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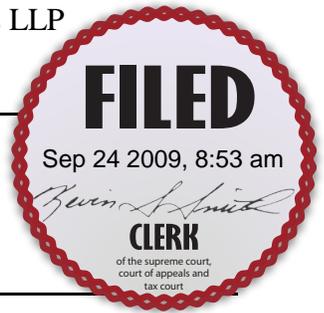
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**IN THE**  
**COURT OF APPEALS OF INDIANA**

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MARCIA (GEISLER) FERRANTE, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
JOHN GEISLER, )  
 )  
Appellee-Petitioner. )

No. 29A02-0902-CV-154

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APPEAL FROM THE HAMILTON SUPERIOR COURT  
The Honorable Daniel J. Pfleging, Judge  
Cause No. 29D02-0507-DR-0058

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September 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

**BAKER, Chief Judge**

Appellant-respondent Marcia (Geisler) Ferrante (Mother) appeals the trial court's denial of her request for change of custody and its approval of appellee-petitioner John Geisler's (Father) notice of intent to relocate with their three minor children. Mother also contends that the evidence failed to demonstrate that the relocation was in the children's best interests and that the trial court failed to enter adequate findings of fact and conclusions of law regarding the factors that affected the best interests of the children.

We conclude that the trial court properly denied Mother's request for change of custody and that it did not abuse its discretion in approving Father's request to relocate from Indiana to Ohio. We also find that the trial court's findings of fact and conclusions of law regarding the best interests of the children were adequate. Thus, we affirm the judgment of the trial court.

### FACTS

Father and Mother were married on December 28, 1991. Three children were born during the marriage: R. was born in 1994, M. was born in 1995, and M.A. was born in 1999. Father attended the Indiana University School of Medicine and graduated in 1994. Thereafter, Father began working as a gynecological oncologist.

Mother graduated from the University of Michigan in 1990 and holds a B.A. in statistics and psychology. Thereafter, she pursued a pharmacy degree at the University of Iowa. While the family was living in Iowa, Mother filed a petition for legal separation in May 2003.

In July 2003, Mother and Father both returned to Indiana because Father desired to

join his father's private medical practice in Indianapolis at GYN Oncology. Mother began employment at CVS as a pharmacy tech in 2004, and on May 28, 2005, Father filed a verified petition for dissolution of the marriage. The trial court set various hearings regarding the matters of custody, support, and parenting time. Mother continued her studies at Butler University in the fall of 2005.

Sometime in 2005, Dr. Kelly Manahan purchased the GYN Oncology practice and changed the firm's name to Indiana Women's Oncology (IWO). Father continued working as an employee of IWO. In the fall of 2005, the trial court entered an order dissolving Mother and Father's marriage. Pursuant to the decree, Mother and Father were to share parenting time, with property issues and custody matters to be resolved at a subsequent hearing. The order also required Father to pay Mother's rent in the amount of \$1570 per month, \$100 per month in health insurance premiums, a \$409 monthly car payment, automobile insurance in the amount of \$100 per month, credit card bills totaling approximately \$744 per month, and payment towards Mother's school of pharmacy tuition in the amount of \$2000 per semester. Those expenses did not include any funds that Father spent for the children.

Father testified that since November 2005, he has paid Mother in excess of \$107,000. Pursuant to an agreed entry on May 25, 2006, Father has had sole physical custody of the children because a question arose about suspected child abuse. Mother was given supervised parenting time in accordance with the Indiana Parenting Time Guidelines. However, her parenting time did not include overnight stays.

Father married Dr. Manahan in 2006. Throughout the proceedings, the children's primary residence has been with Father. However, Mother's parenting time has generally increased and evolved since the agreed order.

The children have actively participated in extra-curricular school activities, including various sports programs. They also became involved in church programs and have maintained excellent grades in their respective schools. Throughout the course of the proceedings, the parents and the children have undergone counseling from various professionals.

In April 2007, the parties agreed that the supervised parenting time should be discontinued and that Mother's parenting time could take place outside her home. The purpose of that change was to ease the children into unsupervised parenting time with Mother. In June 2007, Mother's parenting time shifted so that it took place in her home, but no "overnights" were permitted. Appellant's App. p. 20. Because of a later incident that involved M., it was subsequently agreed that the parenting time would revert back to being exercised outside of Mother's home.

