MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

In Re the Paternity of B.Y.,

Andrea Yanes-Mirabal,

Appellant-Respondent,

v.

Pardeep Badasay,

Appellee-Petitioner.

October 19, 2022

Court of Appeals Case No. 22A-JP-916

Appeal from the Hamilton Superior Court

The Honorable William J. Hughes, Special Judge
The Honorable Andrew R. Bloch, Magistrate

Trial Court Cause No. 29D03-1812-JP-1852

Weissmann, Judge.

[1] Andrea Yanes-Mirabal (Mother) and Pardeep Badasay (Father) have battled over custody of their four-year-old son, B.Y. (Child), since shortly after his birth. After an initial custody determination in Father's favor, Mother appealed, and the Indiana Supreme Court ultimately reversed, finding the trial court conflated Mother's contempt of court with best interests of the child. It sent the case back to the trial court with instructions to reconsider the custody determination. After further proceedings, the court again ruled that Father should have primary physical custody and the parents should share legal custody of their son. Mother appeals, contending the trial court again got it wrong by failing to follow the Supreme Court's instructions. We disagree and affirm.

Facts

[2] Shortly after Child's birth in 2018, Father filed a petition to establish paternity and custody in Marion County. Based on initial findings of the court and because the child was born out of wedlock, Mother became the sole legal custodian, pending a hearing. *See* Ind. Code § 31-14-13-1. Mother, a flight attendant based in Florida but living in Indiana at the time, was required by her employer to return to Florida or risk losing her job. The trial court allowed Mother to take Child to Florida conditioned on her return to Indiana with Child for a November hearing.

[3] The court also prohibited Mother from relocating the Child to Florida until a hearing could be held. Mother disobeyed the court and Father petitioned to find

Mother in contempt. The court first granted Father full relief, including directing Mother to return Child to Indiana. But the court later issued a clarifying order stating it intended only to set a hearing and did not intend to provide any other immediate relief. *See* Appellant's App. Vol. II, pp. 42-43; *see also Matter of Paternity of B.Y.*, 159 N.E.3d 575, 577 (Ind. 2020), *reh'g denied* ("*Paternity of B.Y. II*").

[4] About four months later, in April 2019, the trial court held a hearing on the numerous pending motions and petitions Parents had filed. The court held Mother in contempt of court for relocating Child out of Indiana and denying Father parenting time. The court also found that Mother was living in Indiana before she chose to relocate to Florida and that she took up residence in Florida to prevent Father from being able to parent Child. The court awarded Father sole legal and physical custody of Child, and Mother appealed.

[5] A panel of this Court found the trial court did not err in finding Mother in contempt of court and awarding Father primary physical custody of Child. *Matter of B.Y.*, No. 19A-JP-1645, 2020 WL 1501770, at *7, 8 (Ind. Ct. App. Mar. 30, 2020) ("*Paternity of B.Y. I*"), *vacated sub nom*. Our Supreme Court granted Mother's petition to transfer and reversed the trial court's custody ruling finding the court improperly focused on Mother's contempt rather than the Child's best interest. The court returned the parties to their prior positions, meaning it awarded Parents joint physical custody and Mother sole legal custody of Child pending a hearing. The Court remanded and "urge[d] the trial court to decouple its finding of contempt from the best interests of the child and

determine whether a modification of custody [was] warranted[.]" *Paternity of B.Y. II*, 159 N.E.3d at 579.

[6] On remand, the trial court again awarded Father primary physical custody and granted Parents joint legal custody of Child. The court ruled that Child could not be relocated to Florida.[1] Mother appeals.

Discussion and Decision

[7] Mother contends the trial court violated the Supreme Court's instructions by ordering the parents to share legal custody and by granting primary physical custody of Child to Father. According to Mother, the trial court, contrary to the Supreme Court's directive, once again based its custody determinations on its finding that Mother was in contempt of court for relocating Child to Florida. She also argues that the trial court ignored undisputed evidence and applied a double standard in comparing Mother's and Father's conduct regarding custody and relocation of Child. We find no error in the trial court's custody ruling.

I. Standard of Review

[8] A trial court has discretion in initial custody determinations, and the decision

[1] Mother filed a Motion to Correct Error on January 26, 2022. The trial court heard argument, and, on March 24, issued an order granting in part Mother's motion. While the court did modify its December 27, 2021 Order on Remand, the modification does not affect this appeal.

will be revised only for an abuse of that discretion.[2] *Purnell v. Purnell*, 131 N.E.3d 622, 626-27 (Ind. Ct. App. 2019), *trans. denied*. No abuse of discretion occurs if there is a rational basis for the trial court's determination. *Gomez v. Gomez*, 887 N.E.2d 977, 983 (Ind. Ct. App. 2008).

