MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Vanessa M. Beatrice,

Appellant,

v.

Andrew J. Grubb,

Appellee.

December 12, 2022

Court of Appeals Case No. 22A-JP-1576

Appeal from the Monroe Circuit Court

The Honorable Stephen R. Galvin, Judge

The Honorable Bret Raper, Commissioner

Trial Court Cause No. 53C07-1210-JP-612

Brown, Judge.

[1] Vanessa M. Beatrice ("Mother") appeals the trial court's order denying her request to relocate with her child. We affirm.

Facts and Procedural History

[2] Mother and Andrew J. Grubb ("Father") are the parents of D.G., who was born in November 2011. On May 14, 2015, the court entered an agreed entry providing Father would have regular parenting time with D.G. every Friday from 3:00 p.m. until Saturday at 5:30 p.m., and every Wednesday from 4:00 p.m. to 7:00 p.m. It also stated Father would have extended parenting time during portions of the summer in 2015.

[3] On September 22, 2021, Mother filed a Verified Notice of Intent to Relocate stating that she intended to move her principal residence to Westmoreland, Tennessee. She asserted that she was seeking to move in with her partner, Kellie Taylor, whom she had known since November 2019, and she would be better able to provide financially for D.G. On September 28, 2021, Father filed an objection to Mother's notice of intent to relocate and a petition to modify custody, parenting time, and child support.

[4] On October 5, 2021, the court appointed Melissa Richardson as a guardian ad litem ("GAL Richardson"). On March 16, 2022, GAL Richardson filed a report which stated in part:

> [D.G.] would prefer not to move. He reports enjoying seeing his father and paternal family weekly. He does not like the drive to and from Tennessee. He also fears missing his adult sister. [D.G.] reports being close to [Mother] and knowing her as his

> primary caregiver. A plan can be created so that Father has equal (if not more) parenting time than he has now and allows Mother to move with [D.G.]. Father objects due to being unable to attend school events and extracurricular activities. He is also concerned with Mother's stability.

Exhibits Volume IV at 30. The report recommended that Mother be allowed to relocate to Tennessee with D.G., stated that "[b]y allowing this move, Mother shall carry the burden of transportation, so the move does not cause a loss of parenting time for Father," and recommended that the matter be "set for review through mediation, or an updated GAL report in June of 2023 to assure [D.G.] is safe and happy with the move to Tennessee." *Id.* at 34.

[5] On May 24, 2022, the court held a hearing at which it heard testimony from Mother, Mother's nineteen-year-old daughter, Leta, GAL Richardson, Father, and D.G.'s paternal grandmother. On June 6, 2022, the court entered an eight-page order denying Mother's request to relocate with the child. The court found in part that Father's home was on property that adjoined the property of D.G.'s paternal grandmother; D.G. enjoyed a close relationship with Father's family members; Father and his family members routinely attended D.G.'s extracurricular events and school programs; Father reported that he did not have reliable transportation; D.G. maintained a particularly close relationship with Mother's daughter, Leta, who lived in Bloomington, Indiana; Taylor's property is approximately 220 miles from Monroe County, Indiana; Mother and Taylor were not married or engaged to be married; D.G. told GAL Richardson that he would prefer to keep things as they were; and Mother

adamantly disagreed with GAL Richardson's suggestion that she carry the burden of transportation. The court also found that: D.G., who does not enjoy the drive, would be required to travel approximately 440 miles every other weekend; there would undoubtedly be instances of adverse weather or dangerous driving conditions; and Taylor had no legal obligation to Mother and D.G. and could legally remove them from his home. The court concluded that Mother had met her burden of proving that her intended relocation was made in good faith and for a legitimate reason but Father had met his burden of demonstrating Mother's proposed relocation did not represent D.G.'s best interest. It also denied Father's petition to modify custody and noted that the petition was premised on Mother's attempt to relocate.

Discussion

[6] Mother argues the trial court's order is clearly erroneous because relocation is in D.G.'s best interest. She contends D.G. was already accustomed to the trip as they had been making the journey regularly for well over two years and the four-hour drives would allow them to have quality conversation while traveling. She argues that, although adverse weather or dangerous driving conditions are a possibility, no evidence was introduced of any specific incident where weather or driving conditions put D.G. at risk or caused Father to miss significant parenting time. Without citation to the record, she asserts that the trial court's focus on her "proposal on transportation/travel for exchanges was insufficient evidence when making a best interest determination in the context of a custodial parent's request to relocate." Appellant's Brief at 23. She contends

that D.G. would spend "more extended time with [Father], albeit less frequent tha[n] existing Orders." *Id.* at 25. She argues that the court's concern that she and Taylor were not legally married was not determinative of D.G.'s best interest because the overwhelming evidence demonstrated that the relationship was secure and long-lasting.