After a parenting coordinator was appointed in September 2007, the parties agreed that Mother's parenting time could be home-based and unsupervised. In June 2008, the parties agreed to expand Mother's weekly parenting time for the summer months from Sunday at 9:00 a.m. through Wednesday at 9:00 a.m.

On August 25, 2008, Father filed a "Notice of Intent to Relocate," indicating his intent to move his residence from Indianapolis to Ohio and to accept a position with the University

of Toledo School of Medicine. Appellant's App. p. 13. Throughout Father's career, he has taught residents, medical students, and physicians on the subject of gynecological oncology. Father also became recognized nationally and internationally in that field. He has published over 110 articles in the field and has presented his research and findings to medical experts across the country.

While Father was employed at IWO, his salary consistently decreased over the years. Specifically, Father earned over \$194,000 in 2006, and earned \$152,310 by the end of October 2008. Father's and Dr. Manahan's medical malpractice insurance premiums were nearly \$65,000 per year, which resulted in an increase of IWO's operating expenses. Father's workload also increased, while the rate of reimbursement from insurance companies decreased to a level of approximately twenty cents on the dollar for his hourly rates in his area of practice. Moreover, IWO was understaffed because the practice could not afford to replace staff after attrition. Father also has not had an opportunity to put money aside for his retirement or for the children's college education. The proposed position with the University of Toledo, in addition to providing a substantial increase in household income, would allow Father and Dr. Manahan to pursue their academic callings. The University of Toledo had made a similar offer to Dr. Manahan.

Mother objected to Father's notice of intent to relocate and filed a petition to modify custody on September 4, 2008. When the children's school reconvened that month, the parties agreed that Mother would exercise parenting time every other weekend beginning Friday at 6:00 p.m. until Sunday at 6:00 p.m., plus one evening every week.

The trial court conducted hearings on the various petitions and motions on November 19, December 2, and December 8, 2008. At some point during the hearings, Father testified that if he was not permitted to move to Toledo with the children, he would remain in Indianapolis. However, Father further testified that he might be required to file bankruptcy. The evidence further established that Father intended to purchase a residence in Ottawa Hills, which is a small suburb of Toledo. Ottawa Hills has the “best-ranked” public school system in Ohio. Tr. p. 198-99. Father also testified that he would not attempt to decrease Mother’s parenting time if the court permitted the relocation. Father promised that he would take steps to ensure that the children would have more time with Mother. Specifically, Father offered to drive the children to Mother’s home so the current parenting time schedule could be maintained. Father also agreed to participate in individual counseling to resolve conflicts with Mother, agreed that the children would remain in counseling, and further agreed that the family would continue to work with the parenting coordinator. Moreover, Father testified that if Mother would also move to Toledo, he would pay for Mother to attend pharmacy school for four years and would assist her in gaining admission to the school.

Following the hearing, the trial court permitted Father to move to Ottawa Hills with the children. While the trial court denied Mother’s motion for modification of custody, it granted virtually all of Mother’s requests with regard to parenting time:

[1.] Mother shall have every other weekend

[2.] Mother shall have every Spring Break, including both weekends, if applicable;

[3.] Mother shall have a minimum of seven weeks of parenting time during the Summer break; Father shall have the remaining time during the Summer and Father's time shall include his vacation. The parties may increase Mother's summer parenting time by agreement.

Appellant's App. p. 30. The trial court also ordered Father to pay for the children's visits to Indianapolis and to reimburse Mother for driving expenses for the occasions on which she drives to Ottawa Hills to exercise parenting time. Finally, the trial court ordered the parties to continue working with Dr. Ferraro, the parenting coordinator, and the therapist at Father's expense. The trial court's findings of fact and conclusions of law provided in relevant part as follows:

**B. Father's Financial Situation**

30. Father and Dr. Manahan have practiced together, researched together, and published together since Father joined Indiana Gynecology/Oncology in 2005.

