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Everyday Challenges in Family Law

December 1, 2021

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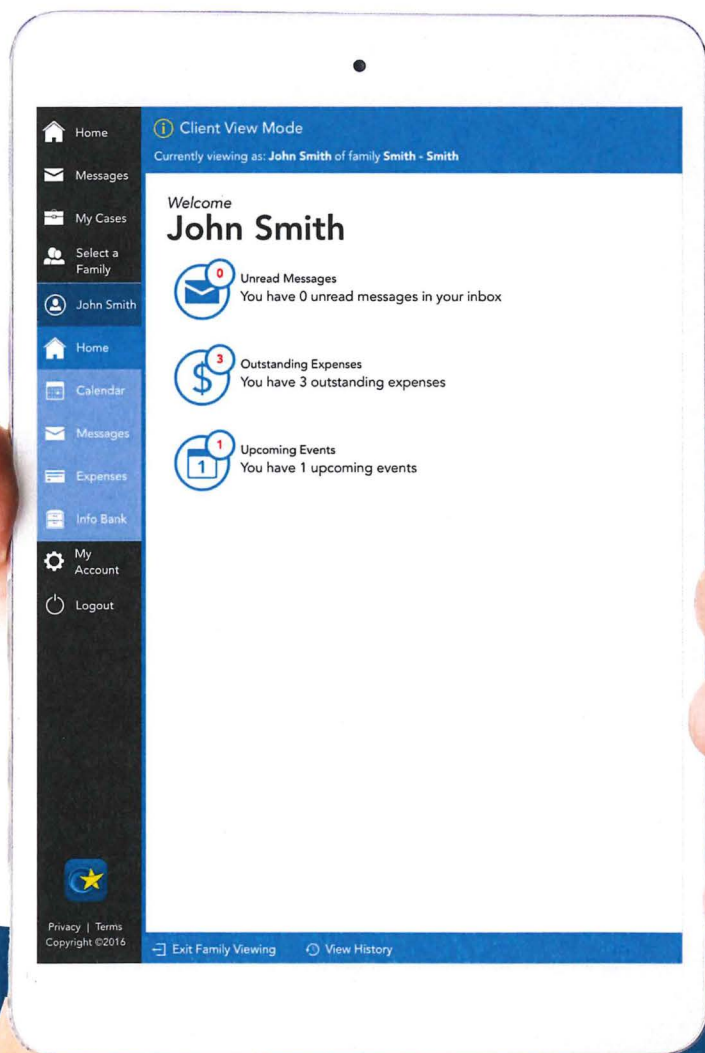
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Please feel free to contact ICLEF with additional suggestions on ways we may further improve our electronic publications. Thank you.

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Everyday Challenges in Family Law

December 1, 2021

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Everyday Challenges in Family Law

Agenda



- 8:50 A.M. Welcome and Introduction
Timothy M. Sledd, Chair
comments from *Nathan Baily*, Ourfamilywizard.com
- 9:00 A.M. Navigating the Revised Indiana Parenting Time Guidelines
Magistrate Judge Andrew R. Bloch & Magistrate Judge Marie L. Kern
- 10:30 A.M. Coffee Break
- 10:45 A.M. Handling variable incomes/bonuses in child support calculations:
True-up approaches
Lana L. Pendoski
- 11:15 A.M. Handling the Child Tax Credit Debacle
Mark Idzik
- 12:15 P.M. Lunch (on your own)
- 1:15 P.M. Building Your Client's Relocation Case for Trial
Audrey R. Brittingham & Timothy M. Sledd
- 2:15 P.M. Navigating the Unruly Client
Elizabeth Eichholtz Walker & Kenneth C. Pierce, II
- 3:15 P.M. Refreshment Break
- 3:30 P.M. Settling the Unsettled: Term Sheets and MOU's in Mediation
Richard A. Mann
- 4:30 P.M. Adjournment

December 1, 2021

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Everyday Challenges in Family Law

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December 1, 2021

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Timothy M. Sledd is an attorney in the family law division of Mallor Grodner, LLP.

As a Certified Family Law Specialist (by the Family Law Certification Board) Tim is recognized as having achieved extraordinary knowledge and skill through his level of experience and expertise in family law.

Tim is a registered mediator for both civil matters and family law matters. He has mediated hundreds of cases using patience, creativity, effective communication, and a “stay in the fight” attitude to help parties come to an agreed resolution of their legal issues. He believes in helping clients craft the outcome of their cases, and believes mediation is a great tool for doing this and avoiding the risks of the courtroom.

Tim is a collaboratively trained attorney by the International Academy of Collaborative Professionals. The collaborative model minimizes conflict as relationships transition and allows divorcing couples to maintain privacy, dignity, and control during this most sensitive time.

Prior to joining Mallor Grodner, Tim sat as the Juvenile Law Judge (Referee) in Lawrence County where he presided over paternity, custody, child support, protective order, and CHINS cases. From this experience on the bench, he honed his ability to see the many sides of complex legal issues and how to formulate cases to be most effectively heard by the Court.

Tim spent 6 years as the Chief Deputy Prosecuting Attorney in Lawrence County, Indiana. He was in a courtroom almost every day, advocating, arguing, and litigating a wide variety of cases. In this role, it was very important to be able to balance the interests and needs of victims of crime with the full power of the law and its ability to punish offenders.

Tim is an aggressive competitor. He holds the esteemed rank of black belt in Brazilian Jiu Jitsu, having trained in that martial art for over 23 years. He has owned two Jiu Jitsu gyms and traveled to many states and foreign countries to teach the art. Tim takes his determination to succeed in competition and applies it to his cases and clients.

Tim is married and the father two daughters and a son. He is active in his church and enjoys outdoor activities, reading, watching movies, and cooking.

Presentations:

2021 ICLEF Everyday Challenges in Family Law, Chair

2021 ICLEF Family Law Institute: “Mediation”

2021 ICLEF Family Law Institute: “Representing the Accused”

2021 ICLEF CME for Family Mediators: “Here to Stay: Virtual and Hybrid Mediations”

2020 ICLEF Everyday Challenges in Family Law, Chair

2020 ICLEF Everyday Challenges in Family Law: “How Reconciliation Agreements Can Protect Our Clients”

2020 ICLEF Family Law Institute: “Mediation in the Zoom Era”

2020 ICLEF Advanced Family Law Masters Series: “Virtual Mediations”

2019 ICLEF Challenges In Family Law: “Preparation and Advocacy for and During Mediations and Settlement Conferences”

Hon. Andrew Bloch

Magistrate, Hamilton County Superior Court, Noblesville



Magistrate Andrew R. Bloch serves as Magistrate for the Hamilton Superior Court, where he hears a variety of family, civil, and criminal matters. He is a Certified Family Law Specialist (Family Law Certification Board) and serves as the District 19 Representative to the Indiana Judge's Association where he represents Magistrates from Carroll, Tippecanoe, Benton, Fountain, Montgomery Warren, Clinton, Grant, Madison, Hancock, Henry, Rush, Boone, Hamilton, Hendricks, Morgan, Johnson, Shelby, Bartholomew, Brown, Jackson, Lawrence, Monroe, Daviess, Martin, Pike, Dubois, Spencer, Know, Gibson, Posey, Vanderburgh, and Warrick counties.

Prior to his appointment to the bench, he was a Registered Family Law Mediator, Trained Family Law Arbitrator, Trained Guardian Ad Litem, and Trained in Collaborative Family Law (CIACP). He received his B.S.B.A. in Information Systems from Xavier University and his J.D. from the Indiana School of Law – Indianapolis (n/k/a Robert McKinney School of Law), where he was also awarded the Norman Lefstein Award of Excellence. Drew was named a "Super Lawyer" for 2019 as well as a "Rising Star" in Family Law in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, as published in Indianapolis Monthly. He is a member of the Domestic Relations Committee, as appointed by the Indiana Supreme Court, Hamilton County Bar Association; Indianapolis Bar Association (Family Law Executive Committee); and Indiana State Bar Association (Family Law Executive Committee). Drew is a Co-Chair of the current Indiana State Bar Summer Study Committee of Presumptive Joint Physical Custody. He previously served as a member of the American Bar Association (Chair of the Bankruptcy Committee - Family Law Section). As well as a member of the Muncie Bar Association (Executive Committee) and a former member of the Ratliff-Cox Inns of Court.

Drew serves as Secretary on the Board of the Indiana Continuing Legal Education Forum (ICLEF) and is a four-time chair of the Advanced Family Law (South) Program.

Drew is a sought-after presenter for several organizations and a featured speaker on a variety of topics across the state of Indiana. Formerly, as a Partner at Cross, Pennamped, Woolsey & Glazier, P.C., he devoted 100% of his practice to family law matters including mediation, arbitration, trial work, and appeals. Before joining Cross, Pennamped, Woolsey & Glazier, P.C. Drew served as a Commissioner in the Marion Circuit Court – Paternity Division, hearing custody, visitation, and child support cases. He also served as Judge Pro Tem in Hamilton, Delaware, and Marion County in a variety of family law, civil, and criminal matters.

In addition to his service on the Board at ICLEF, Drew served as the Indianapolis Alumni Chapter President for Xavier University for six years. He is a member of the Lew Hirt Society at Xavier University. He also served as a Board Member on multiple charter school board across the state of Indiana and has lectured on Open Door Law in Indiana with respect to charter schools.

Hon. Marie Kern

Magistrate, Marion Superior Court (Family Div.), Indianapolis



Marie Kern now serves in the Family Division of the Marion Superior Court. She became a Master Commissioner in June 2008 and had been assigned to Marion Circuit Court, Paternity Division since April 1, 2010. On January 1, 2015, she became the Chief Magistrate in the Paternity Division. Prior to becoming a judicial officer, Marie began her career as a full-time public defender with the Marion County Public Defender Agency in 1998. That experience allowed her to become an associate at Kiefer & McGoff in 2001, before establishing her own legal practice that focused on criminal defense and family law, while simultaneously resuming her position as a public defender, on a part-time basis for the Marion County Public Defender Agency. Marie obtained her Bachelor's degree from Indiana University in Bloomington, Indiana in 1994 and then returned to law school in 1995 at Indiana University School of Law-Indianapolis. She has been admitted to the Indiana Bar since October 1998.

Audrey Brittingham

Mallor Grodner Attorneys, Bloomington and Indianapolis



Audrey R. Brittingham is an associate attorney with Mallor Grodner LLP, assisting clients in family law matters. Her experience includes working with clients on premarital agreements, divorce, child custody, and child support issues. Audrey recently completed the 2021 American Academy of Matrimonial Lawyer's Institute for Family Law Associates. Audrey received her law degree from the Indiana University Maurer School of Law. While attending law school, she served as an executive problem writer on the Advocacy Board for the Sherman Minton Moot Court Competition. She was also executive symposium editor for the Indiana Journal of Law and Social Equality, where she recruited speakers and organized CLE events for the Journal and larger Indiana legal community. Before joining Mallor Grodner, Audrey was a law clerk in the Monroe Circuit Court IV. Audrey is currently an active member of the Indiana State Bar Association's litigation section. She also serves on the Monroe County CASA Board of Directors and is a third-year member of Echo Dance Company.



Mark Idzik

Mark graduated from Indiana University in 1999 with Bachelor's degrees in Accounting and Finance from the Kelley School of Business in Bloomington. After graduation, Mark joined a national accounting firm where he focused on business valuation and litigation support with an emphasis on divorce and estate planning engagements. In addition to receiving his Certified Public Accountant (CPA) license in 2003, Mark has also held the Accredited in Business Valuation (ABV) and Accredited Senior Appraiser (ASA) designations, demonstrating knowledge and expertise in the valuation of various assets (each of which licenses are inactive at this time). From there, Mark went on to serve in multiple corporate financial planning roles for two of the fastest growing companies in central Indiana.