[9] We give substantial deference to trial courts in family law matters. *Paternity of B.Y. II*, 159 N.E.3d 575, 578 (Ind. 2020), *reh'g denied*. "Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment." *Id.* (quoting *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011)). "In conjunction with the [Indiana] Trial Rule 52 standard, there is a longstanding policy that appellate courts should defer to the determination of trial courts in family law matters." *D.G. v. S.G.*, 82 N.E.3d 342, 348 (Ind. Ct. App. 2017) (citation omitted). Our supreme court has stated:

> 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,

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[2] This case arose as a paternity action, but since its filing, numerous temporary orders concerning custody, support, and parenting time have been entered. In *Paternity of B.Y. II*, our Supreme Court found the trial court's April 2019 final custody order to be in error, reset custody of Child to the status existing before the trial court issued the order, and remanded the case for further proceedings. In light of our Supreme Court's decision, in this appeal we apply the standard of review for an initial custody decision, rather than for custody modifications, following the determination of paternity. *See Hughes v. Rogusta*, 830 N.E.2d 898, 901-02 (Ind. Ct. App. 2005).

> particularly in the determination of the best interests of the involved children.

Best, 941 N.E.2d at 502.

[10] Where, as here, a trial court enters findings of fact and conclusions of law, we determine whether the evidence supports the findings and then whether the findings support the judgment. *Lechien v. Wren*, 950 N.E.2d 838, 841 (Ind. Ct. App. 2011). A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. *Id.*

[11] Because Father did not file a brief in this appeal, we will reverse if Mother's brief presents a case of prima facie error, meaning error at first sight, on first appearance, or on the face of it. *In re Adoption of E.B.*, 163 N.E.3d 931, 935 (Ind. Ct. App. 2021). We will not develop legal arguments on Father's behalf. *See Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006).

II. Legal Custody

[12] First, Mother argues the trial court abused its discretion when it determined that Parents should share legal custody of Child. Mother believes the Supreme Court's decision to return custody to the status quo meant she had been awarded sole legal custody of Child and the trial court had to follow suit *unless* the trial court found a change in Parents' circumstances. *See Paternity of B.Y. II*, 159 N.E.3d 575, 579 (Ind. 2020), *reh'g denied*; Appellant's Br. p. 15. According to Mother, because the Supreme Court "was well aware [that she was living in Florida] when it gave her sole legal custody[,]" the trial court was no longer

"writing on a blank slate" and, therefore, could not change legal custody from Mother to Parents jointly on the "sole basis" of Mother's state of residence. Appellant's Br. p. 15. Mother, however, misinterprets our Supreme Court's decision.

[13] In *Paternity of B.Y. II*, our Supreme Court stated:

> While we do think Mother was punished here by losing legal and physical custody of her dependent infant, it is more concerning that her alleged contempt appeared to be the catalyst for the trial court's order granting Father sole legal and physical custody. When it comes to the best interest of the child, we cannot accept this result. Not only was Mother causing no harm to B.Y., she was also breastfeeding the child. Her act of returning to Florida with B.Y. was born out of the reality that she would lose her job as a flight attendant—her means of supporting the child—if she did not do so. Additionally, the court-appointed guardian ad litem in this case had no opportunity for involvement before the court entered its findings. In sum, Mother's alleged contempt of the Marion County court's order was not so severe as to remove B.Y. from her care.
>
> To be sure, no party in this case is without fault. But when it comes to the most important aspect of these proceedings—the wellbeing and best interests of B.Y.—no party would have been harmed by more deliberate proceedings and additional factfinding.
>
> We reverse the trial court's determination that Father is entitled to sole legal and physical custody of B.Y. We award sole legal custody to Mother and joint physical custody to Mother and Father consistent with the status quo prior to the Hamilton County trial court's April 20, 2019 order. This award is based on the initial findings of both the Marion and Hamilton county courts and the establishment of sole legal custody with the

> biological mother of a child born out of wedlock. *See* Ind. Code § 31-14-13-1. On remand, we urge the trial court to decouple its finding of contempt from the best interests of the child and determine whether a modification of custody is warranted with these principles in mind.

159 N.E.3d at 579.

[14] We do not interpret our Supreme Court's decision as preventing the trial court from making its own initial custody determination on remand. To the contrary, the Court awarded sole legal custody to Mother and joint physical custody to Mother and Father "consistent with the status quo" that existed before the trial court awarded legal and physical custody to Father. Because Child was born out of wedlock, Mother became his sole legal custodian by operation of law. *See* Ind. Code § 31-14-13-1. The Supreme Court was not making an initial custody determination, but rather returning the parties to the status demanded by law which had existed prior to the hearing on custody. The Court also specifically urged the trial court to decide whether custody should be changed after "more deliberate proceedings and additional factfinding" and while "decoupl[ing] its finding of contempt from the best interests of the child."

[15] Neither do we find that the trial court ignored our Supreme Court's decision or based its custody determination on the sole basis of Mother's state of residence. In its post-remand preliminary order granting Father primary physical custody and Parents joint legal custody, the court stated that it had considered our Supreme Court's decision and was "mindful" that the Court had returned sole

legal custody of Child to Mother and remanded the case with instructions. Appellant's App. Vol. II, p. 38.