31. In 2006, Father's income was approximately \$195,000. In 2007, Father's approximate income was \$181,000. Through October 2008, Father's approximate income was \$152,500.

32. Father also testified that his expenses are increasing. For example, he testified that the practice's malpractice insurance premium has risen to approximately \$65,000 per year.

33. Father further testified that his income will continue to decline due to a decrease in reimbursements from Insurance Companies. He testified that reimbursements are roughly twenty cents on the dollar for the physician's hourly rate in this area of practice.

34. [Father's accountant] testified that the trend in the medical industry involves reductions in insurance and Medicare reimbursements for physician's services, which has led to a steady reduction in physician owned practices.

35. [The accountant] testified that reimbursements for chemotherapy treatments administered by the practice are on a decline and the cost of chemotherapy has increased.

36. Father testified that in addition to his declining income, the October 26, 2005 Order, which requires Father to pay Mother's expenses . . . remains in full force and effect.

37. As noted, the children's primary residence has been with Father. He is paying their living expenses, school expenses, and health insurance. In addition, Father is receiving no support from Mother.

38. Father has also paid costs associated with these proceedings, counseling, and custodial evaluations. These costs are approximately as follows:

Dr. Ferraro:	\$16,054
Dr. Krupsaw:	\$24,000
Dr. Christy:	\$5,000

### **C. Father's Offers of Employment**

39. Father began receiving offers of potential employment from academic institutions across the United States in the spring of 2008. Father received offers from, inter alia, Emory University, Texas Tech University, and the University of Nebraska. However, Father declined these offers because the academic institutions were too far away from Indianapolis.

40. The University of Toledo recently made Father an offer to join its faculty. The base salary, as a faculty member, will be \$50,000. In addition, Father would earn a salary of \$375,000 for joining the university's affiliated clinical practice plan.

41. The University of Toledo has made a similar offer to Dr. Manahan.

42. Father testified that the additional income would allow him to continue to meet the court-ordered obligations, maintain the children's living and educational expenses, and set aside money for the children's college tuition/expenses. To this point, Father has been unable to set aside money for the children's college.

43. Father's association with the University of Toledo would offer him an excellent professional opportunity as well as an academic placement with a clinical practice. This opportunity does not exist in Indianapolis. Moreover, the move would enable him to more than double the income that he earns in his private practice in Indianapolis.

44. Finally, Father's family's income would also double because, as indicated, Dr. Manahan has received a similar offer from the University of Toledo.

#### **D. Mother's Objections**

45. Mother first objects because she wants the children to remain in their current schools.

46. In addition, if a move is allowed, Mother will not be able to participate in or watch the children's extra-curricular activities.

47. Mother further believes that the length of the round-trip commute from Ottawa Hills to Indianapolis is not in the best interests of the children.

48. Mother testified that she and the children do not travel well together. She further testified that if she is forced to provide any of the transportation, the transportation could have a detrimental effect upon her relationship with the children.

49. Mother believes that this move would thwart her ability to have the continuing and improving contact that she has had with the children.

50. Finally, as previously indicated, Mother commenced education in the area of pharmacy at the University of Iowa. She has followed up on that by enrolling in classes at Butler University. She is currently employed as a lead pharmacy tech for CVS. She particularly enjoys this employment because it provides her the freedom to schedule her parenting time and pursue her studies. Mother does not wish to relocate to Ottawa Hills because she, understandably, does not want to quit a secure job at CVS and face an uncertain job market in Ottawa Hills.

...

## **II. CONCLUSIONS OF LAW**

...

5. Father, as the relocating individual, must first establish that his proposed relocation is made in good faith and for a legitimate reason. If Father satisfies his burden, the burden shifts to Mother to show that Father's proposed relocation is not in the best interest of the children.

### **A. Good Faith and Legitimate Reason**

8. Father's proposed relocation is based on significant professional and economic considerations. Father's first professional priority in medicine has been a dedication to academics and teaching. At the University of Toledo, Father could pursue these ideals and more than double his former income, thereby gaining financial security in the process.

9. Further, Father has been the primary source of financial support for all three children and has been the primary source of financial support for Mother since the Dissolution of Marriage was final. . . .