Mark, originally from South Bend, now resides in Carmel with his wife Carrie and two boys, Jack and Ben. In his free time, Mark enjoys spending time with his family and friends, coaching his sons' various sports teams, listening to live music and watching Notre Dame Football and IU Basketball.

Richard A. Mann

Mann Law, P.C., Indianapolis



Mr. Mann has been selected for inclusion in Super Lawyers SuperLawyers Edition for 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018.

- Mr. Mann is a Certified Family Law Specialist by the Family Law Certification Board. Many think this certification applies only to divorce, it also applies to custody, support, orders of protection (commonly called protective orders or peace bonds), visitation matters, adoptions, guardianships, juvenile matters such as paternity, criminal and Children in need of services.
- Mr. Mann and his firm are proud to have been one of the firms who represented Same-Sex couples who were successful in overturning Indiana's ban on Same-Sex marriage. He continues to fight discrimination in the law.
- Mr. Mann has been practicing Family Law for more than 34 years in the Indianapolis area and throughout the State of Indiana.
- Mr. Mann regularly practices in the Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, and Shelby County courts.
- Mr. Mann is a Registered Family Law and Civil Law Mediator. He also is Guardian ad Litem and Parenting Coordinator. Mr. Mann uses his experience in many areas of practice to aggressively represent his clients. Due to his experience in criminal, business and tax arenas Mr. Mann provides a more full service representation in Family Law matters.
- While a large portion of Mr. Mann's practice is in the Family Law area he also represents several corporations on contract, personnel and other matters. He also has a varied General Practice in wills, estates, juvenile matters, collections, probate throughout the state of Indiana.
- Mr. Mann has tried murder cases as well as a death penalty case.
- Mr. Mann has a Martindale-Hubbell A-V Rating, the highest possible rating in both legal ability and ethical standards. This rating is based upon confidential evaluations by attorneys and judges who are familiar with Mr. Mann.
- Mr. Mann was admitted to the Bar of the Supreme Court of the United States of America on May 18, 2015.

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Lana Pendoski

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Lana practices in all areas of family law and domestic relations including dissolution, property division, paternity, custody modification, child support, premarital agreements, guardianships, and property settlement. Lana is trained as a Parenting Coordinator and provides Parenting Coordination services in high conflict divorce and custody cases. Lana is also a registered domestic relations mediator. She is the Chair of the Indiana Continuing Legal Education (ICLEF) CLE/CME for Family Law Mediators and has lectured extensively to both attorneys and mental health professionals on the issues of divorce, child support, property division, record production, child custody, ethical issues and other family law issues. Her seminar materials on the topics of Preparing Your Client for a Custody Evaluation and 10 Hot Tips on QDRO's (Qualified Domestic Relations Orders) have been published by ICLEF Law Tips Blog. Lana is a member of the Hamilton County, Indianapolis, Indiana State, and Tennessee State Bar Associations, and a member of the Association of the Family and Conciliation Courts (AFCC). Lana serves as the Treasurer of the Indiana State Bar Association Family Law & Juvenile Law Section. She is also a member of Grievance Committee B of the Indianapolis Bar Association. Her past community activities include previously serving as a Board Member of the Hands of Hope Adoption and Orphan Care Ministry, former member of the Professional Advisory Committee for Buchanan Pastoral Counseling, and a member of the executive committee of the Women and the Law Division of the Indianapolis Bar Association. She attended Ball State University (B.S., cum laude, 1998); legal education, Valparaiso University (J.D., 1997).

Kenneth C. Pierce, II
Blanton & Pierce, Jeffersonville



Partner *Ken Pierce* provides many services to our Indiana clients. Mr. Pierce devotes about 60% of his time practicing family and domestic law, including but not limited to, divorce, paternity, modification to current orders and adoptions. The remaining 40% of his time is spent focusing on criminal law and civil litigation.

Mr. Pierce joined the firm in December of 2007. Mr. Pierce was elected as the Jeffersonville City Court Judge in November 2007 and presided over the Court from January 2008 until the Jeffersonville City Council abolished the Jeffersonville City Court on December 31, 2015.



ELIZABETH EICHHOLTZ WALKER is a partner in the firm of Becker Bouwkamp Walker, PC in Indianapolis, Indiana. Elizabeth has focused her practice on exclusively family law matters since graduation from law school. Elizabeth represents clients in relationship transitions of all types, including contested and uncontested divorce, child custody, child support, modification actions, contempt proceedings, relocations, and parenting time issues. Her practice is full-service which includes prenuptial and postnuptial agreements, guardianship or third party custody, adoption, juvenile paternity actions, grandparent visitation rights, family law appeals, and other family law issues. Elizabeth received her B.A. from Purdue University in Political Science and her J.D. at Indiana University Robert McKinney School of Law. She is a member of the Indianapolis Bar Association, Hamilton County Bar Association, and the Boone County Bar Association. Elizabeth is a Distinguished Fellow of the Indianapolis Bar Foundation, has been recognized as an Indiana Super Lawyer Rising Star in 2015- 2020 and as a “Leadership in Law Up & Coming Lawyer” in the Indiana Lawyer newspaper in 2016. She also serves as the secretary to the Board of the Indianapolis Bar Foundation and is a Board Member of the Central Indiana Association of Collaborative Professionals (CIACP). Elizabeth is an experienced trial lawyer who works hard both in the courtroom and in mediation to advance her clients’ interests. Elizabeth serves as a private and volunteer court-appointed Guardian Ad Litem in the Hamilton County and Boone County Courts on behalf of children. Elizabeth is married to her husband, Aaron and enjoys spending quality time with Aaron and their two fur babies, Gus & Tuck. Her hobbies include reading, fishing, being outdoors and cooking.

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Indiana Parenting Time Guidelines

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Magistrate Marie L. Kern**

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True-Up Approaches..... Lana L. Pendoski

PowerPoint Presentation

Section Three

Everyday Challenges in Family Law

Child Related Tax Credits..... Mark E. Idzik, CPA, CDFA®

PowerPoint Presentation

Section Four

Building Your Relocation

**Case for Trial..... Timothy M. Sledd
Audrey Brittingham**

PowerPoint Presentation

In re Paternity of K.C., 171 N.E.3d 659 (2021)

Lynn v. Freeman, 157 N.E.3d 17 (2020)

Section Five

**Navigating the Unruly Client.....Elizabeth Eichholtz Walker
Kenneth C. Pierce, II**

Section Six

**Settling the Unsettled: Term Sheets
and MOU's in Mediation.....Richard A. Mann**

Section One

Indiana Parenting Time Guidelines Revisions – Effective January 1, 2022

Magistrate Andrew R. Bloch
Hamilton County Superior Court
Noblesville, Indiana

Magistrate Marie L. Kern
Marion County Circuit Court
Indianapolis, Indiana

Section One

Indiana Parenting Time Guidelines

**Revisions – Effective January 1, 2022..... Magistrate Andrew R. Bloch
Magistrate Marie L. Kern**



INDIANA PARENTING TIME GUIDELINES REVISIONS

EFFECTIVE JANUARY 1, 2022

DOMESTIC RELATIONS COMMITTEE OF THE
JUDICIAL CONFERENCE OF INDIANA

APPROVED BY THE INDIANA SUPREME COURT

APPROVED BY THE BOARD OF DIRECTORS OF THE JUDICIAL CONFERENCE OF INDIANA

EFFECTIVE JANUARY 1, 2022

In the
Indiana Supreme Court

Cause No. 21S-MS-19



Order Amending Indiana Parenting Time Guidelines

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, the Indiana Parenting Time Guidelines are amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

...

GUIDELINES

...

PREAMBLE

...

B. PURPOSE OF COMMENTARY FOLLOWING GUIDELINE.

...

Commentary

1. Use of Term "Parenting Time." Throughout these Guidelines the words "parenting time" have been used instead of the word "visitation" so as to emphasize the importance of the time a parent spends with a child. The concept that a non-custodial parent "visits" with a child does not convey the nature of the parenting time relationship.

This amendment is effective January 1, 2022.

Done at Indianapolis, Indiana, on 10/5/2021.

A handwritten signature in black ink, appearing to read "Loretta H. Rush".



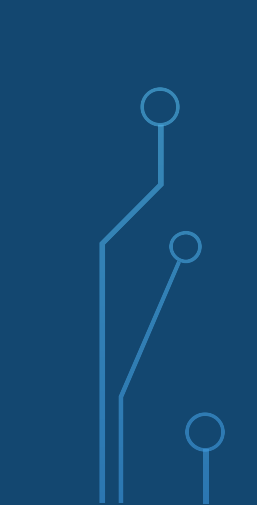
Loretta H. Rush
Chief Justice of Indiana

All Justices concur.



I. INTRODUCTION:

(A.) A BRIEF HISTORY ON THE INDIANA PARENTING TIME GUIDELINES (I.P.T.G.)

- Indiana Parenting Time Rules and Guidelines
 - Approved and Adopted by the Board of Directors of the Judicial Conference of Indiana and Indiana Supreme Court
 - Originally adopted in 2001
- 
- 
- 

I. (B.) OBJECTIVES OF I.P.T.G.

- To Be Used by:
 - Courts, Mediators, Attorneys, and Hoosier Parents
 - As a Model or Guide for Co-parenting
- PURPOSE
 - To be a MINIMUM time a NCP should spend with a child when parents unable to reach their own agreement.
 - To Encourage Parenting Time Plans or Calendars .
 - Indiana Parenting Time Calendar:
<https://public.courts.in.gov/PTC/#/>



I. (C.) INDIANA PARENTING TIME GUIDELINES ADOPT THE PREMISE:

- **IT IS USUALLY IN A CHILD'S BEST INTEREST TO
HAVE FREQUENT, MEANINGFUL AND CONTINUING
CONTACT WITH EACH PARENT**
- 
- 

I. (D.) WHO IS RESPONSIBLE FOR RECOMMENDING REVISIONS

- The Domestic Relations Committee of the Judicial Conference of Indiana
- Public comments received from:
 - Large and small counties
 - Judicial officers, attorneys and members of the public
 - All comments reviewed and considered

I. (E.) WHY REVISE THE IPTGS ??

- Domestic Relations Committee also revised the Indiana Child Support Guidelines (CSG)
- Last revision to the CSG was made effective January 1, 2020.
- A review of CSG is required every 4 years per federal law

I. (E.) WHY REVISE THE IPTGS ? (CONT'D)

- At CSG review, committee found: A great many of the public comments involved Parenting Time – NOT Child Support

I. (E.) WHY REVISE (CONT'D)

- NO MANDATORY REVIEW FOR THE IPTG
- IPTGs not revised significantly since 2013
- Committee members recognized Hoosier parents were devising parenting plans for shared parenting more frequently.

I. E. WHY REVISE (CONT'D)

- The following concept was not revised:
 - Indiana's Parenting Time Guidelines are child centered

II. OVERVIEW OF THE MAJOR CHANGES

- A. NEW Section on “**SHARED PARENTING**” with Factors to decide if it is appropriate (Section IV) with NEW **APPENDIX** of questions.
- B. Parenting Time during a Public Health Emergency (Section I, F.);
- C. Uniformity in pick-up and drop off times for Holidays and Birthdays, Extended PT (Section II, D and F.)