[7] The trial court made specific findings of fact and conclusions of law in its order preventing D.G.'s relocation. "Accordingly, we '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.'" *D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012) (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) (quoting Ind. Trial Rule 52(A)). "'Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.'" *Id.* at 953-954 (quoting *Best*, 941 N.E.2d at 502 (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997))). An appellate court neither reweighs the evidence nor reassesses witness credibility, and it views evidence most favorably to the judgment. *Id.*

[8] The Indiana 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). 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. *Best*, 941 N.E.2d at 502. "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." *Id.* We will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment. *Baxendale v. Raich*, 878 N.E.2d 1252, 1257-1258 (Ind. 2008). Further, "appellate courts 'are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.'" *D.C.*, 977 N.E.2d at 956-957 (quoting *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965))). "[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." *Id.* at 957 (quoting *Kirk*, 770 N.E.2d at 307 (quoting *Brickley*, 247 Ind. at 204, 210 N.E.2d at 852)). "This Court 'will not substitute [its] own judgment if any evidence or legitimate inferences support the trial court's judgment. The concern for finality in custody matters reinforces this doctrine.'" *Id.* (quoting *Baxendale*, 878 N.E.2d at 1257-1258).

[9] The relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason, and if the relocating individual meets the burden of proof, 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. When a relocation is made in good faith, the analysis ultimately turns on the best interests of the child. *Baxendale*, 878 N.E.2d at 1256 n.5.

[10] Ind. Code § 31-17-2.2-1(c) provides:

> Upon motion of a party, the court shall set the matter for a hearing to allow or restrain the relocation of a child and to review and modify, if appropriate, a custody order, parenting time order, grandparent visitation order, or child support order. The court's authority to modify a custody order, parenting time order, grandparent visitation order, or child support order is not affected by the fact that a relocating individual is exempt from the requirement to file a notice of relocation by subsection (b). The court shall take into account the following in determining whether to modify a custody order, parenting time order, grandparent visitation order, or child support 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.

"The 'other factors affecting the best interest of the child' include, by implication, the factors set forth for custody determinations and modifications under Indiana Code section 31-17-2-8."[1] *H.H. v. A.A.*, 3 N.E.3d 30, 34 (Ind. Ct. App. 2014) (citations omitted).

[11] We also note that the Indiana Supreme Court has held:

> [W]here a very young child or baby is involved, a move out of state may have little or no effect on the child. For an older child who has formed friendships, attends school, and participates in activities or sports, is involved in church, or enjoys the security of supportive relationships with nearby relatives or others in his community, a move out of state may have a much more significant effect. *Baxendale*, 878 N.E.2d at 1257 (alteration in original) (quoting *Lamb v. Wenning*, 600 N.E.2d 96, 99 (Ind. 1992)).

D.C., 977 N.E.2d at 957.

[12] The record reveals Mother testified that she met Taylor on November 7, 2019, and the relationship became serious on December 31, 2019. She indicated her

[1] The factors listed in Ind. Code § 31-17-2-8 include: (1) the age and sex of the child; (2) the wishes of the child's parent or 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 the child's parent or parents, the child's sibling, and any other person who may significantly affect the child's best interests; (5) the child's adjustment to the child's home, school, and community; (6) the mental and physical health of all individuals involved; (7) evidence of a pattern of domestic or family violence by either parent; (8) evidence that the child has been cared for by a de facto custodian; and (9) a designation in a power of attorney of the child's parent or a person found to be a de facto custodian of the child.

relationship with Father ended when she was three months pregnant with D.G. and she had a relationship with Travis DeKoker for six years before meeting Taylor. She stated that she intended "this to be a lifetime move. For a lifetime." Transcript Volume II at 11. On cross-examination, Mother indicated that Father's consistent contact of three times a week would be eliminated as a result of her move but Father's hours would not be reduced. She indicated that the sole reason for the move was because of her relationship with Taylor. When asked if she had a plan if she and Taylor ended their relationship, she answered: "There won't be a break up is the plan. It'll be a marriage." *Id.* at 33. She acknowledged that D.G. would be spending substantially more time in the car if they relocated to Tennessee. She also indicated that D.G. "wants everything stayed [sic] the same." *Id.* at 35. She testified that she disagreed with GAL Richardson's recommendation that she provide most of the transportation because "it took us both to create" D.G., Father makes more money than her, she had said yes to "to a lot of things [Father had] wanted in the past," and it would be dangerous for her to drive for eight hours. *Id.* at 26.