10. Father's current income does not cover his monthly obligations, which include substantial support for Mother, private school tuition for the children, the children's therapy, parenting coordination, and other expenses.

11. Father's proposed relocation will improve his material and economic situation by allowing him to continue to meet the previously court-ordered obligations, to care for the children, and to begin to save for the children's college education and his own retirement.

12. Accordingly, the Court finds that Father's intent to relocate to Ottawa Hills has been made in good faith and has not been made out of spite. Therefore, Father has met his burden of proving that the proposed relocation is made in good faith and for legitimate reasons.

### **B. Best Interests of the Children**

13. In determining whether Father should be allowed to relocate, the Court must take into account the following factors:

- (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.

i. Distance

14. The distance between Indianapolis/Carmel and Ottawa Hills is approximately 200 miles and can be traveled by car in approximately 3½ hours.

15. The Court concludes that this is a reasonable distance to allow Mother to maintain the current amount of parenting time.

ii. Hardship and Expense for Mother to Exercise Parenting Time

16. Mother's employment grants her significant flexibility. In addition, Father has testified that he will drive the children back and forth for parenting time with Mother or pay Mother's traveling expenses if she would prefer to drive to Ottawa Hills.

iii. Feasibility of Preserving Relationship between Mother and the Children

18. Father and Dr. Manahan both testified that they would make the existing parenting times schedule work and Father's financial circumstances would be made substantially better with the proposed relocation.

19. The Court also notes that the parties have been able to cooperate and work with each other in resolving parenting time issues.

...

iv. Father's Pattern of Conduct to Thwart Mother's Contact with the Children

22. It appears that both Mother and Father have been working positively towards resolving their issues. This has been evidenced by the increased parenting time Mother has obtained through agreements, culminating in the "marvelous" agreement for the 2008 Christmas holiday.

23. Therefore, the Court concludes that, despite Mother's accusations of Father alienating the children, Father has not exhibited a pattern of conduct to thwart Mother's contact with the children.

...

vi. Other Factors Affecting the Best Interests of the Children

25. Since the May 2006 Order, Father has substantially provided the home for the children and he has been responsible financially for their tuition at private schools and their extra-curricular activities. Father has also been a substantial source of financial aid to Mother, paying the expenses as required in the October 26, 2005 Order. Father has added to the stability of the children by accepting these responsibilities and expenses.

26. Father's position at IWO and its/his decreasing income has placed him in a situation where he may not be able to continue to meet the above-mentioned expenses and responsibilities. Father's failure to meet these responsibilities could have a detrimental effect upon the stability that the children now have.

27. If Father is allowed to move with the children to Ottawa Hills, he will be better off financially, which will promote his material and psychological well-being. As a result, the material and psychological health of the children will also be promoted.

28. Father even went to the extent to indicate that he would assist Mother in relocating to the Toledo area.

29. Mother did not present sufficient evidence to show that it was in the best interest of the children to prevent Father from relocating to Ottawa Hills.

30. In addition, Mother did not present sufficient evidence to show that there was a substantial change of circumstances in one or more of the relevant modification factors to show that modification of physical custody of the children was in the children's best interest.

## ORDER

Based on all of the foregoing, it is hereby Ordered . . . that:

1. The parties shall continue to share joint legal custody of the children.
2. Father shall continue to have primary physical custody of the children.
3. Mother's request for change of custody and to prevent the relocation of the children is hereby denied.
4. Father's notice of Intent to Relocate is approved and hereby Granted.
5. Mother shall have parenting time that complies with the Indiana Parenting Time Guidelines, particularly Section III of those guidelines. Specifically,
  - [a.] Mother shall have every other weekend;
  - [b.] Mother shall have every Spring Break, including both weekends, if applicable;
  - [c.] Mother shall have a minimum of seven weeks of parenting time during the Summer break; Father shall have the remaining time during the Summer and Father's time shall include his vacation. The parties may increase Mother's summer parenting time by agreement.
6. Father shall pay for the children's visits to Indianapolis for parenting time with Mother and shall reimburse Mother for driving-related expenses for the occasions on which she drives to Ottawa Hills to exercise her parenting time.
7. The parties shall continue to work with [the] parenting coordinator . . . to facilitate the exercise of parenting time. Father shall pay for the costs of the Parenting Time Coordinator's services.
8. The parties shall continue to take the children to therapy with Dr. Pam Christy (or such other licensed therapist upon whom the parties agree). Father shall continue to pay for this therapy.