II. OVERVIEW OF THE MAJOR CHANGES (CONT'D)


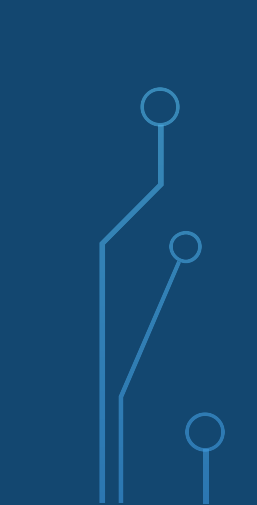
D. *New Factors* to consider for proposed parenting plans in excess of IPTG minimums (Section II, A. Commentary)

E. Improved language in other Sections including:
(cont'd next slide)



II. OVERVIEW OF MAJOR CHANGES (CONT'D)


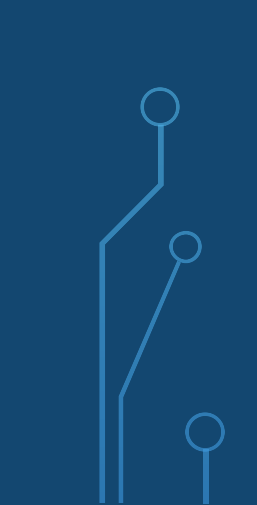
E. IMPROVED LANGUAGE (CONT'D)

- 1) Reduction of conflict during exchanges of children
(Section I, B. Commentary);
 - 2) Determination of “Regular Care Responsibilities”
(Section II. B. Commentary);
 - 3) Proper use of Make-up time with less conflict
(Section I, C. Guideline and Commentary);
- 
- 



II. OVERVIEW OF MAJOR CHANGES (CONT'D)

E. IMPROVED LANGUAGE (CONT'D)

- 4.) Holiday scheduling for younger Children;
(Section II, D. and F. 2);
 - 5.) Immunity for Parenting Coordinators
(Section V. B.);
 - 6.) Parallel Parenting section was removed.
(Fmr. Section IV)
- 
- 

II. (A.) SHARED PARENTING (SP) NEW SECTION IV

- **MOST SIGNIFICANT** - entirely NEW SECTION as
NEW Section IV Shared Parenting
- Designed to guide Parents, Bench & bar, Mediators.
- As more Hoosier parents are devising Shared Parenting arrangements.

II. (A.) SHARED PARENTING (CONT'D)

- SHARED PARENTING:
- Divided into:
 - A. Introduction To Shared Parenting; “An Alternate Parenting Plan”;
 - B. “Two Houses, One Home” discussion; and

II. (A.) SHARED PARENTING (CONT'D)

- *Commentary* with “Factors Helpful in Determining the Capacity for Shared Parenting”; and ...

II. (A.) SHARED PARENTING (CONT'D)

- Also a new Appendix added:

APPENDIX. WILL SHARED PARENTING WORK FOR YOU? QUESTIONS TO CONSIDER

Shared Parenting requires not just a sharing of time and responsibility for raising the child, but a conscious effort to create two homes that are highly unified when taking care of a child and making decisions for the child. The following questions should be seriously considered before deciding to work within a Shared Parenting agreement during the time that your child is being raised in your home.

1. Do you feel you have been thoroughly informed regarding all that is required of parents who practice Shared Parenting?
 - Do you understand all of the things a parent needs to do in one's own household and in coordination with the other parent's household when committing to Shared Parenting?
 - Do you understand what the court expects of parents who commit to Shared Parenting?
2. Do you feel all of your children would benefit from spending nearly equal amounts of time in the homes of both parents?

II. (A.) SHARED PARENTING (CONT'D)


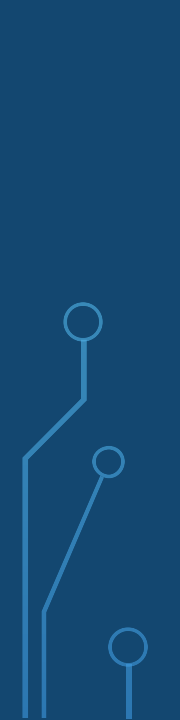
(1). EXPERT ENLISTED

- An expert was needed by the Committee;
- An expert experienced with Parenting Time (PT) issues;
- An expert to provide background and research in psychological and social sciences for the implementation of parenting plans.



II. (A.) SHARED PARENTING (CONT'D)

(1). EXPERT ENLISTED

- Dr. Marguerite Rebesco enlisted: a well-respected psychologist from Northern Indiana.
 - Invaluable in revising the IPTGs and drafting the section on Shared Parenting
- 
- 

(A.) (1.) EXPERT ASSISTANCE (CONT'D)

- Assisted the Committee in developing *Commentary with Factors* in devising parenting plans which exceed the Minimums of IPTGs. (Sec. II., A. Introduction, *Commentary*)

II. (A.) SHARED PARENTING (CONT'D)

(1). EXPERT ENLISTED

- Further assisted in drafting Factors, questions and considerations to be considered for Shared Parenting plans in new Section IV.
- (Sec IV. B. *Commentary*)

(A.) (1.) GOALS AND METHODOLOGY

- Dr. Rebesco set the goals and methodology for Shared Parenting as:

“TWO (2) HOUSES, ONE (1) HOME”

(A.) (1.) GOALS AND METHODOLOGY (CONT'D)

- Committee viewed Factors for Shared Parenting (SP) plans as an “assessment” based on the questions to determine if SP arrangement should be approved by the Court.
- “In deciding whether or not a Shared Parenting plan meets the needs of their family, parents need to make a careful assessment of their family situation.” (Sec. IV., A., Para 2, Ln. 1)
- See Sec IV. B. *Commentary, Factors*

(A.) (1.) GOALS AND METHODOLOGY (CONT'D)

- The Appendix added to IPTGs contains a short list of questions for parents to answer to see if child and parents are “ready” for a Shared Parenting plan.
- See Appendix at pg. 30

SECTION IV – SHARED PARENTING “FACTORS”

- Factors Related to the Child.

1. Characterize the amount of joint work required in the rearing of the child.

- “considerations” listed;

2. What is the ability of the child to benefit from Shared Parenting.

- “considerations” listed

SECTION IV – SHARED PARENTING “FACTORS”

- Factors Related to the Parent.

1. What appears to motivate the parent to take specific positions with respect to the rearing of the child? Perception of the needs, feelings, and interests of the child? The needs, feelings and interests of the parent? Perception of what is fair for the parent? Desire to comply with rules or agreements?

- “considerations”

2. Does the parent show interest in the work of raising children? Examples include scheduling and attending appointments addressing educational or health-related needs, planning and sharing meals, engaging the children with extended family, athletics, or religious opportunities.

SECTION IV – SHARED PARENTING “FACTORS”

• Factors Related to the Parent (Cont'd)

3. Does the parent have a generally peaceful relationship with the child?

- “considerations”

4. Are there factors in the life of the parent which detract from the time and attention needed to perform the tasks of Shared Parenting? Examples include addictions, medical problems, other relationships, and employment requirements.

SECTION IV – SHARED PARENTING “FACTORS”

- Factors Related to the Parent-Child Relationship.

1. What may the child gain from each parent if the parents have the high level of engagement necessitated by a Shared Parenting arrangement? Weigh that against what the child may gain from each parent if the parents have less engagement than that of parents who have adopted a Shared Parenting arrangement.

SECTION IV – SHARED PARENTING “FACTORS”

- Factors Related To The Parent-Child Relationship (cont'd)

2. To what extent do either or both parents exhibit positive relational qualities such as warmth, availability, interest in the child, a shared positive history with the child, and an ability to discern the child's needs? Shared Parenting ensures a child access to those qualities.

SECTION IV – SHARED PARENTING “FACTORS”

Factors Related To The Parent-Child Relationship (cont'd)

3. Does a parent have a history which poses some risk to the child, such as a prior history of using cruel punishment or perpetrating child abuse, a model of parenting which does not require a sharing of responsibilities may provide an opportunity to dilute risk while maintaining parental access?

SECTION IV – SHARED PARENTING “FACTORS”

- Factors Related to the Co-Parenting Relationship

1. How do the parents manage disagreements regarding matters pertaining to the child? Does their interpersonal style allow them to maintain a working connection when they see things differently? Does their interpersonal style / history of previous wounds cause them to establish distance at times of differing opinion which may sever their ability to work together?

SECTION IV – SHARED PARENTING “FACTORS”

- Factors Related to the Co-Parenting Relationship
(cont'd)

2. Is there a history of parental collaboration, even in the midst of conflict, which needs to be protected by a Shared Parenting plan, i.e., a structure which allows the collaboration to continue?

3. Is there a potential for ongoing gate-keeping which could potentially be dampened by a Shared Parenting order ?

SECTION IV – SHARED PARENTING “FACTORS”

Factors Related to the Co-Parenting Relationship

(cont'd)

4. Would Shared Parenting undermine the mental health of either parent?

- “consideration”

5. Do parents respond to each other in a conscientious manner?

- “consideration”

SECTION IV – SHARED PARENTING “FACTORS”

Factors Related to the Co-Parenting Relationship (cont'd)

6. Is there a History of highly regrettable behavior?

- How is it best characterized ? (recent / historic, addressed / unaddressed, involving both parents / just one parent, acknowledged by both / reported by just one)
- How is it best understood ? (a means of controlling others, a chronic lack of emotional self-control, an isolated / circumstantial episode of emotional outburst)

SECTION IV – SHARED PARENTING “FACTORS”

Factors Related to the Co-Parenting Relationship (cont'd)

7. Have the children witnessed regrettable incidents? Have they done so on an isolated or frequent basis?

- “consideration”

8. Characterize the degree to which the child is aware of parental conflicts.

- “consideration”

SECTION IV – SHARED PARENTING “FACTORS”

Factors Related to the Co-Parenting Relationship (cont'd)

9. Do the parents provide the children with evidence they like each other? For example, do they engage in social banter at exchanges, support the children in choosing gifts for the other parent, refer to the other parent as “mom” / “dad”? Do they deliberately encourage the child’s love for the other parent?

SECTION IV – SHARED PARENTING “FACTORS”

Factors Related to the Co-Parenting Relationship (cont'd)

(9 cont'd)

- Do the parents provide the child with evidence they dislike each other? For example, do they show a lack of cordial conduct at exchanges? Do they maintain physical separation at public gatherings? Do they criticize clothing, food, recreational opportunities chosen by the other parent?

SECTION IV – SHARED PARENTING “FACTORS”

Factors Related to the Co-Parenting Relationship (cont'd)

(9 cont'd)

- Does a parent refer to the other parent negatively or with a lack of respect? Is there evidence a parent would tolerate a child's hostility or disrespect toward the other parent? For example, “You will form your own opinion of your mom / dad when you are older.”
 - “consideration”: ***“The ultimate goal of Shared Parenting is to promote the healthiest bond possible between the child and both parents.”***

SECTION IV – SHARED PARENTING “FACTORS”

Environmental Factors

1. Can Shared Parenting increase the amount of actual time a child is cared for by parent?

- “consideration”

2. Does Shared Parenting save the family money / increase the financial stability of the child?

SECTION IV – SHARED PARENTING “FACTORS”

Environmental Factors (cont'd)

3. Does Shared Parenting drain resources of the family (money, time, work schedule accommodations) to so great an extent that other needs of the child are significantly sacrificed?

II (A) SHARED PARENTING (CONT'D)

(2.) WHAT SHARED PARENTING *IS* AND *IS NOT*

Shared parenting is **NOT**:

- “equal” parenting;
- “50/50 custody”;
- “Joint Custody”;
- “Presumption” ;

II (A) SHARED PARENTING (CONT'D)

(2.) WHAT SHARED PARENTING IS AND IS NOT

Shared Parenting **IS** :

Two parents raising a child(ren) together, NOT
focused only on the amount of time the child(ren)
spends with each parent

II. B. PARENTING DURING A PUBLIC HEALTH EMERGENCY

- *NEW SECTION* from the lessons learned from the Covid-19 Pandemic
- Modeled after the Indiana Supreme Court order of March 30, 2020.

