47, 52. To that end, she had proposed a visitation schedule. *Id*. at 52.

As to Mother's boyfriend's criminal history, he failed to make child support payments in 2005, and he was charged with perjury at the hearing thereon. *Id*. at 6; Appellant's App. at 74-75. Specifically, he testified that he had made payments of $120, whereas the payment ledger showed that he had made payments of $100, $40, and $42. Appellant's App. at 75.

Also, he had been arrested ten years prior to the relocation hearing for an alcohol-related offense. Tr. at 7. Mother, however, testified that her boyfriend had a "very stable job" and was "a responsible person." *Id*. at 51. Father's argument would have us reweigh the evidence, which we may not do. The evidence and the legitimate inferences arising therefrom support the trial court's finding that Father failed to show that the move to Oklahoma was not in the children's best interest. Therefore, we conclude that the trial court did not err in granting Mother's petition to relocate.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.