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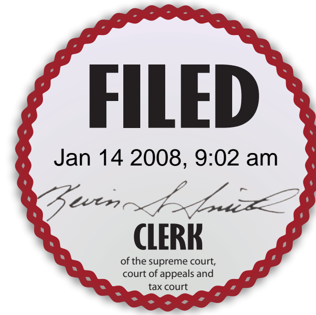

ATTORNEYS FOR APPELLANT:

AMANDA R. BLYSTONE
ANDREW Z. SOSHNICK
Baker & Daniels, LLP
Indianapolis, Indiana

WILLIAM L. WILSON
Anderson, Agostino & Keller, P.C.
South Bend, Indiana

ATTORNEY FOR APPELLEE:

LEN C. ZAPPIA
Len Zappia & Associates
South Bend, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JULIE A. RATLIFF,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-0708-CV-365
	)	
BRYAN S. RATLIFF,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable William Means, Judge
Cause No. 71D04-0607-DR-450

January 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Julie A. Ratliff appeals the trial court's custody and parenting time orders that were entered following her notice of intent to move to Cincinnati, Ohio. Specifically, Julie argues that the trial court erred in denying her petition to relocate and in determining that her former husband, appellee-petitioner Scott Ratliff, should have physical custody of the parties' minor daughter, D.R. Julie also contends that the trial court erred in granting her less parenting time than that provided by the Indiana Parenting Time Guidelines (Guidelines) without explaining its reasons for the deviation.

We conclude that the trial court properly exercised its discretion in denying Julie's petition to relocate with D.R. and in granting physical custody of D.R. to Scott. However, because the trial court did not explain its reasons for deviating from the Guidelines when determining parenting time, we remand this cause to the trial court with instructions to enter a visitation order that either mirrors the Guidelines or sets forth its reasons for the deviation.

FACTS

Scott graduated from Ball State University in 1987 with a degree in education and a minor in computer science. Thereafter, he obtained a full-time position as a computer technician with Alltrista Corporation (Alltrista) and was eventually promoted to the manager of corporate computer technology.

While working at Alltrista in 1998, Scott met Julie, who was also working there. The two married in 1999 and Scott left Alltrista shortly thereafter and began working as the director of information technology at Central Indiana Orthopedics (Indiana Orthopedics), where he remained until six weeks after D.R.'s birth on February 3, 2003.

After Scott left his position at Indiana Orthopedics, he stayed at home and cared for D.R. for approximately six months while Julie continued working. Thereafter, Scott began working one to four days per week as a substitute teacher in the Muncie school system. Scott then obtained a position as a full-time high school mathematics teacher during the 2004-05 school year.

At some point, Julie decided to pursue an MBA degree at the University of Notre Dame (Notre Dame). As a result, Scott and Julie sold their Muncie residence and moved to South Bend. While Julie worked toward her MBA degree, Scott taught math at Elkhart Central High School. In May 2006, Julie accepted a summer intern position with CB Fleet in Lynchburg, Virginia. Julie left Indiana in the middle of May 2006 to relocate to Virginia temporarily for the internship. Because Scott had teaching responsibilities through the end of the school year in June 2006, the parties decided that it would be in D.R.'s best interest to remain in South Bend with Scott.

During the summer of 2006, the parties separated, and Scott filed a petition for dissolution of marriage on July 12, 2006. On August 9, 2006, the parties entered into a provisional order, which provided that they were to continue the joint custody arrangement that they had observed since the separation. In particular, the order provided for shared parenting time on an alternating week basis, with parenting time exchanges occurring on Fridays. Scott continued to work as a math teacher while Julie continued to work toward her MBA degree.

On January 24, 2007, Julie filed a verified notice of intent to relocate pursuant to

Indiana Code section 31-17-2.2, indicating her intent to move from South Bend to Cincinnati with D.R. for the purpose of obtaining employment. Scott objected, and the trial court conducted a hearing on April 24, 2007. At the hearing, Julie asked the trial court to issue a temporary order permitting her and D.R. to relocate to Cincinnati pending the trial court's final custody determination. The trial court denied Julie's request, ordered the parties to continue the existing joint custody and parenting time arrangement, and set the case for a full evidentiary hearing on June 4, 2007.