II. B. PARENTING DURING A PUBLIC HEALTH EMERGENCY (CONT'D)

- Addresses matters affected by an emergency;
 - School;
 - Transportation;
 - Temporary changes in custody or parenting time
 - Payment of Child Support
 - Filing of proposed agreed modifications to obtain Court approval

II. C. HOLIDAY SCHEDULE

- *New language* added to clarify Extended PT and Holidays for 3-4 year-olds and which calendar (School district or academic child-care facility) controls; ALL made 6:00 P.M.;
- **CHILD'S BIRTHDAY:** Clarified to specify detailed basis when each parent has child on child's birthday.
- **CHRISTMAS VACATION:** Amended language to delete "from 2 hours after released from school" to 6 P.M.

II. C. HOLIDAY SCHEDULE (CONT'D)

- MLK, President's Day, Memorial Day, Labor Day, Thanksgiving Day all changed to 6 P.M.
- Spring Break, Easter, Fourth of July, Fall break also changed to 6 P.M.
- Halloween NOT changed due to trick or treat time set by local community;
- GOAL: To promote consistency; allow ease of use for border counties;

II. D. NEW COMMENTARY ADDED FOR PARENTING PLANS IN EXCESS OF IPTG MINIMUMS

- NEW COMMENTARY added to give Hoosier parents guidance for formulating parenting time plans that exceed the minimums under the guidelines
- Factors were drawn from the Association of Family and Conciliation Courts (AFCC) report, *“Closing The Gap: Research, Policy, Practice and Shared Parenting”* (<https://www.afccnet.org/Resource-Center/Center-for-Excellence-in-Family-Court-Practice>)

II. D. NEW COMMENTARY WITH FACTORS FOR PARENTING PLANS IN EXCESS OF IPTG MINIMUMS (CONT'D)

- *Commentary* with Factors added to Section II. A. for preparing PT Plans that exceed the IPTG minimums with Factors Related to:
 - the Child;
 - the Parent;
 - the Parent – Child Relationship;

(cont'd next slide)

II. D. NEW COMMENTARY WITH FACTORS FOR PARENTING PLANS IN EXCESS OF IPTG MINIMUMS (CONT'D)

- The Co-Parenting Relationship;
- Environmental Factors

ALL DESIGNED TO HELP HOOSIER PARENTS
DEVELOP A PLAN THAT WILL WORK FOR THEIR
CHILDREN AND EACH PARENT

II. E. IMPROVED LANGUAGE – OTHER SECTIONS

1.) REDUCING POTENTIAL FOR 3RD PARTY CONFLICT

- Section I. B.; *Commentary* added:
- *Commentary 1*: Stresses both parents should strive to be at exchanges – not bring 3rd parties (i.e. spouses, boy/girl friends, grandparent, etc.)

II. E. IMPROVED LANGUAGE – OTHER SECTIONS

1.) REDUCING POTENTIAL FOR 3RD PARTY CONFLICT (CONT'D)

- *Commentary 3: Discourages use of LEA station for exchanges:*
 - UNLESS there is a Protective Order, No Contact order, or Workplace Violence Restraining Order)

II. E. IMPROVED LANGUAGE – OTHER SECTIONS (CONTD)

2. DETERMINATION OF “REGULAR CARE RESPONSIBILITIES”

- *Commentary* para. 6 was added to Section II., B. “Overnight Parenting Time” to provide Factors to use in determining if a parent has provided “regular care responsibilities” to justify overnight PT;
- Refers to Section B., C.2 and C.3 (Children Under 3 yrs. of age);

II. E. IMPROVED LANGUAGE – OTHER SECTIONS (CONTD)

2. DETERMINATION OF “REGULAR CARE RESPONSIBILITIES” (CONT'D)

- Factors placed after first use of the phrase “regular care responsibilities” used in Sec. II., B.
- Focuses on factors emphasizing the care each parent has given the child

II. E. IMPROVED LANGUAGE – OTHER SECTIONS (CONT'D)

2. DETERMINATION OF “REGULAR CARE RESPONSIBILITIES” (CONT'D)

- *6. Factors in Determining the Exercise of “regular care responsibilities”*

- *The length of time the parents resided together with the child(ren)*
- *Overnights previously exercised by the parents prior to court involvement (ability to incorporate the status quo for the parents and child(ren))*
- *Medical conditions, developmental issues, and/or neurological disorders relating to the child(ren), and the history and experience of the parent in providing the care necessary for the child(ren)*
- *The parents’ provision of appropriate housing and sleeping arrangements for the child(ren)*
- *The frequency and involvement of the parent in the daily activities of the child(ren) such as feeding, cleaning, changing clothes and/or diapers, and bedtime routine, etc.*
- *Other factors affecting the regular care responsibilities of the child(ren)*

II. E. IMPROVED LANGUAGE (CONT'D)

3.) MAKE-UP TIME AMENDED (SEC. I., C., 2)

- Sec I., C., 2: Requires each parent to notify other ASAP of frequently occurring activities like Military drill or other annual work obligations
- *NEW language added Sec. I., C., 2 (2nd and 3rd paragraphs) to explain proper use of make-up time.*

II. E. IMPROVED LANGUAGE (CONT'D)

3.) MAKE-UP TIME AMENDED (SEC. I., C., 2)

- *Commentary* revised:
 - 1st para re-emphasizes “make up” time; uses examples of mandatory work, military drill obligations;
 - 2nd para: Situation where parent voluntarily foregoes PT; (no make-up)

II. E. IMPROVED LANGUAGE (CONT'D)



3.) MAKE-UP TIME AMENDED (SEC. I., C., 2)

- NEW 3rd para: Stops parents with equal periods of PT from “piggy backing” make-up time by limiting make-up days to no more than 3 days at a time so no parent has more than 10 consecutive days of regular and make-up PT. (Sec I. C. 3)

II. E. IMPROVED LANGUAGE : (CONT'D)


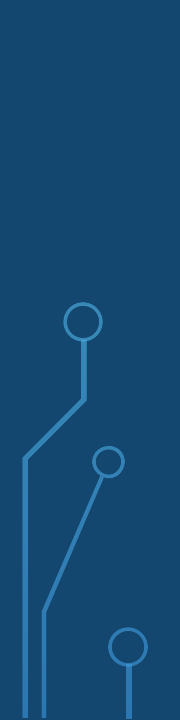
4.) HOLIDAY SCHEDULING FOR YOUNGER CHILDREN (SECTION II, F. 2); 3-4 YR. OLDS:

- Changed drop-off and pick-up time from 4 p.m. to 6 p.m. for uniformity;
 - Again EXCEPT Halloween: trick-or-treating occurs later or is on different days and time set by the local community
 - “Non-Custodial” – word was removed from line before the word “parent” and replaced with “the parent exercising parenting time” to remove confusing language



II. E. IMPROVED LANGUAGE : (CONT'D)

4.) HOLIDAY SCHEDULING FOR YOUNGER CHILDREN (SECTION II, F. 2); 3-4 YR. OLDS (CONT'D)

- Holidays: clarified as to which school district
Calendar controls:
 - School calendar where child primarily resides
controls;
(cont'd next slide)
- 
- 

II. E. IMPROVED LANGUAGE : (CONT'D)

4.) HOLIDAY SCHEDULING FOR YOUNGER CHILDREN (SECTION II, F. 2); 3-4 YR. OLDS (CONT'D)

- IF shared PT, then school district calendar where parent paying the controlled expenses resides controls;
- IF child in an academic child-care program — that facility's calendar controls

II. E. IMPROVED LANGUAGE: (CONTD)

5.) IMMUNITY OF PARENTING COORDINATORS

- NEW LANGUAGE added:
 - Clarifies that Because a Parenting Coordinator (PC) MUST be a registered Indiana Domestic Relations Mediator they therefor have immunity under ADR Rule 1.5 (providing immunity to Mediators) as a PC to same extent as a judge.

II. E. IMPROVED LANGUAGE (CONTD)

6.) PARALLEL PARENTING SECTION REMOVED

- IPTGs are child centered – Parallel Parenting is not
– conflicts with IPTGs
- Section deemed confusing in light of purpose of IPTGs
- Parallel Parenting for High Conflict parents unable to focus on Best Interest of Child

II. E. IMPROVED LANGUAGE (CONTD)

6.) PARALLEL PARENTING SECTION REMOVED

- Children could be traumatized by rules which indicate parents can not communicate/cooperate on a basic level for effective co-parenting
- Child subjected to 2 sets of rules- completely different
- Rarely used

III. OTHER CHANGES AND CLARIFICATIONS

- A. Preamble Changes
- B. Communication Updates
 - Methods
 - Withholding device as discipline
- C. Extra-curriculars
 - Who transports
 - Strike a Balance
 - Summer PT
- D. Relocation

III. A. PREAMBLE CHANGES

- Preamble: B. Purpose of Commentary : “noncustodial” spelling; Parenting Time Calendar website link added and removes unneeded text and obsolete link;
- Preamble: C. Scope of Application: added “most recent” to clarify which PT order to follow

III. B. COMMUNICATION METHODS – UPDATE

- Section I., A. COMMUNICATIONS tweaked:
- Para 3, 2nd sentence; Text Messaging: added as a common method of communication (so reads “text or email” deleted “pager”)

III. B. COMMUNICATION METHODS – UPDATE (CONT'D)

- Para 4 With a Child By Mail; Added “text” as to more modern method of communication (texts vs pagers)
- Commentary, 2nd para – NEW language recognizing parents ability to restrict phone or device use by child as discipline, but it may not be used to prevent communication with other parent.

III. C. EXTRA-CURRICULAR ACTIVITIES: WHO TRANSPORTS ?

- Sec. I., D., Para 3. “Other Activities”: Added a sentence clarifying which parent responsible for transporting a child to extra-curricular activities.
- Commentary: 2 NEW paragraphs added: language added stressing striking a balance on extra-curricular activities.

III. C. EXTRA-CURRICULAR ACTIVITIES: (CONT'D) SUMMER PT AND EXTRA-CURRICULARS

- NOTE: Section III. Parenting Time When Distance is a Major Factor, 3. “Priority of Summer Visitation” revised with new language to emphasize the focus on PT, not extracurricular activities, during summer break.
- Second sentence was deleted as unnecessary infringement of NCPs decisions for PT.

III. D. RELOCATION

- Section I, E. Resolution of Problems and Relocation, 4. Relocation and Commentary Para. 2.
- Changes to conform to Amendments to relocation statutes:
 - Changes the 90 days to 30 days
 - Updates citation to statute

DOMESTIC RELATIONS COMMITTEE 2020 TO 2021

- Hon. Thomas Hallett, Chair (7-1-2021 to 6-30-22)
- Mag. Marie Kern
- Mag. Andrew Bloch
- Mag. Ashley Hand
- Mag. Lisa Berdine
- Hon. Les Shively
- Hon. Lori Morgan
- Hon. Kurt Grimm
- Hon. David Najjar
- Mag. Mark Hardwick
- Mag. Jennifer Kinsley
- Mag. William Wilson
- Hon. Gregory A. Smith (“Special Advisor”- Chair 7-1-20 to 6-30-21)

SPECIAL THANKS

- Dr. Marguerite Rebesco
- Jeffrey Bercovitz, Domestic Relations Committee Staff Attorney, Indiana Office of Court Services;
- Angie James, Indiana Office of Court Technology
- Angela Reid-Brown, Indiana Office of Court Services
- Jill Russell, Indiana Office of Court Technology
- ChiQuita Williams, Indiana Office of Court Technology
- Mike Commons, Staff Attorney, Indiana Office of Court Services
- All members of the Bench, Bar and fellow Hoosiers who provided comments.

A decorative graphic on the left side of the slide, consisting of a network of light blue lines and small circles, resembling a circuit board or a stylized tree structure.