9. Father shall pay Bruce M. Pennamped, attorney for Mother, the sum of \$24,473.36, within sixty (60) days of the date of this Order.

Appellant's App. p. 18-31. Mother now appeals.

### DISCUSSION AND DECISION

Mother argues that the trial court abused its discretion when it granted Father's request to relocate and denied her petition to modify custody. Mother maintains that the trial court erred in requiring Mother to demonstrate that Father's relocation "resulted in a substantial change in circumstances in one or more of the factors affecting the best interest of the children." Appellant's Br. p. 5. Mother also argues that she was able to establish through her testimony that the relocation was not in the best interests of the children. As a result, she maintains that the trial court should have denied Father's petition to relocate and granted her request for custody modification.

Finally, Mother maintains that the trial court's findings of fact and conclusions of law were inadequate because those findings did not "consider the six relocation factors in Indiana Code section 31-17-2.2(1)(b) in addition to the eight factors affecting the best interests of the children in Indiana Code section 31-17-2-8." Id. at 6.

#### I. Standard of Review

We initially observe that there is 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). 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.” Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002). We will not substitute our judgment if any evidence or legitimate inferences support the trial court’s judgment. The concern for finality in custody matters reinforces this doctrine. Baxendale v. Raich, 878 N.E.2d 1252, 1258 (Ind. 2008).

Custody modifications are generally governed by Indiana Code section 31-17-2-21, which provides that a custody modification is permitted only if the modification is in the best interests of the child and there has been a substantial change in one or more of the factors identified in Indiana Code section 31-17-2-8. J.J. v. Wess A.J., No. 08A02-0903-JV-280, slip op. at 5 (Ind. Ct. App. Aug. 25, 2009). Such matters are reviewed for an abuse of discretion. Wolljung v. Sidell, 891 N.E.2d 1109, 1111 (Ind. Ct. App. 2008).

## II. The Relocation Statute and Mother’s Contentions

In 2006, our General Assembly enacted a new statute governing a custodial parent’s request to relocate with the child or children in the parent’s custody. See Ind. Code § 31-17-2.2-1 et seq. In Baxendale, our Supreme Court summed up the new relocation statute as follows:

“Relocation” is “a change in the primary residence of an individual for a period of at least sixty (60) days,” and no longer requires a move of 100 miles or out of state. Id. § 31-9-2-107.7. A “relocating individual” is someone who “has or is seeking: (1) custody of a child; or (2) parenting time with a child; and intends to move the individual’s principal residence.” Id. § 31-9-2-107.5. A “nonrelocating parent” is someone “who has, or is seeking: (1) custody of the child; or (2) parenting time with the child; and does not intend to move the individual’s principal residence.” Id. § 31-9-2-84.7. Upon motion of either parent, the court must hold a hearing to review and modify custody “if appropriate.” Id. § 31-17-2.2-1(b). In determining whether to modify a

custody order, the court is directed to consider several additional factors that are set out in section 31-17-2.2-1(b) and are specific to relocation. In general, the court must consider the financial impact of relocation on the affected parties and the motivation for the relocation in addition to the effects on the child, parents, and others identified in Section 8 as relevant to every change of custody.

878 N.E.2d at 1255-56 (footnotes omitted). The Baxendale court's reference to "section 8" is with regard to Indiana Code section 31-17-2-8, which is to be determined "in accordance with the best interest of the child." Under that section, the trial court must consider "all relevant factors" in determining the child's best interests, including the nonexclusive list of factors set forth in the statute. Modifications of original custody orders outside the context of a relocation are "permitted only if the modification is in the best interest of the child and there has been 'a substantial change' in one or more of the factors identified in Section 8 as considerations in the initial custody determination." Baxendale, 878 N.E.2d at 1255 (citing Ind. Code § 31-17-2-21(a)).

