

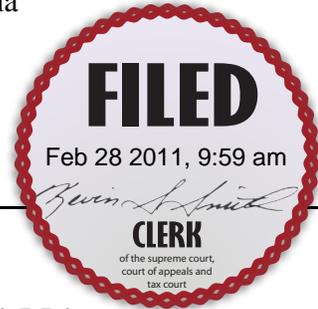
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**IN THE
COURT OF APPEALS OF INDIANA**

M.A-G.,)
)
Appellant-Petitioner,)
)
vs.)
)
J.G.,)
)
Appellee-Respondent.)

No. 30A05-1002-DR-230

APPEAL FROM THE HANCOCK SUPERIOR COURT 1
The Honorable Terry K. Snow, Judge
Cause No. 30D01-0810-DR-1195

February 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, M.A.-G. (Mother), appeals the trial court's denial of her motion to relocate filed two months after the trial court dissolved her marriage to J.G. (Father), and awarded the parties joint legal custody of their five-year-old son.

We affirm.

ISSUE

Mother raises six issues for review. However, for reasons discussed below we find that she has waived all of her issues except that relating to the trial court's denial of her motion to relocate.¹

FACTS AND PROCEDURAL HISTORY

Mother and Father were married on February 14, 2003. Their son, C.G., was born on April 13, 2004. On October 29, 2008, Mother filed a petition for dissolution of the marriage. On August 5, 2009, the trial court approved the parties' settlement agreement and issued a dissolution decree incorporating the agreement. At that time, the parties agreed to joint legal custody of their son, with Father to have approximately 160 overnight visits per year.

On October 9, 2008, Mother filed a Notice of Intent to Relocate wherein she asked the trial court to permit her to relocate five-year-old C.G. to Bedford, Indiana, approximately 100 miles from both parents' current residences in Greenfield, Indiana. On November 4, 2009, Father filed an objection to Mother's intent to relocate their son and requested an order

¹ We note that Mother's statement of the issues does not match the issues presented in the body of her brief.

prohibiting the relocation. On November 6, 2009, the trial court held a hearing on the motions.

Testimony at the hearing revealed that Mother is a certified optician who has been unemployed since April 2008. She explained that she recently found employment with a new optical practice in Bedford, which offers daytime working hours. She plans to live with family members in the Bedford area until she is able to find a house. Mother proposed that Father have visitation with C.G. every weekend from Friday at 5:00 p.m. until Sunday at 5:00 p.m., with drop off and pick up in Martinsville, Indiana. She explained that C.G. and his father could talk on the phone during the week. During cross examination, Mother acknowledged that she declined to interview with companies in the Greenfield and Indianapolis area that require Sunday and evening hours. She also admitted that she does not always “work with [Father],” and that she refused to allow him to take C.G. to school. (Transcript p. 26).

Father testified that he previously held the same optical certification that Mother holds and does not believe that she has exhausted all of the employment options in the Indianapolis area. Father explained that he believes Mother could find a job in the area if she was willing to work weekends and evenings, when he was available to stay with C.G. Father further testified that the parties agreed that equal parenting time was in C.G.’s best interests just two months prior to Mother filing the motion to relocate C.G., and that it was still in C.G.’s best interests to spend significant time with both parents. Father testified that Mother’s requested relocation would reduce his parenting time from 160 overnight visits per year to 104

overnight visits. In addition, Father explained that the transportation time would take away from the visitation, and that phone calls are not a replacement for face to face time with a five-year-old.

Father also testified that C.G. has close ties to the Greenfield community, and that it would not be in his best interests to move to Bedford to a new school and home so soon after his parents dissolved their marriage. Specifically, Father explained that C.G. is close to his paternal grandparents, aunts, uncles, and cousins that live in the Greenfield area. C.G. attends a local church with Father and attends kindergarten with children he has known since preschool. Father lives in the family home, and there are many children in the neighborhood that have grown up with C.G. Father further testified that he and C.G. camp, fish, and ride bikes together. Father also helps C.G. with his school work and attends other activities with C.G. Father would not be able to be as involved in C.G.'s school work and activities if C.G. moved to Bedford. Father also expressed his concern that C.G. would have to go to daycare after school in Bedford whereas he has always been in the care of family and friends in Greenfield. Lastly, Father expressed his concern that Mother's true intention is to move C.G. to New York where she was raised, and that the move to Bedford is just a stepping stone.