On May 20, 2007, Julie received her MBA degree from Notre Dame and ultimately accepted an offer of employment with a Johnson & Johnson subsidiary corporation located in Cincinnati. In order for D.R. to be closer to her relatives, Scott decided to return to Muncie—where he had lived for forty-one years—and purchase a residence there.

Following an evidentiary hearing that concluded on June 5, 2007, the trial court granted the parties joint legal custody of D.R., denied Julie's request to relocate with D.R., granted Scott's request for physical custody of D.R., and ordered a parenting time schedule for Julie. The trial court sent a letter to counsel for both parties on June 12, 2007, which provided in pertinent part as follows:

> I feel that Muncie has more to offer [D.R.] than does Cincinnati at this juncture. She has both sets of grandparents there and I expect the Wife's parents to be able to exercise regular visitation with [D.R.] If that visitation is hindered in any way I will step in and immediately correct it.
>
> To sum up, [D.R.] has a strong support group in Muncie and would have nothing comparable in Cincinnati.
>
> Second, the Husband will be able to spend more time with [D.R.] Quite frankly, I know school teaching as a profession and teachers are not

> overworked and have a great deal of time off. In this case, as a math teacher the Husband need not burn the midnight oil grading essays—the answers on a math exam are either right or wrong and easily graded. He will have a great deal of time to devote to [D.R.]
>
> I was very impressed with the testimony of both Notre Dame professors. I can't begin to express my admiration for the Wife's academic achievements in such a rigorous program as she endured in the MBA program at Notre Dame and additionally she was also near the top of her class.
>
> I learned from Professor O'Rourke's testimony what a fine company Johnson & Johnson is to work for particularly in the area of wanting family to play a very important role in the lives of all of their employees.
>
> I have no doubt that the Wife will be on no more than a 40 hour per week schedule in the foreseeable future; she has rented a very comfortable apartment with a good day care nearby.
>
> Two things disturb me about the Wife. One, she sought originally to go to Johnson & Johnson's corporate headquarters for a marketing position in New Jersey. Is that desire gone or just temporarily "on hold?" Second, no matter how you slice it—the Wife is career driven. It would be difficult to believe that she would move laterally and not attempt to move up. I know from experience that no one ever got up the ladder of success on a 40 hour week. I sense that she will be working at something [sic] 50-60 hours per week. It's in her nature.
>
> I am in no way suggesting that the Wife would ever neglect [D.R.] What I am suggesting is that with such drive she is apt to neglect herself and pay for it somewhere down the line in the future which could adversely affect [D.R.] I am concerned.

Appellant's App. p. 7-8. Julie now appeals.

DISCUSSION AND DECISION

I. Denial of Request to Relocate and Physical Custody

Julie argues that the trial court erred in denying her request to relocate to Cincinnati with D.R. and in awarding physical custody of D.R. to Scott. In essence, Julie contends that

the evidence failed to establish that it was in D.R.'s best interests for Scott to have physical custody of her.

In resolving this issue, we initially observe that we review custody modifications for an abuse of discretion "with a 'preference for granting latitude and deference to our trial judges in family law matters.'" Green v. Green, 843 N.E.2d 23, 26 (Ind. Ct. App. 2006) (quoting Apter v. Ross, 781 N.E.2d 744, 757 (Ind. Ct. App. 2003)). When reviewing a trial court's decision modifying custody, we may not reweigh the evidence or judge the credibility of the witnesses. Id. Instead, we consider only the evidence most favorable to the judgment and any reasonable inferences therefrom. Id. It must be determined whether the evidence supports the trial court's factual findings and whether the findings support the trial court's judgment.[1] The burden of demonstrating that an existing child custody arrangement should be modified rests with the party seeking the modification. Id. at 27.

We note that in determining whether to grant a parent's request for relocation, the following factors should be considered:

> (1) The distance involved in the proposed change of residence.
> (2) The hardship and expense involved for the non-relocating individual to exercise parenting time. . . .
> (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time 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.