Under Chapter 2.2, there are two ways to object to a proposed relocation: a motion to modify a custody order under Indiana Code section 31-17-2.2-1(b), and a motion to prevent relocation of the child under Indiana Code section 31-17-2.2-5(a). J.J. v. Wess A.J., slip op. at 5. If the non-relocating parent files a motion to prevent relocation, the relocating parent must first prove that "the proposed relocation is made in good faith and for a legitimate reason." Id. at 6 (quoting I.C. § 31-17-2.2-5(c)). If this burden is met, the non-relocating parent must then prove that "the proposed relocation is not in the best interest of the child." Id. 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 interest of the child.” Id.

We also note that the custodial parent’s relocation does not require modification of a custody order. In essence, a motion to modify a custody order in the context of the custodial parent’s relocation and a motion to prevent relocation are two different procedural vehicles under the statute. However, when the non-relocating parent seeks custody in response to a notice of intent to relocate with the child, the trial court—as it did in this case—is required to take into account the following factors when considering the proposed relocation:

- (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.

I. C. § 31-17-2.2-1(b). Moreover, the “court may consider a proposed relocation of a child as a factor in determining whether to modify a custody [or] parenting time order[.]” I.C. § 31-17-2.2-2(b).

As set forth in Indiana Code section 31-17-2.2-1(a), the custodial parent who seeks to relocate must file a notice of intent to move. Next, upon motion of either parent, the court is required to set the matter for a hearing to review and, if appropriate, modify a custody

order, parenting time order, grandparent visitation order or child support order. I.C. § 31-17-2.2-1(b).

After the noncustodial parent files a motion to prevent relocation, the relocating parent has the burden to prove at a hearing that the proposed relocation is made in good faith and for a legitimate reason. As noted above, if the relocating parent meets that burden, Indiana Code section 31-17-2.2-5(c)-(d) requires the burden to shift to the nonrelocating parent to establish that the proposed relocation is not in the best interest of the child. However, under the rule announced in Baxendale, a noncustodial parent is not required to prove a “substantial change” in one of the factors set forth in Indiana Code section 31-17-2-8 before a custody change may be ordered after a relocation. Id. at 1257.

In this case, the circumstances differ substantially from those in Baxendale, where the custodial parent relocated to Minnesota without the child. Id. at 1254. The court had to decide whether to permit the child to move with mother or modify custody to father if moving was not in the best interests of the child.

Here, the modification of custody to Mother is not the sole alternative to permitting relocation. That is, if the trial court had not permitted the relocation, Father unequivocally testified that he would remain in Indianapolis. Tr. p. 389. As a result, the trial court was not required to modify custody if Mother met her burden of proving that relocation was not in the best interests of the children. Therefore, it was proper for the trial court to initially consider Mother’s motion to prevent relocation according to the burden shifting analysis set forth in Indiana Code section 31-17-2.2-5(c) and -5(d). Indeed, had the trial court granted her

motion, Father would not have moved, and Mother's petition to modify custody would no longer have been in the context of relocation. Rather, it would have been subject to the standard set forth in the modification statute, Indiana Code section 31-17-2-21, which requires proof that modification is in the best interests of the child and that there has been a substantial change in one or more of the factors set forth in section 8.

Additionally, we note that the trial court did, in fact, properly apply the burden-shifting analysis as required by Indiana Code section 31-17-2.2-5. And the evidence supported the trial court's conclusion that the proposed relocation to Toledo was based on significant professional and economic considerations. More specifically, the evidence demonstrated that Father was the primary source of financial support for all three children since the dissolution became final. Appellant's App. p. 26. The income that Father earned from IWO was not sufficient to cover the family expenses, including substantial support for Mother, private school tuition for the children, therapy, court-ordered parenting coordination, and setting aside savings for the children's college education and his own retirement. *Id.* at 26. The evidence also established Father's declining income at IWO, his passion for teaching, and a \$425,000 annual salary that would permit him to meet the children's and Mother's financial needs and, at the same time, allow him to pursue his professional goals. In light of these circumstances, the trial court properly concluded, pursuant to Indiana Code section 31-17-2.2-5, that Father's request to relocate was made in good faith and for a legitimate reason.