On November 12, 2009, the trial court issued an order prohibiting C.G.'s relocation. Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

At the outset, we note that Mother raises six issues in her appellant's brief. It is well settled that *pro se* litigants are held to the same standard as are licensed attorneys. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). Thus, a litigant who chooses to proceed *pro se* must, like trained legal counsel, be prepared to accept the consequences of her actions if she fails to adhere to procedural rules. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). One such rule, Indiana Appellate Rule 46(A)(8), provides in part that the argument section of appellant's brief "must contain the contentions of the appellant in the issues presented, supported by cogent reasoning," along with citations to the authorities, statutes, and parts of the record relied upon, and a clear showing of how the issues and contentions in support thereof relate to the particular facts of the case under review. *In re Paternity of M.G.S.*, 756 N.E.2d 990, 1004 (Ind. Ct. App. 2001), *trans. denied*. Noncompliance with the rule results in waiver of this argument on appeal. *Nealy v. American Family Mut. Ins. Co.*, 910 N.E.2d 842, 849 (Ind. Ct. App. 2009), *trans. denied*. Here, Mother's *pro se* brief fails to develop cogent arguments with citations to proper authority. The only argument Mother attempts to develop is the one regarding the denial of her motion to relocate. Thus, to the extent Mother has attempted to develop arguments on this issue, we have attempted to discern and address them. Mother has waived all other issues. *See id.*

We further note our preference for granting latitude and deference to trial court judges in family law matters. *Kirk v. Kirk*, 770 N.E.2d 304, 307 (Ind. 2002). The Indiana supreme court explained the reason for this deference in *Kirk*:

While we are not able to say the trial judge could not have found otherwise than he did upon the evidence introduced below, this Court as a court of review has heretofore held by a long line of decisions that we 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, or that he should have found its preponderance or the inferences therefrom to be different from what he did.

Id. (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)). Therefore, on appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal. *Id.* We now turn to the issue in this case.

Mother argues that the trial court erred in denying her motion to relocate. In 2006, our General Assembly amended the Family Law Title of the Indiana Code by adding Indiana Code section 31-17-2.2 concerning the relocation of the custodial parent. *Baxendale v. Raich*, 878 N.E.2d 1252, 1255 (Ind. 2008). Relocation is defined as a change in the primary residence of an individual for a period of at least sixty days. *Id.* at 1255-56. Where, as here, the non-relocating parent files a motion to prevent relocation, the relocating parent must prove that the relocation is made in good faith and for legitimate reason. *Swadner v. Swadner*, 897 N.E.2d 966, 975 (Ind. Ct. App. 2008) (citing I.C.G. § 31-17-2.2-5). If this

burden is met, the non-relocating parent must prove that the proposed relocation is not in the child's best interests. *Id.*

In making its determination, the trial court shall consider: 1) the distance involved in the proposed relocation; 2) the expense involved for the non-relocating parent to exercise visitation; 3) the feasibility of preserving the relationship of the nonrelocating individual and the child through visitation; 4) whether there is an established pattern of conduct by the relocation individual to thwart the non-relocating parent's contact with the child; 5) the reasons provided by the relocating parent for the relocation; and 6) other factors affecting the best interest of the child. I.C.G. § 31-17-2.2-1. This statute also incorporates all of the factors considered in making an initial custody determination. *Baxendale*, 878 N.E.2d at 1256. These factors include 1) the age and sex of the child; 2) the wishes of the parents; 3) the wishes of the child; 4) the interaction and interrelationship of the child with the parents, siblings, and other people who may significantly affect the child's best interests; 5) the child's adjustment to home, school, and community; 6) the mental and physical health of all individuals involved; 7) evidence of domestic abuse; and 8) evidence of care by a *de facto* custodian. *See* I.C.G. § 31-17-2-8. Evidence of a parent's drug or alcohol use can also be relevant to that parent's health and the child's best interests. *See Russell v. Russell*, 682 N.E.2d 513, 515 (Ind. 1997).

Here, the trial court considered that by the terms of the parties' agreement, Father is as equally involved with C.G. as Mother is, and that just three months prior to the trial court's decision in this case, both parents agreed that a split parenting arrangement was in C.G.'s

best interests. Mother acknowledged that nothing has changed since the issuance of the decree other than her desire to relocate C.G. The trial court also considered that the current parenting time schedule allows Father to be extensively involved with C.G. on a regular and consistent basis, including both weekday and weekend events. It would be impossible for Father to maintain his current level of parenting and involvement in C.G.'s activities if Mother relocated C.G. to Bedford.

The trial court also considered that Father has limited financial resources for two weekly trips to Martinsville to pick up and drop off his son. In addition, the trial court considered that Mother has attempted to control Father's interaction with C.G. in the past, and that the distance between Father and C.G. would only create more difficulties for Father. The trial court also found that Mother's relocation would necessitate additional daycare to which C.G. is not accustomed and would not need if he was not relocated. Lastly, the trial court noted that stability is best for a child, and that Father, Father's family, and C.G.'s current school, provide stability for C.G., which would be diminished if Mother were permitted to relocate him.

It is apparent from the trial court's detailed order that the court thoughtfully considered the evidence, balanced all of the factors relevant to the relocation determination, and concluded it was in C.G.'s best interests not to be relocated to Bedford with Mother. We

conclude that the trial court did not abuse its discretion in denying Mother's motion to relocate.

CONCLUSION

Based upon the foregoing, we find that the trial court did not err in denying Mother's motion to relocate.

Affirmed.

ROBB, C.J., and BROWN, J., concur.