[16] In any case, Mother has waived her challenge to the joint custody award by failing to challenge the trial court's finding that Parents "indicated they agree[d]" to joint legal custody of Child. *Id.* at 71. Unchallenged facts stand as proven. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) ("Because [parent] does not challenge the findings of the trial court, they must be accepted as correct."); *see also In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*. Having agreed to joint legal custody, Mother cannot fault the trial court for awarding it.

III. Physical Custody

[17] Mother next argues that the trial court abused its discretion when it awarded Father primary physical custody of Child. She claims the trial court, in violation of the Supreme Court's instructions, "again relie[d]" on Mother's contempt in relocating Child to Florida and restricting Father's access to Child. Appellant's Br. p. 15; Appellant's App. Vol. II, p. 95.

[18] In an initial custody determination, both parents are presumed equally entitled to custody. *Hamilton v. Hamilton*, 103 N.E.3d 690, 694 (Ind. Ct. App. 2018), *trans. denied.* Cases involving initial custody determinations, unlike cases where a party is seeking to modify custody, "bear no presumption for either parent because 'permanence and stability are considered best for the welfare

and happiness of the child.'" *Paternity of B.Y. II*, 159 N.E.3d 575, 578 (Ind. 2020) (quoting *Lamb v. Wenning*, 600 N.E.2d 96, 98 (Ind. 1992)), *reh'g denied*. But the court must consider all relevant factors in deciding the best interests, which specifically includes those identified in Indiana Code § 31-14-13-2. S*ee Baxendale v. Raich*, 878 N.E.2d 1252, 1254 (Ind. 2008). And the court must consider all evidence from the time of the child's birth. *In re Paternity of M.W.*, 949 N.E.2d 839, 843 (Ind. Ct. App. 2011).

[19] Though the trial court did note Mother's attempts to abscond with Child to Florida, the court's detailed findings reveal that this was not the only consideration. The trial court analyzed all seven factors under Indiana Code § 31-14-13-2, finding:

- that both parents wanted primary physical custody but agreed they should share joint legal custody;
- the guardian ad litem (GAL) appointed in the case observed that Child seemed at ease in each parent's home but was perhaps more comfortable in Mother's home;
- Child had a close and beneficial relationship with both parents, their fiancés, and the other children living in each parent's home;
- Child is well-adjusted to the school he attends in Indiana and the Indiana community, but Child has bonded with Mother's parents (who now live in Florida);
- neither parent exhibits physical or mental health issues, but Child has exhibited some "behavioral anomalies" in each parent's home and has experienced stress due to moving from one home to another; and

- the court could not substantiate Mother's reports that she was the victim of Father's domestic violence.

Appellant's App. Vol. II, pp. 92-94.

[20] The trial court also found that although Parents struggled to coparent during Child's medical emergency, their overall ability to communicate effectively with each other had improved, albeit modestly. *Id.* at 75-77. The court also noted Father's reluctant but eventual attention to Child's emotional health needs as well as Father's efforts to facilitate a more productive and cohesive co-parenting relationship between Mother and him. The court also examined each parent's work schedule, income, and travel flexibility; each parent's child-care needs; and the ability of Child's maternal grandparents to provide childcare when Child is with Mother in Florida. *Id.* at 80-82, 84.

[21] Although the trial court found Child had significant ties to Indiana, the court also found both Parents capable of being excellent parents to Child. *Id.* at 83. And the court considered the GAL's report indicating both Parents were "suitable and appropriate care[]givers for [Child]." *Id.* at 78.

[22] When the trial court ultimately decided that Father should have primary physical custody of Child, it did not simply rely on its findings that Mother was in contempt of court but, instead, considered the Indiana Code § 31-14-13-2 factors, other relevant considerations, and the GAL's report. The record supports the court's judgment. And because this matter involves an initial custody determination, the court did not err in considering Mother's efforts to restrict Father's parenting time when it made its decision. The court was

required to consider all the evidence from the time of Child's birth in deciding the custody arrangement that was in Child's best interests. *See Hughes v. Rogusta*, 830 N.E.2d 898, 902 (Ind. Ct. App. 2005). Therefore, the trial court did not abuse its discretion when it gave Father primary physical custody of Child.

IV. Reweighing of Evidence

[23] Mother finally argues that, when deciding whether the move to Florida was in Child's best interests, the trial court "at times ignore[d] uncontroverted evidence" and "weigh[ed] certain factors in a way that [wa]s unduly prejudicial to [her]." Appellant's Br. p. 18. Mother alleges the court held her to a higher standard and was overly critical of her "misunderstandings" of the court's orders and her failure to timely file her notice of intent to relocate to Florida. *Id.* at 19. Mother also contends the court failed to fairly consider the evidence related to Child's adjustment to his home, school, and community, or the "substantial contrary evidence in the record" that contradicted "the notion" that giving Father primary custody provided Child with the most stability. *Id.*

[24] But Mother's arguments are simply an invitation to reweigh the evidence, which we cannot do. *See Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011). The court analyzed the evidence before it, including the evidence Mother believes was not given due consideration. It did not abuse its discretion in ultimately granting Father primary physical custody and Parents joint legal custody of Child.

[25] We affirm the trial court's judgment.

Robb, J., and Pyle, J., concur.