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[1] As indicated above, the trial court sent a letter to Julie and Scott's counsel explaining its reasons for the decision. The letter was specifically incorporated into the Custody Order; therefore, the letter constitutes sua sponte findings of fact that are reviewed in accordance with the standard set forth above. Snemis v. Snemis, 575 N.E.2d 650, 652 (Ind. Ct. App. 1991).

(5) The reasons provided by the:
(A) relocating individual for seeking relocation; and
(B) nonrelocating parent for opposing relocation of the child.
(6) Other factors affecting the best interest of the child.

I.C. § 31-17-2.2-1(b). Also, when a parent objects to the relocation of the other parent with a child, the relocating parent bears the burden of showing that the move is made in good faith and for a legitimate reason. I.C. § 31-17-2.2-5(c). The burden then shifts to the non-relocating parent to show that the relocation is "not in the best interest of the child." I.C. § 31-17-2.2-5(d).

Similarly, we note that the trial court should enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, Indiana Code section 31-17-2-8 provides that the trial court must consider all relevant factors including:

(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:
(A) the child's parent or parents;
(B) the child's sibling; and
(C) any other person who may significantly affect the child's best interests.
(5) The child's adjustment to the child's:
(A) home;
(B) school; and
(C) community.
(6) The mental and physical health of all individuals involved.
(7) Evidence of a pattern of domestic or family violence by either parent.

Additionally, a modification of custody requires the trial court to find that (1) the modification of custody is in the child's best interests; and (2) there is a substantial change in

one or more of the statutory factors that the trial court may consider when it originally determines custody. I.C. § 31-17-2-8, 21; Tompa v. Tompa, 867 N.E.2d 158, 163 (Ind. Ct. App. 2007).

As discussed above, the evidence established that Scott was D.R.'s primary caregiver during the first thirteen months of her life. Appellant's App. p. 10, 33. Indeed, he was a stay-at-home dad who bathed, played with, and cared for D.R. Id. at 10, 51, 63. Julie acknowledged that D.R. loved Scott and that Scott was a good father. Id. at 24-26. The evidence further established that Scott was able to provide stability for D.R. and that, in the past, Julie had demonstrated ever-changing educational and career goals. During the parties' seven-year marriage, Julie had enrolled in and attended three different graduate programs. Id. at 8-9. Also, from the time that Julie graduated from Ball State in 2001 to the time she attended Notre Dame in 2005, she had worked for five different companies. Id. at 7, 11-12.

Notwithstanding Julie's contentions, the evidence supported the trial court's conclusion that Scott will be able to spend more time with D.R. As the trial court acknowledged, Scott does not work during the summer because he is a teacher and he has additional vacation days. When Scott was not teaching, he kept D.R. at home and did not send her to a daycare facility. Id. at 47.

During the separation period, Julie's schedule as an MBA student was flexible. However, since Julie has become employed on a full-time basis, she will be working as a full-time manager and will no longer have a three-month summer vacation. Id. at 17. Julie

admitted that she has a propensity to "over work," and she acknowledged to Scott that she is a "workaholic." Id. at 65-66.

As for Julie's request to relocate to Cincinnati, the evidence showed that D.R. had a strong support group in Muncie and would have nothing comparable in Cincinnati. Id. at 6. More specifically, D.R.'s grandparents reside in Muncie, along with a number of aunts, uncles, nieces, and nephews. Id. at 13-14, 22. If D.R. was not in Muncie, she would be unable to play with her cousins and interact with her grandparents on a weekly basis. D.R. would also lack the benefit of a familiar environment. Id. at 58-59.

The residence that Scott purchased in Muncie is located in a safe neighborhood, and he knows many of his neighbors. The home is adjacent to a park with a playground and biking trails. Moreover, the house is near an elementary school and Ball State University, where there are numerous activities for children. Id. at 54-55.

In contrast, there is no support group for D.R. in Cincinnati, as her nearest relatives are nearly two hours away. Id. at 18. Julie had no one else to pick up D.R. from daycare in the event of an emergency. Id. at 21. Even though Julie maintains that Scott could obtain employment in Cincinnati, the evidence established that Scott is not licensed to teach in Ohio. Id. at 56.