THE END

(UNTIL THE NEXT REVISIONS)

Section Two

Handling Variable Income/Bonuses in Child Support Calculations: True-Up Approaches

Lana L. Pendoski

Cross | Glazier | Reed | Burroughs, PC
Carmel, Indiana

Section Two

Handling Variable Income/Bonuses in Child Support Calculations:

True-Up Approaches..... Lana L. Pendoski

PowerPoint Presentation



HANDLING VARIABLE INCOME/BONUSES IN CHILD SUPPORT CALCULATIONS: TRUE-UP APPROACHES

Lana Lennington Pendoski,
Cross Glazier Reed Burroughs,
PC

VARIABLES CALCULATING CHILD SUPPORT

Self-
Employment
Income

Irregular
Income

Potential
Income

In-Kind
Benefits

Social
Security

Prior-Born
Child

Subsequent
Born Child

CALCULATION OPTIONS FOR IRREGULAR INCOME

Average
Income

Ratio

True-Up

SELF-EMPLOYMENT INCOME

°Actual Expenses are deducted, and benefits that reduce living expenses (i.e. company cars, free lodging, reimbursed meals, etc.) should be included in whole or in part

°Deduct actual out-of-pocket expenditures, to the extent that they are REASONABLE and NECESSARY for the production of income.

°Deductions allowed for income tax purposes differ significantly from those allowed for child support purposes

°Self-employed pay FICA tax at twice the rate of that paid by employees. Permitted to deduct one-half of their FICA payment.

IRREGULAR INCOME

There are numerous forms of irregular or non-guaranteed income, which cause difficulty in determining the gross income of a party.

- Overtime
- Commissions
- Bonuses
- Periodic partnership distributions
- Voluntary extra work or extra hours

POTENTIAL INCOME

Discourages a parent from taking a lower paying job to avoid the payment of significant support

Child care costs more than earnings

Voluntarily underemployed

Voluntarily unemployed

Involuntary layoff or job termination

Disability

Incarceration

VOLUNTARILY UNDEREMPLOYED

Charmichael v. Siegel, 754 N.E.2d 619 (Ind.Ct.App. 2001). Mother working 30 hours per week as the manager of a bookstore was not underemployed. Mother had a high school diploma, some college classes, and an Indiana real estate license. Trial Court found her underemployed based on “education and training.” Court of Appeals disagreed.

CHARMICHAEL CONTINUED



Most importantly, no indication the trial court considered Mother's work history.

- Father provided no evidence of Mother's work history and it was his burden.

No evidence Mother's income had declined significantly over time.

- Mother was unemployed at the time of divorce.

No claim Mother was unemployed for the purposes of avoiding child support.

- Mother had remarried but no evidence of what her new spouse contributed to her living expenses.

SOCIAL SECURITY BENEFITS

Custodial Parent

- Social security benefits received for a child based on the disability of the custodial parent is included in the custodial parent's income and is a credit toward the custodial parent's child support obligation.

Noncustodial
Parent

- Social security benefits received by a custodial parent, as representative payee of the child, based upon the earnings or disability of the noncustodial parent shall be considered as a credit to satisfy the noncustodial parent's child support obligation.

SOCIAL SECURITY BENEFITS CONT'D: NONCUSTODIAL PARENT

Maybe: Social Security Retirement benefits.

Must: Social Security Disability benefits shall be included in the Weekly Gross Income of the noncustodial parent and applied as a credit to the noncustodial parent's child support obligation.

Any portion that exceeds the child support obligation is gratuity for the benefit of the child.

REDUCTIONS IN INCOME: MORE CHILDREN

Subsequent Born

- Born or legal adopted subsequent to the birthdate of the child subject to the support order;
- That parent is actually meeting or paying that obligation.

Prior-Born With Order

- Amounts of court ordered child support for prior-born shall be deducted from Weekly Gross Income;
- Includes court ordered post-secondary education expenses
- Not for arrearages.

Prior-Born No Order

- Parent has a legal duty to financially support children born prior to the children for whom support is being established;
- No court order exists;
- An amount reasonably necessary for support actually paid or funds actually spent shall be deducted from Weekly Gross Income;
- Does not apply to step-children.

AVERAGE INCOME

Averaging income for child support purposes is just like it sounds.

Take the average of three (3) years of income:

2019: \$250,000; 2020 \$346,000; 2021 \$198,000 = $\$794,000 / 3 = \$264,666$

Gross Weekly Income: $\$264,666 / 52 = \$5,089.74$

AVERAGE INCOME: TRABUCCO

Trabucco v. Trabucco, 944 N.E.2d 544, (Ind.Ct.App. 2011)

Trial Court used income averaging to calculate Father's weekly gross income for child support purposes.

Important to note: both parties were charged with felony possession for growing the Devil's lettuce in their home. Father's medical license was suspended for 6 months.

2005 \$203,121 from Columbus Regional; 2006 \$311,692 St. Vincent North Vernon; 2007 \$104,026 Urology Institute; 2008 \$67,407.

TRABUCCO CONT'D

Father's weekly gross income was calculated at \$3,967 for child support purposes.

Gross annual income as report on income tax returns from 2004 though 2008

"Throwing out" the highest and lowest annual incomes from this period and averaging the remaining incomes.

Father appealed arguing his actual income at the time should have been used to calculate support.

TRABUCCO CONT'D: COURT OF APPEALS

Father was self-employed.

Paid himself \$5,000 per month.

Also paid personal expenses including rent, vehicle, health care, credit card and other expenses from his business.

Father received certain loans that were later forgiven.

Insufficient evidence at trial to adequately document Father's actual income, any error was invited.

Significant fluctuations in income.

INCOME AVERAGING

Pros

No interaction between parties

No exchange of yearly income

No need to track down information

Cons

Does not account for changes over time

Both sides gamble

No exchange of yearly income

RATIO CALCULATION

One method of treating irregular income is to determine the ratio of the basic child support obligation (line 4 of the worksheet) to the combined weekly adjusted income (line 3 of the worksheet) and apply this ratio to the irregular income during a fixed period. For example, if the basic obligation was \$110.00 and the combined income was \$650.00, the ratio would be .169 ($\$110.00 / \650.00). The order of the court would then require the obligor to make a lump sum payment of 16.9% of the obligor's irregular income received during the fixed period.

RATIO CONTINUED

The use of this ratio will not result in an exact calculation of support paid on a weekly basis. It will result in an overstatement of the additional support due, and particularly so when average irregular income exceeds \$250.00 per week or exceeds 75% of the regular adjusted Weekly Gross Income. In these latter cases the obligor may seek to have the irregular income calculation redetermined by the court.

RATIO CALCULATION

Calculate child support using the base income.

Take the ratio of Line 4/Line 3.

Apply the percentage to any irregular income earned over the base income.

Example: Mother's base salary is \$75,000 with an opportunity to earn a bonus each year. Calculate support using \$1,442.30 as Mother's gross weekly income.

Mother's weekly child support obligation is \$196.34 and she will pay $(\$417.00 / \$2,222.30)$ 18% of any bonus income she receives to Father.

IN RE: and		CASE NO.: FATHER: MOTHER:	
CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)			
Children	DOB	Children	DOB
1. WEEKLY GROSS INCOME	FATHER \$800.00	MOTHER \$1,422.30	
A. Subsequent Children Credit, .065, .097, ...	0 \$0.00	0 \$0.00	
B. Child Support Order for prior born	\$0.00	\$0.00	
C. Child Support Duty for prior born	\$0.00	\$0.00	
D. Maintenance Paid	\$0.00	\$0.00	
E. WEEKLY ADJUSTED INCOME (WAI)	\$800.00	\$1,422.30	
2. PERCENTAGE SHARE OF TOTAL WAI	35.9987%	64.0013%	
3. COMBINED WEEKLY ADJUSTED INCOME			\$2,222.30
4. BASIC CHILD SUPPORT OBLIGATION	\$150.11	\$266.89	\$417.00
A. Work-related Child Care Expense	\$0.00	\$0.00	\$0.00
B. Weekly Health Insurance Premium (children part)			\$0.00
5. TOTAL CHILD SUPPORT OBLIGATION			\$417.00
6. PARENT'S CHILD SUPPORT OBLIGATION	\$150.11	\$266.89	
7. Adjustment from PSEW Line J.	\$0.00	\$0.00	
Credit for child care payment from 4A	\$0.00	\$0.00	
Credit for health insurance premium (children part)	\$0.00	\$0.00	
Credit for parenting time for 105 overnights	\$0.00	\$70.55	
8. RECOMMENDED SUPPORT OBLIGATION		\$196.34	
I affirm under the penalties for perjury the foregoing representations are true.			
Preparer: _____		Father: _____	
Dated: 11/26/2021		Mother: _____	
Father should pay the first \$1,301.04 annual uninsured health care. (CSOW 4. + PSEW I. x 52 x .06) Balance of Annual Expenses to be paid: 35.9987% by Father; 64.0013% by Mother; Calculated for 2 at home and 0 at college using year 2021 guidelines and 105 overnights.			
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FAULK V. FAULK

Faulk v. Faulk, 166 N.E.3d 939, (Ind.Ct.App. 2021). Father's child support obligation is based on \$90,000 per year. If Father earns more than \$90,000 in gross income in a year, he shall pay eleven percent (11%) of any gross income above \$90,000.

Because Father is self employed and enjoys a fluctuating income in any given year, the trial court used a base yearly gross income to calculate his child support and included a true-up percentage in case he earns more than the anticipated yearly gross income.

This language: "...for any year in which the calculation of irregular income is an overstatement of support, the obligor may simply file a motion seeking adjustment for that year..." Is this endorsing retroactive modification of child support?

RATIO CALCULATION PROS AND CONS

Pros

Does not require a recalculation of support

Based on current facts

Exchanging of some information

Cons

Overpayment of child support

Language: specify whether the payment is on the gross or net amount

Getting documentation and payment

TRUE UP

Calculate support based on current circumstances of the parties.

Language specifying how the “catch-up” or “true-up” will occur each year.

Each year at predetermined date the parties exchange identified tax and/or income information.

Support is calculated using the current year information.

If appropriate, payment is made from one parent to another to “true-up” support for the past year .

PROS AND CONS OF TRUE-UP

Pros

Most realist or “real time” child support calculation

Promotes fairness for both sides

Ensures child(ren) receive(s) the full amount of support available

Cons

Requires parties to communicate and cooperate

Bad language can lead to problems

Can be problematic for high conflict families

Might be difficult to get information

EXAMPLE TRUE-UP

Initial divorce of Husband and Wife

Two children ages 12 and 10

Wife has been unemployed but just recently started working part-time.

Husband earns \$500,000 per year; Wife agrees to imputed income of \$15,600 per year.

IN RE: and		CASE NO.: FATHER: MOTHER:	
CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)			
Children	DOB	Children	DOB
1. WEEKLY GROSS INCOME		FATHER \$9,615.38	MOTHER \$300.00
A. Subsequent Children Credit, .065, .097, ...		0 \$0.00	0 \$0.00
B. Child Support Order for prior born		\$0.00	\$0.00
C. Child Support Duty for prior born		\$0.00	\$0.00
D. Maintenance Paid		\$0.00	\$0.00
E. WEEKLY ADJUSTED INCOME (WAI)		\$9,615.38	\$300.00
2. PERCENTAGE SHARE OF TOTAL WAI		96.9744%	3.0256%
3. COMBINED WEEKLY ADJUSTED INCOME		\$9,915.38	
4. BASIC CHILD SUPPORT OBLIGATION		\$966.83	\$30.17
A. Work-related Child Care Expense		\$0.00	\$0.00
B. Weekly Health Insurance Premium (children part)		\$55.00	
5. TOTAL CHILD SUPPORT OBLIGATION		\$1,052.00	
6. PARENT'S CHILD SUPPORT OBLIGATION		\$1,020.17	\$31.83
7. Adjustment from PSEW Line J.		\$0.00	\$0.00
Credit for child care payment from 4A		\$0.00	\$0.00
Credit for health insurance premium (children part)		\$0.00	\$55.00
Credit for parenting time for 098 overnights		\$98.43	\$0.00
8. RECOMMENDED SUPPORT OBLIGATION		\$921.74	
I affirm under the penalties for perjury the foregoing representations are true.			
Preparer:		Father: _____	
Dated: 11/22/2021		Mother: _____	
<p>Mother should pay the first \$3,110.64 annual uninsured health care. (CSOW 4. + PSEW I x 52 x .06)</p> <p>Balance of Annual Expenses to be paid: 96.9744% by Father; 3.0256% by Mother;</p> <p>Calculated for 2 at home and 0 at college using year 2021 guidelines and 098 overnights.</p> <p>Copyright 1989-2021 Professional Software Corporation 812-781-1422 www.SupportMasterSoftware.com</p>			

TRUE-UP LANGUAGE

Child Support. Husband shall pursuant to the attached child support obligation worksheet, Husband shall pay support in the amount of \$920.00 per week effective the first Friday following this agreement and continuing each Friday thereafter. The parties shall use an annual “true up” calculation to determine if Husband has overpaid or underpaid his child support because so much of his income is based on fluctuating, non-guaranteed bonus income.