[13] When asked if her recommendation was to allow D.G. to move to Tennessee, GAL Richardson answered: "It is if we can make a plan that he can maintain a relationship with his Father." *Id.* at 48. She indicated that D.G. has a close relationship with Leta, Mother's daughter, who lives in Bloomington. She testified that D.G.'s first choice "would be that everything stay the same." *Id.* at 51. When asked what Mother would do if Taylor ended the relationship, she answered: "I think that'll be very unfortunate for [D.G.] and for Mother. I

don't know if they would relocate if she will have made connections down there at that point in time. I don't know." *Id.* at 52. She testified that the relationship between Father and D.G. was "a positive one" and it was important to D.G. that he not lose time with Father and Father's extended family. *Id.* at 54. She acknowledged that the frequency of contact between D.G. and Father would be greatly affected by a move to Tennessee. She testified that she thought "at least three hours of the drive should be Mother's and "Father should not have to drive more than one hour." *Id.* at 57.

[14] On cross-examination, she stated that a child's happiness and security is bolstered by having a happy secure caregiver, Mother had been the primary caregiver, and "that is the reason why" she recommended the relocation. *Id.* at 59. She testified that D.G.'s second choice would be to live with Mother in Tennessee and plan to have as much time as possible with Father and his grandmother. She also testified that her recommendation was to allow D.G. to move with Mother to Tennessee. She stated that she stood "pretty firm that Mother should do the majority of the driving" because Father's current vehicle had 180,000 miles on it and Mother was "the reason that we're having this bump in the road right now." *Id.* at 62.

[15] On redirect examination, when asked what was best for D.G., GAL Richardson answered:

> I think it's never a simple in, in these situations. We don't have a Guardian ad Litem when there's a simple choice. So, I think you have, I always think of 'em as, as like weights, you know, we

> have to put the pros and the cons and I do think that having a happy and secure Mother is a positive for the child.

Id. at 64. She also stated that "whether [D.G.] leave[s] or stays is a close call." *Id.* at 65. Upon questioning by the court, GAL Richardson testified that she believed the move represented the child's best interest because Mother, who was the primary caregiver, would be more happy and secure and D.G. would benefit from that.

[16] Father testified that his current parenting time involved every Wednesday, every Friday afternoon until Saturday afternoon, alternating holidays, and portions of the summer. He stated that Mother had turned down requests for him to have additional parenting time or for "make up time." *Id.* at 71. He testified that he did not think he would "get to talk to [D.G.] at all" if Mother moved to Tennessee. *Id.* at 72. He testified the distance between his home to Taylor's residence in Tennessee was about 220 miles, he did not have reliable transportation, and his vehicle had 185,000 miles on it. He stated that he took D.G. to practices and he and D.G. would hike, practice basketball, swim, and go to the movies and art shows. He testified that his brother's house was about 200 feet from his house and D.G. had a very close relationship with his paternal grandmother. He also indicated that he felt it would be best for D.G. to stay with him and his family and Mother could have D.G. on the weekends.

[17] D.G.'s paternal grandmother testified that she lived about 500 feet away from Father's home and she had the opportunity to see D.G. when Father has parenting time. When asked what she thought was best for D.G. with respect

to the move to Tennessee, she answered: "Well, um, it, it's a hard question because I know he's gonna miss us cause he's real close to us and he likes his family out there. And I think he'll see [sic] unhappy away from us." *Id.* at 87.

[18] Based upon the record and keeping in mind our deference to trial judges in family law matters, we cannot say that there are not facts or inferences drawn therefrom to support the trial court's findings or that the court's decision is clearly erroneous. *See D.C.*, 977 N.E.2d at 957-958 (holding that "we cannot conclude, consistent with the applicable clear-error standard of review, that there are no facts to support the trial court's judgment either directly or by inference," observing that, "[u]ltimately, although an appellate court in this case may be able to reach a different conclusion from that of the trial court, doing so would involve reweighing the evidence, which is not permitted," stating that "[t]rial courts are afforded a great deal of deference in family law matters, including relocation and custody disputes," "[a]pplying the highly deferential standard of review," and affirming the trial court's decision to prevent relocation).

[19] For the foregoing reasons, we affirm the trial court's order.

[20] Affirmed.

Altice, J., and Tavitas, J., concur.