As for the distance involved, the evidence demonstrated that Scott's home in Muncie and Julie's apartment in Cincinnati would be approximately two hours apart. Scott testified that he would be willing to share the transportation between Muncie and Cincinnati. Scott was also willing to accommodate Julie's schedule and to work with Julie to maximize her

time with D.R. Id. at 15, 53, 62, 69. In sum, the evidence established that Scott has put significant thought and action into the preservation of the relationship between Julie and D.R.

In our view, it is apparent that the trial court correctly considered all of the evidence and its application to both the relocation and custody statutes. Although Julie has directed us to isolated disagreements between her and Scott with regard to the custody of D.R., that evidence was not favorable to the trial court's judgment and we may therefore not consider it. As a result, we cannot say that the trial court's decision granting Scott custody of D.R. contradicts the logic and effect of the evidence before it, or the reasonable inferences drawn therefrom. Therefore, we conclude that the trial court properly denied Julie's petition to relocate to Cincinnati with D.R.

II. Parenting Time

Julie next contends that the trial court erred in awarding her less parenting time with D.R. than she was entitled to under the Guidelines. Julie also claims that the trial court impermissibly deviated from the Guidelines without entering an order explaining its reasons for doing so.

We review a trial court's determination of a parenting time issue for an abuse of discretion. J.M. v. N.M., 844 N.E.2d 590, 599 (Ind. Ct. App. 2006), trans. denied. No abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination. Id. We will neither reweigh evidence nor judge the credibility of witnesses. Id. In all parenting time controversies, courts are required to give foremost consideration to the best interests of the child. Id.

The Guidelines provide in relevant part that

> [t]here is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases covered by these guidelines. Any deviation from these Guidelines by either the parties or the court must be accompanied by a written explanation indicating why the deviation is necessary.

Ind. Parenting Time Guidelines, Scope of Application § 2; see also Haley v. Haley, 771 N.E.2d 743, 752 (Ind. Ct. App. 2002). The Guidelines also provide that for children ages five years and older—which D.R. will be by the summer of 2008—the non-custodial parent shall have parenting time equal to "one-half (1/2) of the summer vacation," with the parent's half of summer vacation "either consecutive or split into two (2) segments." Parenting Time G. §II.B.3.

In this case, the trial court ordered Julie's parenting time as follows:

> i. Summer of 2007: Alternating weeks from Friday evening until the subsequent Friday evening.
> ii. During the school years the Indiana Parenting Time Guidelines shall apply.
> iii. Beginning with the summer of 2008: Beginning with the commencement of Father's break from school; three weekends per month as agreed to by the parties from Friday evening until Sunday evening.
> iv. Wife's two (2) week vacation.
> v. Commensurate with the Indiana Parenting Time Guidelines as to holidays and birthdays.
> vi. Additional visitation as may be agreed upon by the parties.

Appellant's App. p. 4-5, 10.

In examining the above, it is apparent that the trial court's order amounts to a maximum of nine weekends during summer break if the trial court intended that Julie receive the full three weekends during the months of June and August, when Scott will be in school

part of the time. Appellant's App. p. 4-5, 10. Julie argues—and Scott does not contest—that this order provides for substantially less time than the Guidelines permit in these circumstances. More specifically, the Guidelines would provide Julie with five weeks of parenting time in the summer for a summer break lasting ten weeks. Parenting Time G. § II.B.3.

Although Scott responds that the "trial court did not manifestly abuse its discretion" because "there was a rational basis in the record for supporting [the] parenting time determination," appellee's br. p. 18-19, the trial court did not offer any explanation regarding its deviation from the Guidelines. Therefore, we must remand this cause to the trial court with instructions that it enter a visitation order that either mirrors the Guidelines or provides the parties with an explanation for the deviation from the Guidelines. Haley, 771 N.E.2d at 752.

The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions.

DARDEN, J., and BRADFORD, J., concur.