

Cindi M. (Kirchner) Hrovat (“Mother”) appeals from the trial court’s order denying her verified notice of intent to relocate. Thomas W. Kirchner (“Father”) cross-appeals contending that the trial court erred by denying his motion for summary judgment. We restate the following issues presented for our review:

- I. Whether the trial court abused its discretion by denying Mother’s verified notice of intent to relocate; and
- II. Whether the trial court erred by denying Father’s motion for summary judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father’s marriage was dissolved on January 11, 2006. Pursuant to a property settlement, custody, and support agreement entered into by the parties, Mother was to be the primary physical custodian of their two daughters, with Father to have visitation according to the Indiana Parenting Time Guidelines or as otherwise agreed. Mother and Father share joint legal custody of the children, and they all live in Terre Haute, Indiana, where both parents have been active participants in the upbringing of their children.

Mother remarried, and her husband, Blair Hrovat (“Husband”), was at that time the offensive coordinator for the Indiana State University Football program. Both Mother and Husband were aware prior to their marriage in 2006 that Husband’s contract would not be renewed and that Husband might have to relocate from Terre Haute. Mother and Father had discussions about the possibility of relocation, and Mother was aware that Father would object to any relocation of their children. Mother also was aware prior to their marriage that

Husband's employment had led him to five different states in fourteen years.

On August 19, 2008, Mother filed a verified notice of intent to relocate with the children to South Carolina to be with Husband, who had secured employment there. After a two-day hearing on the matter at the end of January 2009, the trial court entered its findings of fact, conclusions thereon and judgment, denying Mother's request and granting Father's request for a permanent order preventing relocation to South Carolina on February 11, 2009.

On May 12, 2010, Mother filed a verified notice of intent to relocate in which she stated a desire to relocate with the children to Evansville, Indiana. On July 7, 2010, Father filed an objection to the proposed move, along with a petition to modify parenting time and child support. On August 17, 2010, Mother filed an additional verified notice of intent to relocate in which she expressed her desire to move to an apartment on the south side of Terre Haute. Later, on September 27, 2010, Mother filed a verified withdrawal of her notice of intent to relocate in which she contended that she would remain at her current residence in Terre Haute. The matter of Mother's relocation was not resolved, however, and the issue of a potential relocation of Mother and the children to Princeton, Indiana, was litigated at a hearing held in November 2010 and January 2011. On January 7, 2011, the trial court issued its order denying Mother's request to relocate to Princeton, Indiana, modified the order on parenting time to reflect the actual practice and agreement of the parties, and declined to modify the child support order.¹ Mother now appeals, and Father cross-appeals.

¹ We commend the trial court on the thoroughness and clarity of its findings and order which have greatly facilitated our appellate review of this matter.

DISCUSSION AND DECISION

I. Denial of Request to Relocate

Mother argues that the trial court abused its discretion by denying her request to relocate to Princeton, Indiana. Pursuant to the relocation statutes enacted in 2006, a relocating parent must file a notice of intent to relocate and send a copy of the notice to any nonrelocating parent. Ind. Code § 31-17-2.2-1(a). The nonrelocating parent can simply not respond to the notice, thus allowing the relocating custodial parent to relocate. Ind. Code § 31-17-2.2-5(e). Otherwise, the nonrelocating parent may object to the relocation by: (1) filing a motion to modify the custody order; or (2) by filing, within sixty days of receipt of the notice, a motion to prevent relocation of the child. *Baxendale v. Raich*, 878 N.E.2d 1252, 1256 n.5 (Ind. 2008); *see also* Ind. Code § 31-17-2.2-5(a). Upon the request of either party, the trial court shall hold a full evidentiary hearing to grant or deny a motion to prevent relocation of the child or children. Ind. Code § 31-17-2.2-5(b). At that hearing, the relocating parent has the burden of proving that the proposed relocation is made in good faith and for a legitimate reason. Ind. Code § 31-17-2.2-5(c). Upon meeting that burden, the burden then shifts to the nonrelocating parent to show the proposed relocation is not in the best interest of the child or children. Ind. Code § 31-17-2.2-5(d).

The trial court shall 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

- (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time . . . 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.

Ind. Code § 31-17-2.2-1(b); *Swadner v. Swadner*, 897 N.E.2d 966, 976-77 (Ind. Ct. App. 2008).

Here, the trial court found that Mother's proposed request for relocation was made in good faith and for a legitimate reason. *Appellant's App.* at 14-15. The record supported the inference that Mother wished to remain the custodial parent of the children and also wished to relocate to the place of Husband's current employment. *Id.* at 15. At that point, as recognized by the trial court, the burden shifted to Father to prove by a preponderance of the evidence that the proposed move was not in the best interests of the children. Ind. Code § 31-17-2.2-5(d).

The evidence at the hearings established what the trial court noted in its entry, what had already been found in prior litigation over the proposed move to South Carolina as follows:

[Father] has regularly exercised parenting time with his children every other weekend; overnight on his midweek visitation; every other Tuesday as he is

responsible for transporting the children to and from their gymnastics practice (in which he stays to watch his children practice); and two overnights a week during the summer in addition to every other weekend.

Id. (quoting from a prior order entered on February 11, 2009). The trial court found that the pattern of parenting time had remained relatively unchanged during the four years since the dissolution of the marriage and that the children were not only well-adjusted, but were thriving under that arrangement. *Id.* The trial court also noted that there was no guarantee that Husband would be eligible to honor his teaching contract in Princeton as he needed to secure an Indiana teacher's license. *Id.* We conclude that the trial court did not abuse its discretion in concluding that Mother's request to relocate was not in the best interests of the children.

Mother does not contend that the trial court misstated the law. Rather, Mother's argument is a request that we reweigh the evidence presented to the trial court, a task we are forbidden to undertake. *Baxendale*, 878 N.E.2d at 1257. Our Supreme Court has expressed a "preference for granting latitude and deference to our trial judges in family law matters." *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993). Such deference is to be afforded trial judges' "unique, direct interactions with the parties face-to-face." *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). "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.* Therefore, we "will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment. The concern for

finality in custody matters reinforces this doctrine.” *Baxendale*, 878 N.E.2d at 1257-58. The trial court did not err.

II. Denial of Motion For Summary Judgment

Father cross-appeals asking this court to affirm the trial court’s decision to deny Mother’s relocation request. In the event that we were to reverse the trial court’s decision, Father argues, in the alternative, that the trial court erred by denying his motion for summary judgment. Because we affirm the trial court’s decision to deny the relocation request, we need not reach the issue of the denial of Father’s motion for summary judgment.

Affirmed.

BAKER, J., and BROWN, J., concur.