The trial court then turned to the second part of the statutory relocation analysis pursuant to Indiana Code section 31-17-2.2-5(d), which involves the shift of the burden of proof to Mother to establish that the relocation was not in the best interest of the children.

The trial court considered Mother's proposed schedule for parenting time if the relocation was permitted. In her proposal, Mother indicated that she wanted increased parenting time to include, among other things, every other weekend, extended weekends, every spring break, the majority of time for every winter break, and the entire summer break. Id. at 25. The trial court granted each of these requests in its findings and conclusions. Id. at 30.

In concluding that Mother failed to present sufficient evidence to establish that it was in the best interest of the children to prevent Father from relocating to Ohio with them, the trial court analyzed all of the factors listed in the relocation statute, Indiana Code sections 31-17-2.2-1(b)(1) – (b)(6), and determined that

Based on the preceding analysis of the relevant factors, the Court concludes that Mother did not present sufficient evidence to show that it was in the best interest of the children to prevent Father from relocating to Ottawa Hills.

Appellant's App. p. 29.

Also instructive in this case is our opinion in Rogers v. Rogers, 876 N.E.2d 1121 (Ind. Ct. App. 2007), trans. denied, where we addressed a situation where Mother, the custodial parent, sought to relocate to Texas, but testified that she would return to Indiana if she was prohibited from taking the children with her. Id. at 1125. Mother's reasons for moving in that case were to take care of her ailing father, to be closer to her family, and to accept

employment with greater opportunities. Id. at 1124-25. We allowed the relocation, finding that it was in the best interest of the children to move with their Mother. This court denied modification of custody, observing that

[I]n every modification case, the person seeking to modify custody must show that the modification is in the child’s best interest and there is a substantial change in one or more of the factors the court may consider under Indiana Code § 31-17-2-8.

Id. at 1130-31.

In this case, if Father’s relocation request was denied and he stayed in Indianapolis, Mother’s request to modify custody would be subject to the same standard. In fact, that is precisely what occurred in Rogers, where the mother was permitted to move with the children and father was required to come forward with evidence of a substantial change in one or more of the factors set forth in Section 8 in order to modify custody.

Here, it is apparent that the trial court applied the proper standard in determining that relocation is in the best interests of the children. As a result, Mother has failed to show error on this basis.

### III. Standard Involving Custody Modification

Notwithstanding Mother’s previous argument, she also maintains that she, in fact, satisfied a “higher standard” under Indiana Code section 31-17-2-21 because she demonstrated that “a substantial change occurred in several of the Section 8 factors.” Appellant’s Br. p. 15. In essence, even though Mother has made contradictory arguments with regard to the standard that the trial court applied—and should have applied—she asserts

that relocating the children to Ottawa Hills represents a substantial change that warranted a modification of custody.

Notwithstanding this claim, we have determined that a custodial parent's move out of state, by itself, is not sufficient to support a change of custody. Rogers, 876 N.E.2d at 1131. Even more compelling, Mother has failed to acknowledge Father's testimony that he would not relocate unless the court permitted him to do so with the children. This circumstance further distinguishes this instance from Baxendale where the custodial parent relocated without the child. When that circumstance arises, the court must modify custody if it determines that relocation is not in the child's best interest. However, if the trial court determined that relocation was not appropriate in this case, Father—the custodial parent—would not relocate. Therefore, Mother cannot successfully contend that relocation itself was a substantial change that would necessarily warrant a custody modification.

#### IV. Best Interests of the Children

With regard to Mother's claim that the trial court erred in determining that she failed to present sufficient evidence to show that it was in the best interest of the children to prevent Father from relocating, the record demonstrates that the trial court conducted a detailed analysis of the factors pertaining to the best interests of the children.

In particular, the court-appointed custody evaluator, Dr. Randall Krupsaw, testified that Father should be provided primary custody of all three children. Tr. p. 18. As discussed above, the evidence established that relocation to Ottawa Hills and Father's new position at

the University of Toledo would increase his financial stability which would, in turn, promote the material and psychological health of the children. Appellant's App. p. 29.