LANGUAGE CONT'D

Beginning in April 2020 for the child support “true up” calculation for calendar year 2019 and for each year thereafter, the parties shall exchange tax returns and relevant documents to calculate his or her income. The parties shall recalculate Husband’s child support obligation for the prior year based upon each party’s gross income as reflected in his or her W-2 earnings summary, 1099s, K-1 schedule...

LANGUAGE CONT'D

...the actual number of overnight parenting time exercised by Husband, the actual health insurance premium paid, and each party's Federal and State tax rates. If Husband has underpaid his child support obligation to Wife, then Husband shall make a lump sum "catch-up" payment to Wife payable on, or before, May 1st of the year following the year that the "catch up" payment is owed.

AND EVEN MORE LANGUAGE

For example, if a true up payment is calculated by April 16, 2020 for tax year 2019, then Husband would owe the catch-up payment to Wife by May 1, 2020. If the true up calculation determines that Husband has overpaid his child support obligation to Wife, then Wife shall make the refund payment to Husband by May 1st following the year that the “catch-up” payment is owed. All future support payments shall be paid by Income Withholding Order (other than any “catch-up” payment) through the Indiana State Central Collection Unit (INSCCU).

EXAMPLE TRUE-UP LANGUAGE

Beginning with income earned in 2020, the parties shall conduct a “true-up” calculation by May 1st of each year (beginning May 1, 2021) to include Husband’s non-guaranteed bonus income and any income Husband earns from other income producing activity. The “true up” calculation shall include each party’s actual gross income, the actual day care costs incurred during the children’s school year, the actual medical, dental, and vision insurance premium costs for the children, and the number of overnights Father exercised during the year in question. Any “true-up” overpayment or underpayment shall be paid within seven (7) days of the calculation.

IN RE: and		CASE NO.: FATHER: MOTHER:	
CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)			
Children	DOB	Children	DOB
1. WEEKLY GROSS INCOME		FATHER \$11,382.50	MOTHER \$673.07
A. Subsequent Children Credit, .065, .097, ...		0 \$0.00	0 \$0.00
B. Child Support Order for prior born		\$0.00	\$0.00
C. Child Support Duty for prior born		\$0.00	\$0.00
D. Maintenance Paid		\$0.00	\$0.00
E. WEEKLY ADJUSTED INCOME (WAI)		\$11,382.50	\$673.07
2. PERCENTAGE SHARE OF TOTAL WAI		94.4169%	5.5831%
3. COMBINED WEEKLY ADJUSTED INCOME		\$12,055.57	
4. BASIC CHILD SUPPORT OBLIGATION		\$1,138.25	\$67.31
A. Work-related Child Care Expense		\$0.00	\$0.00
B. Weekly Health Insurance Premium (children part)		\$65.00	
5. TOTAL CHILD SUPPORT OBLIGATION		\$1,270.56	
6. PARENT'S CHILD SUPPORT OBLIGATION		\$1,199.62	\$70.94
7. Adjustment from PSEW Line J.		\$0.00	\$0.00
Credit for child care payment from 4A		\$0.00	\$0.00
Credit for health insurance premium (children part)		\$0.00	\$65.00
Credit for parenting time for 098 overnights		\$123.82	\$0.00
8. RECOMMENDED SUPPORT OBLIGATION		\$1,075.80	
I affirm under the penalties for perjury the foregoing representations are true.			
Preparer:		Father: _____	
Dated: 11/22/2021		Mother: _____	
<p>Mother should pay the first \$3,761.35 annual uninsured health care. (CSOW 4. + PSEW I. x 52 x .06)</p> <p>Balance of Annual Expenses to be paid: 94.4169% by Father; 5.5831% by Mother;</p> <p>Calculated for 2 at home and 0 at college using year 2021 guidelines and 098 overnights.</p> <p style="text-align: center;">Copyright 1989-2021 Professional Software Corporation 812-781-1422 www.SupportMasterSoftware.com</p>			

SAMPLE TRUE-UP CALCULATION

Father's W-2 Gross Income

- \$500,000
- \$150,000 bonus income
- Total Income: \$650,000
- Weekly Income: \$12,500

Father's Tax

- Federal: \$200,339
- Effective Tax Rate: 30.82%
- Effective Tax Rate is total tax paid divided by income earned

Effective Tax Rate Less Presumed Tax Rate

- $30.82\% - 21.88\% = 8.94\%$
- $\$12,500 \times 0.0894 = \$1,117.50$
- $\$12,500 - \$1,117.50 = \$11,382.50$

Sample True-Up

2020 True-Up Calculation

Father's W-2 gross income	\$500,000
Bonus	\$150,000
Annual Total:	\$650,000
Weekly:	\$12,500

Father's Tax

Federal:	\$200,339
Effective Tax Rate:	30.82%

(Total tax paid divided by total income earned)

Effective Tax Rate Less Presumed Tax Rate:

$30.82\% \text{ less } 21.88\% = 8.94\%$

$\$12,500 \times .0894 = \$1,117.50$

$\$12,500 - \$1,117.50 = \$11,382.50$

Mother's W-2 gross income	\$35,000
Weekly:	\$673.07
Tax Rate:	7.18%

True-Up for 2020:

Child Support Recalculated	\$1,075.80
Current Child Support Order	\$920.00
Difference	\$155.80
True-Up Amount (52 x \$155.80)	\$8,101.60

EXAMPLES: BASIC FACTS

Father has a gross weekly income of \$2,000

Mother has a gross weekly income of \$500

The parties have two children in common.

Parenting time is set so Mother has primary physical custody and Father has 98 overnights per year.

IN RE: and		CASE NO.: FATHER: MOTHER:	
CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)			
Children	DOB	Children	DOB
1. WEEKLY GROSS INCOME		FATHER \$2,000.00	MOTHER \$500.00
A. Subsequent Children Credit, .065, .097, ...		0 \$0.00	0 \$0.00
B. Child Support Order for prior born		\$0.00	\$0.00
C. Child Support Duty for prior born		\$0.00	\$0.00
D. Maintenance Paid		\$0.00	\$0.00
E. WEEKLY ADJUSTED INCOME (WAI)		\$2,000.00	\$500.00
2. PERCENTAGE SHARE OF TOTAL WAI		80.0000%	20.0000%
3. COMBINED WEEKLY ADJUSTED INCOME		\$2,500.00	
4. BASIC CHILD SUPPORT OBLIGATION		\$345.60	\$86.40
A. Work-related Child Care Expense		\$0.00	\$0.00
B. Weekly Health Insurance Premium (children part)		\$0.00	
5. TOTAL CHILD SUPPORT OBLIGATION		\$432.00	
6. PARENT'S CHILD SUPPORT OBLIGATION		\$345.60	\$86.40
7. Adjustment from PSEW Line J. Credit for child care payment from 4A Credit for health insurance premium (children part) Credit for parenting time for 098 overnights		\$0.00 \$0.00 \$0.00 \$54.09	\$0.00 \$0.00 \$0.00 \$0.00
8. RECOMMENDED SUPPORT OBLIGATION		\$291.51	
I affirm under the penalties for perjury the foregoing representations are true.			
Preparer:		Father: _____	
Dated: 11/26/2021		Mother: _____	
Mother should pay the first \$1,347.84 annual uninsured health care. (CSOW 4. + PSEW I. x 52 x .06) Balance of Annual Expenses to be paid: 80.0000% by Father; 20.0000% by Mother; Calculated for 2 at home and 0 at college using year 2021 guidelines and 098 overnights.			
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PRIOR BORN CHILD

Father has an existing court order to pay \$100 per week for a prior born child.

The amount paid for the prior born child reduces Father's Weekly Adjusted Income (WAI) on line 1(E).

Father's child support obligation is reduced from \$292 per week to \$285 per week.

IN RE: and		CASE NO.: FATHER: MOTHER:	
CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)			
Children	DOB	Children	DOB
1. WEEKLY GROSS INCOME		FATHER \$2,000.00	MOTHER \$500.00
A. Subsequent Children Credit, .065, .097, ...		0 \$0.00	0 \$0.00
B. Child Support Order for prior born		\$100.00	\$0.00
C. Child Support Duty for prior born		\$0.00	\$0.00
D. Maintenance Paid		\$0.00	\$0.00
E. WEEKLY ADJUSTED INCOME (WAI)		\$1,900.00	\$500.00
2. PERCENTAGE SHARE OF TOTAL WAI		79.1667%	20.8333%
3. COMBINED WEEKLY ADJUSTED INCOME		\$2,400.00	
4. BASIC CHILD SUPPORT OBLIGATION		\$338.83	\$89.17
A. Work-related Child Care Expense		\$0.00	\$0.00
B. Weekly Health Insurance Premium (children part)		\$0.00	
5. TOTAL CHILD SUPPORT OBLIGATION		\$428.00	
6. PARENT'S CHILD SUPPORT OBLIGATION		\$338.83	\$89.17
7. Adjustment from PSEW Line J. Credit for child care payment from 4A Credit for health insurance premium (children part) Credit for parenting time for 098 overnights		\$0.00 \$0.00 \$0.00 \$54.14	\$0.00 \$0.00 \$0.00 \$0.00
8. RECOMMENDED SUPPORT OBLIGATION		\$284.69	
I affirm under the penalties for perjury the foregoing representations are true.			
Preparer:		Father: _____	
Dated: 11/26/2021		Mother: _____	
Mother should pay the first \$1,335.36 annual uninsured health care. (CSOW 4. + PSEW I. x 52 x .06) Balance of Annual Expenses to be paid: 79.1667% by Father; 20.8333% by Mother; Calculated for 2 at home and 0 at college using year 2021 guidelines and 098 overnights.			
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SUBSEQUENT BORN CHILD

After the parties divorce, Mother has another child.

The worksheet notes a subsequent child in the home on Mother's side.

Remember, Mother must have either a legal obligation or a court order to support the subsequent child and actually be supporting the child.

Just like with a prior born child, a subsequent born child results in a reduction in Mother's Weekly Adjusted Income (WAI).

The result is an increase in Father's child support obligation from \$292 per week to \$296 per week.