Also, Father agreed to additional parenting time for Mother. He also offered to provide her with financial and transportation assistance if the trial court approved the relocation. Appellant's App. p. 25. Moreover, Father offered to assist Mother with admission into the University of Toledo, and he agreed to pay her tuition if Mother agreed to move to Ohio. The evidence also demonstrated that both Mother and Father's relatives lived within a few hours of Toledo. Tr. p. 388.

Also, even though Mother asserts that the distance involved in the relocation—215 miles—will likely affect her ability to interact with the children, Father testified that he would transport the children to Mother's house for parenting time, and would emphasize the importance of parenting time to the children. And, as noted above, Father agreed to increased parenting time. Tr. p. 204-05, 388. The trial court also noted the parties' progress, as evidenced by the testimony of the parenting coordinator and the custody evaluator, in reaching agreements to expand parenting time for Mother.

Finally, although Mother maintains that relocation was not in the children's best interest because the commute would "substantially impact . . . their ability to participate in extracurricular activities and school," appellant's br. p. 17, the children's ability to participate in extracurricular activities, and Father's ability to support them in doing so, depends, in part, on the financial stability of the household. As discussed above, Father's current employment and financial situations could have a detrimental effect upon the stability that the children are

currently enjoying. Indeed, the evidence supports the conclusion that Father's stability will be promoted by the move to Toledo, as it will be for the children.

In sum, it is apparent that the trial court gave careful consideration to the significant economic considerations behind Father's intent to move. The testimony of Father, Dr. Manahan, and their accountant underscored the family's financial struggles. Tr. p. 195. The testimony supports a conclusion that the financial stability of the entire family is at stake in Father's request to relocate. Moreover, Mother testified that she has the flexibility in her job as a pharmacy tech at CVS to leave work early on Tuesdays and Thursdays and that she only has to work every other weekend. Tr. p. 460. The evidence established that her schedule is flexible enough to allow parenting time and appointments with the children. *Id.* at 492. As a result, the evidence supports the trial court's determination that Mother failed to show that granting Father's request to relocate was not in the children's best interest.

#### V. Findings of Fact and Conclusions of Law

Finally, Mother argues that the judgment cannot stand because the trial court "failed to enter specific findings of fact and conclusions of law as to the factors [set forth in 31-17-2-8]." Appellant's Br. p. 24. As a result, Mother claims that the trial court's failure to do so amounted to an abuse of discretion that requires reversal.

We initially observe that Mother's argument is wholly inconsistent with her position that she was not required to meet the standard set forth in Indiana Code section 31-17-2-21. Moreover, the language of the modification statute requires the trial court to find that (1) the modification is in the best interests of the child; and (2) there is a substantial change in one

(1) or more of the factors a court may consider under Indiana Code section 31-17-2-8 when it originally determines custody. I.C. §§ 31-17-2-21(a)(1) -21(a)(2). The trial court is not required to address each of the factors set forth in Indiana Code section 31-17-2-8 or to issue a specific finding or conclusion as to any one factor in particular. Rather, the trial court is only required to consider the statutory factors in the relocation statute, Indiana Code section 31-17-2.2-1, and make a finding regarding the best interests of the children. As discussed above, the trial court did precisely that. Thus, Mother does not prevail on her claim that the trial court erred in its findings and conclusions concerning the factors affecting custody modification.

### CONCLUSION

In light of our discussion above, we conclude that the trial court properly applied the correct legal standard pursuant to Indiana Code section 31-17-2.2-5 in considering Mother's motion to prevent Father's relocation and her petition to modify custody of the children. Contrary to Mother's argument, the trial court did not require her to demonstrate a substantial change in one or more of the factors set forth in Indiana Code section 31-17-2-8. Moreover, the evidence presented at the hearings supports the trial court's findings of fact, which in turn support the trial court's conclusion that Father's relocation from Indianapolis to Ottawa Hills, Ohio, is in the best interests of the children. Finally, we conclude that the trial court's findings of fact and conclusions of law were not deficient.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.