IN RE: and		CASE NO.: FATHER: MOTHER:	
CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)			
Children	DOB	Children	DOB
1. WEEKLY GROSS INCOME		FATHER \$2,000.00	MOTHER \$500.00
A. Subsequent Children Credit, .065, .097, ...		0 \$0.00	1 \$32.50
B. Child Support Order for prior born		\$0.00	\$0.00
C. Child Support Duty for prior born		\$0.00	\$0.00
D. Maintenance Paid		\$0.00	\$0.00
E. WEEKLY ADJUSTED INCOME (WAI)		\$2,000.00	\$467.50
2. PERCENTAGE SHARE OF TOTAL WAI		81.0537%	18.9463%
3. COMBINED WEEKLY ADJUSTED INCOME		\$2,467.50	
4. BASIC CHILD SUPPORT OBLIGATION		\$349.34	\$81.66
A. Work-related Child Care Expense		\$0.00	\$0.00
B. Weekly Health Insurance Premium (children part)		\$0.00	
5. TOTAL CHILD SUPPORT OBLIGATION		\$431.00	
6. PARENT'S CHILD SUPPORT OBLIGATION		\$349.34	\$81.66
7. Adjustment from PSEW Line J. Credit for child care payment from 4A Credit for health insurance premium (children part) Credit for parenting time for 098 overnights		\$0.00 \$0.00 \$0.00 \$53.25	\$0.00 \$0.00 \$0.00 \$0.00
8. RECOMMENDED SUPPORT OBLIGATION		\$296.09	
I affirm under the penalties for perjury the foregoing representations are true.			
Preparer:		Father: _____	
Dated: 11/26/2021		Mother: _____	
Mother should pay the first \$1,344.72 annual uninsured health care. (CSOW 4. + PSEW I. x 52 x .06) Balance of Annual Expenses to be paid: 81.0537% by Father; 18.9463% by Mother; Calculated for 2 at home and 0 at college using year 2021 guidelines and 098 overnights.			
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SOCIAL SECURITY BENEFIT

As the representative payee for the children, Mother receives \$50 per week in Social Security Disability benefits based on Father's disability.

The amount is both added to Father's income and is a credit to Father against his child support obligation.

Father's income will go from \$2,000 per week to \$2,050.00 per week.

Father's child support obligation is \$296 per week, but he also receives a \$50 per week credit for the SSD Mother is receiving.

Father's child support obligation is $\$296 - \$50 = \$246$

IN RE: and		CASE NO.: FATHER: MOTHER:	
CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)			
Children	DOB	Children	DOB
1. WEEKLY GROSS INCOME		FATHER \$2,050.00	MOTHER \$500.00
A. Subsequent Children Credit, .065, .097, ...		0 \$0.00	0 \$0.00
B. Child Support Order for prior born		\$0.00	\$0.00
C. Child Support Duty for prior born		\$0.00	\$0.00
D. Maintenance Paid		\$0.00	\$0.00
E. WEEKLY ADJUSTED INCOME (WAI)		\$2,050.00	\$500.00
2. PERCENTAGE SHARE OF TOTAL WAI		80.3922%	19.6078%
3. COMBINED WEEKLY ADJUSTED INCOME		\$2,550.00	
4. BASIC CHILD SUPPORT OBLIGATION		\$349.71	\$85.29
A. Work-related Child Care Expense		\$0.00	\$0.00
B. Weekly Health Insurance Premium (children part)		\$0.00	
5. TOTAL CHILD SUPPORT OBLIGATION		\$435.00	
6. PARENT'S CHILD SUPPORT OBLIGATION		\$349.71	\$85.29
7. Adjustment from PSEW Line J. Credit for child care payment from 4A Credit for health insurance premium (children part) Credit for parenting time for 098 overnights		\$0.00 \$0.00 \$0.00 \$54.20	\$0.00 \$0.00 \$0.00 \$0.00
8. RECOMMENDED SUPPORT OBLIGATION		\$295.51	
I affirm under the penalties for perjury the foregoing representations are true.			
Preparer:		Father: _____	
Dated: 11/26/2021		Mother: _____	
Mother should pay the first \$1,357.20 annual uninsured health care. (CSOW 4. + PSEW I. x 52 x .06) Balance of Annual Expenses to be paid: 80.3922% by Father; 19.6078% by Mother; Calculated for 2 at home and 0 at college using year 2021 guidelines and 098 overnights.			
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SPLIT CUSTODY

Mother has custody of one child. Father has custody of the other child. Each parent has 98 overnights with the child not in their primary custody.

This requires two worksheets. One worksheet is generated as though the child in Mother's custody is the only child with Father having 98 overnights.

Father's obligation would be \$193 per week.

A second worksheet is generated as though the child in Father's custody is the only child with Mother having 98 overnights.

Mother's obligation would be -\$5.00.

Father would pay the difference between the two support amounts. Because Mother's child support obligation is negative it results in Father paying \$198 per week.

Section Three

Everyday Challenges in Family Law Child Related Tax Credits

Mark E. Idzik, CPA, CDFA®
Holistic Financial Partners
Indianapolis, Indiana

Section Three

Everyday Challenges in Family Law

Child Related Tax Credits..... Mark E. Idzik, CPA, CDFA®

PowerPoint Presentation

EVERYDAY CHALLENGES IN FAMILY LAW – CHILD RELATED TAX CREDITS



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OUTLINE

#1 **Working with Holistic Financial Partners**

#2 **Recent Legislation (American
Rescue Plan Act of 2021)**

#3 **Children & Taxes**

#4 **Proposed Legislation (Build Back
Better Plan)**



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- Empathy
- Consistency

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- Experience
- Competence
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 - Income Tax Projections
- Tax-efficient division of marital estate
 - “Will I have enough to live on?”



OUR FOCUS

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 - Assist family law attorneys and clients with all financial issues involved in divorce
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 - Consult on tax-efficient and client focused division of assets
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AMERICAN RESCUE PLAN ACT 2021

- \$1.9T economic stimulus plan passed/signed March 2021
- Third round of “stimulus checks” at \$1,400/dependent
 - (not just children under 17)
- Expansion of Child Tax Credit
 - Higher amount, increased age limit & advance payment
- Increase in Dependent Care Credit
 - Higher eligible expense limits & applicable %’s claimed
- For 2021 only – provides temporary relief
 - Could be extended with Build Back Better Plan



CHILD RELATED TAX BENEFITS

	Eligibility	Qualifier	Credit Subject to Phase Out	Phase Out for Single (HOH)	Refundable or Non-Refundable	Other Important Points
Dependency Exemption	<ul style="list-style-type: none"> ▫ The Tax Cuts and Jobs Act of 2017 suspended the \$4,050 deduction per dependent claimed on tax returns. ▫ Form 8332 can still be signed by the custodial parent to give the non-custodial parent the ability to claim a child on their tax return and benefit from any tax credits that may follow. 					
Child Tax Credit <i>- expanded for 2021 only</i>	<ul style="list-style-type: none"> ▫ Need to claim as <u>dependent</u> to be eligible 	<ul style="list-style-type: none"> ▫ Only children under age 18 (was 17) 	<ul style="list-style-type: none"> ▫ Max Credit: <ul style="list-style-type: none"> ▫ \$3,600 per qualifying child (ages 5 and under) ▫ \$3,000 per qualifying child (ages 6-17) ▫ \$2,000 per qualifying child ▫ \$500 per non-qualifying child 	<ul style="list-style-type: none"> ▫ Begins at AGI > \$112,500 ▫ Complete at AGI = \$135,501 before reverting to \$2k credit phase out limits ▫ Begins at AGI > \$200,001 ▫ Complete at AGI = \$240,001 	<ul style="list-style-type: none"> ▫ Fully Refundable 	<ul style="list-style-type: none"> ▫ In order to waive credit, the non-custodial parent needs to attach Form 8332 ▫ 50% of credit to be paid in advance via periodic payments from IRS from July 2021 - December 2021
Child & Dependent Care <i>- expanded for 2021 only</i>	<ul style="list-style-type: none"> ▫ Only <u>Custodial</u> parent is eligible ▫ Do not need to claim as a dependent 	<ul style="list-style-type: none"> ▫ Only children under age 13 ▫ Must report earned income 	<ul style="list-style-type: none"> ▫ Max Credit is 50% of eligible expenses up to: <ul style="list-style-type: none"> ▫ \$16,000 for 2+ children ▫ \$8,000 for 1 child 	<ul style="list-style-type: none"> ▫ 50% max credit is reduced (but not below 20%) by 1% for each \$2,000 of AGI > \$125,000 ▫ 20% credit is reduced (not below 0%) by 1% for each \$2,000 of AGI > \$400,000 	<ul style="list-style-type: none"> ▫ Fully Refundable 	<ul style="list-style-type: none"> ▫ Non custodial parents can not take any expenses they pay for daycare even if they take the dependency exemption ▫ Need to determine if Section 129 DCB Plan is
Earned Income Credit <i>- expanded for 2021 only</i>	<ul style="list-style-type: none"> ▫ Only <u>Custodial</u> parent is eligible ▫ Do not need to claim as a dependent 	<ul style="list-style-type: none"> ▫ Must report earned income 	<ul style="list-style-type: none"> ▫ Max Credit: <ul style="list-style-type: none"> ▫ \$6,728 for 3+ children ▫ \$5,980 for 2 children ▫ \$3,618 for 1 child ▫ ~\$1500 for no children 	<ul style="list-style-type: none"> ▫ Complete when AGI > than: <ul style="list-style-type: none"> ▫ \$51,464 for 3+ children ▫ \$47,915 for 2 children ▫ \$42,158 for 1 child 	<ul style="list-style-type: none"> ▫ Refundable 	<ul style="list-style-type: none"> ▫ Investment Income not > \$10,000 ▫ Spousal maintenance and child support are not considered earned income
American Opportunity Education Credit	<ul style="list-style-type: none"> ▫ Need to claim as <u>dependent</u> to be eligible 	<ul style="list-style-type: none"> ▫ Available 1st 4 years of college 	<ul style="list-style-type: none"> ▫ Max Credit: <ul style="list-style-type: none"> ▫ \$2,500 per student 	<ul style="list-style-type: none"> ▫ AGI > \$90,000 	<ul style="list-style-type: none"> ▫ Refundable up to 40%; \$1,000 max 	<ul style="list-style-type: none"> ▫ Credit follows dependency exemption regardless of who pays expense ▫ Reverts back to Hope Credit in 2018
Lifetime Learning Credit	<ul style="list-style-type: none"> ▫ Need to claim as <u>dependent</u> to be eligible 	<ul style="list-style-type: none"> ▫ Available for unlimited number of years 	<ul style="list-style-type: none"> ▫ Max Credit: <ul style="list-style-type: none"> ▫ \$2,000 per tax return 	<ul style="list-style-type: none"> ▫ AGI > \$69,500 	<ul style="list-style-type: none"> ▫ Non-Refundable 	<ul style="list-style-type: none"> ▫ Credit follows dependency exemption regardless of who pays expense



CHILD RELATED TAX BENEFITS

	Eligibility	Qualifier	Credit Subject to Phase Out	Phase Out for Single (HOH)	Refundable or Non-Refundable	Other Important Points
Dependency Exemption	<ul style="list-style-type: none"> ▫ The Tax Cuts and Jobs Act of 2017 suspended the \$4,050 deduction per dependent claimed on tax returns. ▫ Form 8332 can still be signed by the custodial parent to give the non-custodial parent the ability to claim a child on their tax return and benefit from any tax credits that may follow. 					
American Opportunity Education Credit	<ul style="list-style-type: none"> ▫ Need to claim as <u>dependent</u> to be eligible 	<ul style="list-style-type: none"> ▫ Available 1st 4 years of college 	<ul style="list-style-type: none"> ▫ Max Credit: \$2,500 per student 	<ul style="list-style-type: none"> ▫ AGI > \$90,000 	<ul style="list-style-type: none"> ▫ Refundable up to 40%; \$1,000 max 	<ul style="list-style-type: none"> ▫ Credit follows dependency exemption regardless of who pays expense ▫ Reverts back to Hope Credit in 2018
Lifetime Learning Credit	<ul style="list-style-type: none"> ▫ Need to claim as <u>dependent</u> to be eligible 	<ul style="list-style-type: none"> ▫ Available for unlimited number of years 	<ul style="list-style-type: none"> ▫ Max Credit: \$2,000 per tax return 	<ul style="list-style-type: none"> ▫ AGI > \$69,500 	<ul style="list-style-type: none"> ▫ Non-Refundable 	<ul style="list-style-type: none"> ▫ Credit follows dependency exemption regardless of who pays expense

- A refundable tax credit is available to the taxpayer above and beyond the taxpayer's federal tax liability. A non-refundable credit is only available to the extent of the taxpayer's federal tax liability.
- Under the Affordable Care Act, the parent claiming the dependent exemption is required to maintain health insurance coverage for dependent children or be penalized.



DEPENDENCY EXEMPTION RULES

Tie-Breaker on Claiming Child Exemption/Dependent

When two or more taxpayers can claim a child as a qualifying child under the general rules, special tie-breaker rules apply.

- If a parent and a non-parent both claim a child, the parent “wins” [IRC Sec. 152(c)(4)(A)(i)]
- If two parents claim a child on separate returns, the parent with whom the child lives for the longer period during the tax year “wins.” [IRC Sec. 152(c)(4)(B)(i)]
- If the child lives with each parent for the same amount of time during the tax year, the parent with the higher adjusted gross income “wins” [IRC Sec. 152(c)(4)(b)(ii)].
- If two non-parents claim a child, the one with the higher adjusted gross income for the tax year “wins” [IRC Sec. 152(c)(4)(A)(ii)]



CHILD RELATED TAX BENEFITS

	Eligibility	Qualifier	Credit Subject to Phase Out	Phase Out for Single (HOH)	Refundable or Non-Refundable	Other Important Points
Earned Income Credit <i>- expanded for 2021 only</i>	<ul style="list-style-type: none"> Only <u>Custodial</u> parent is eligible Do not need to claim as a dependent 	<ul style="list-style-type: none"> Must report earned income 	<ul style="list-style-type: none"> Max Credit: <ul style="list-style-type: none"> \$6,728 for 3+ children \$5,980 for 2 children \$3,618 for 1 child ~\$1500 for no children 	<ul style="list-style-type: none"> Complete when AGI > than: <ul style="list-style-type: none"> \$51,464 for 3+ children \$47,915 for 2 children \$42,158 for 1 child 	<ul style="list-style-type: none"> Refundable 	<ul style="list-style-type: none"> Investment Income not > \$10,000 Spousal maintenance and child support are not considered earned income
Child & Dependent Care <i>- expanded for 2021 only</i>	<ul style="list-style-type: none"> Only <u>Custodial</u> parent is eligible Do not need to claim as a dependent 	<ul style="list-style-type: none"> Only children under age 13 Must report earned income 	<ul style="list-style-type: none"> Max Credit is 50% of eligible expenses up to: <ul style="list-style-type: none"> \$16,000 for 2+ children \$8,000 for 1 child 	<ul style="list-style-type: none"> 50% max credit is reduced (but not below 20%) by 1% for each \$2,000 of AGI > \$125,000 20% credit is reduced (not below 0%) by 1% for each \$2,000 of AGI > \$400,000 	<ul style="list-style-type: none"> Fully Refundable 	<ul style="list-style-type: none"> Non custodial parents can not take any expenses they pay for daycare even if they take the dependency exemption Need to determine if Section 129 DCB Plan is



CHANGES TO CHILD & DEPENDENT CARE TAX CREDIT

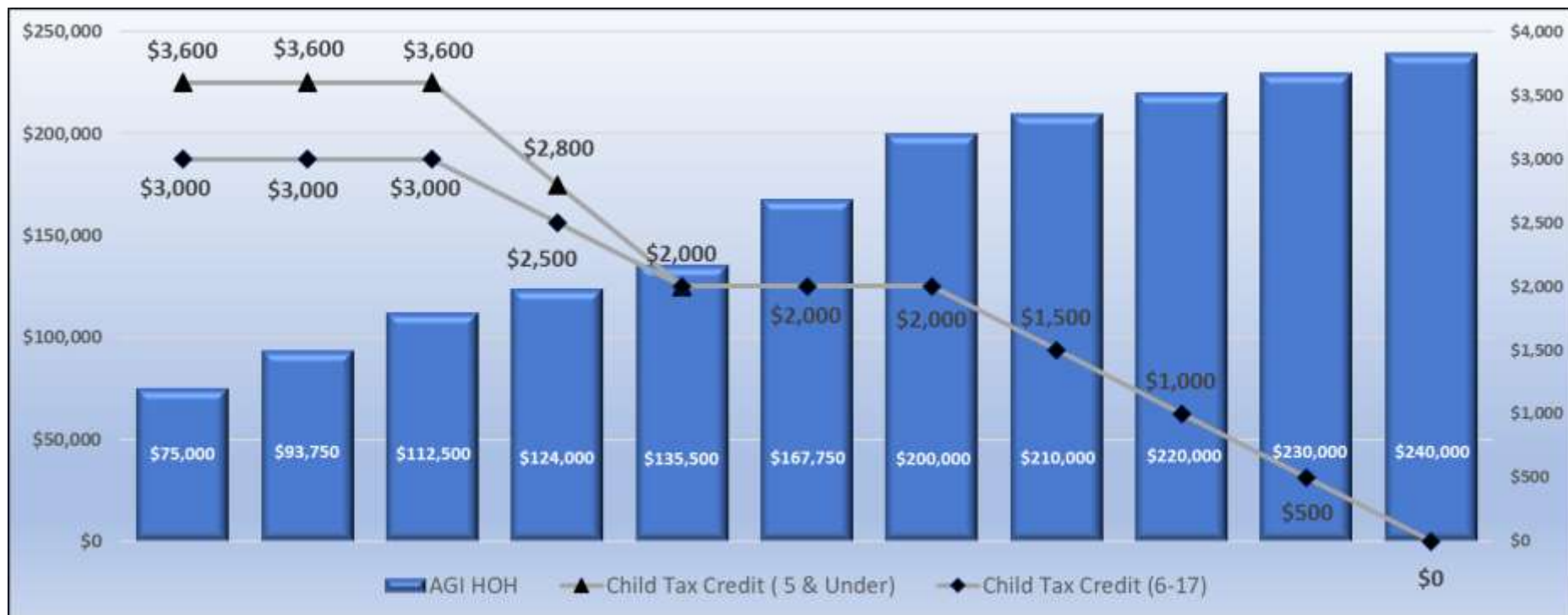
		Eligible Expenses	Max %	Max Credit
2020	1 Qualifying Child	\$ 3,000	35%	\$ 1,050
	2 or More Qualifying Children	\$ 6,000	35%	\$ 2,100
2021	1 Qualifying Child	\$ 8,000	50%	\$ 4,000
	2 or More Qualifying Children	\$ 16,000	50%	\$ 8,000



CHILD RELATED TAX BENEFITS

	Eligibility	Qualifier	Credit Subject to Phase Out	Phase Out for Single (HOH)	Refundable or Non-Refundable	Other Important Points
Child Tax Credit <i>- expanded for 2021 only</i>	<ul style="list-style-type: none"> Need to claim as <u>dependent</u> to be eligible 	<ul style="list-style-type: none"> Only children under age 18 (was 17) 	<ul style="list-style-type: none"> Max Credit: <ul style="list-style-type: none"> \$3,600 per qualifying child (ages 5 and under) \$3,000 per qualifying child (ages 6-17) 	<ul style="list-style-type: none"> Begins at AGI > \$112,500 Complete at AGI = \$135,501 before reverting to \$2k credit phase out limits 	<ul style="list-style-type: none"> Fully Refundable 	<ul style="list-style-type: none"> In order to waive credit, the non-custodial parent needs to attach Form 8332 50% of credit to be paid in advance via periodic payments from IRS from July 2021 - December 2021
			<ul style="list-style-type: none"> \$2,000 per qualifying child \$500 per non-qualifying child 	<ul style="list-style-type: none"> Begins at AGI > \$200,001 Complete at AGI = \$240,001 		

CHILD TAX CREDIT BENEFIT & PHASE OUT



CHILD TAX CREDIT - EXAMPLE

- Head of Household taxpayer w/ 2 children ages 8 and 4
 - Based on children's age - eligible for max credit of \$6,600 (\$3k for 8 y/o + \$3.6k for 4 y/o)
 - If AGI was \$110k, taxpayer would receive full \$6.6k
 - However, if AGI was \$140k (over phase out), taxpayer would receive \$4k



CHILD TAX CREDIT ADVANCED PAYMENTS

- IRS will rely on 2020 filing status, income and age/number of kids to determine advanced payment amount.
 - Same facts ... HoH with \$110k AGI, 2 kids ages 4 & 8 = \$6.6k credit
- IRS will pay 50% of estimated Child Tax Credit for 2021 equally from July – December.
 - Expect \$550/mo. ($\$6.6k \times 50\% \div 6 \text{ months}$)
 - Will receive other 50% when 2021 tax return filed



CHILD TAX CREDIT ADVANCED PAYMENTS

- In general – payments subject to “claw back” if advance exceeds actual amount.
- What happens if 2021 AGI enters or exceeds phaseouts?
 - If 2021 AGI was \$124k, credit will be \$5.3k
 - Advance will have exceeded actual by \$650 and will need to be paid back on 2021 tax return
- What happens if number of dependents or filing status changes?
 - If only claimed 8 y/o, \$1.8k in advance payments for 4 y/o would be clawed back.



CHILD TAX CREDIT ADVANCED PAYMENTS

- However, AGI less than another threshold amount, will be eligible for safe harbor
 - Permits taxpayer to keep up to \$2,000 of overpayment per child erroneously paid in advance
- Suppose AGI is only \$45k
 - falls below the claw back threshold of \$50k - \$100k for HoH filers,
 - taxpayer can keep the \$1.8k advance overpayment.



CHILD TAX CREDIT ADVANCED PAYMENTS

- Questions for those divorcing:
- IRS will rely on most current return on file – likely a “Married Filing Joint” return.
 - Will income reported on Joint Return exclude them from credit and advanced payment?
 - Where will advance payments go?
 - Mailed to marital residence
 - Deposited directly into old bank accounts
 - What to do with payments received?
 - Should both parties opt out of advance payment?
 - Must do so by 3 days prior to 1st Thursday of the month



CHILD TAX CREDIT ADVANCED PAYMENTS

- Questions for those divorced or sharing custody:
- IRS will rely on most current return on file – likely a “Single” or “Head of Household” return.
 - Will parent who can claim dependents per settlement agreement receive advanced payment?
 - Likely if claiming same kids each year
 - Unlikely if alternating kids with Form 8332
 - What if I’m receiving advanced payments but shouldn’t?
 - Unenroll from receiving advanced payments via portal
 - Consider safe harbor (\$40k-\$80k single, \$50k-\$100k HoH)
 - What if I’m not receiving advanced payments but should?
 - Update dependent information via portal
 - Wait until next return filed to claim full amount



CHILD TAX CREDIT ADVANCED PAYMENTS

- How to update your information:
 - Go to the Child Tax Credit Update Portal @ irs.gov/credits-deductions/child-tax-credit-update-portal
 - Click on “Manage Advance Payments” box at bottom

Date You Can Make Changes	What You Can Do
June 21 st	<ul style="list-style-type: none">- Find out if you're eligible- Unenroll from payments- See a list of your payments
June 30 th	<ul style="list-style-type: none">- Make changes to your bank information for your payments beginning in August
August	<ul style="list-style-type: none">- Make changes to your address
Late Summer	<ul style="list-style-type: none">- Make changes to your dependents, marital status and income- Re-enroll if you previously unenrolled

W-4 WITHHOLDINGS

Form W-4 (Rev. December 2020) Department of the Treasury Internal Revenue Service		Employee's Withholding Certificate ▶ Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. ▶ Give Form W-4 to your employer. ▶ Your withholding is subject to review by the IRS.		OMB No. 1545-0074 2021
Step 1: Enter Personal Information	(a) First name and middle initial		Last name	(b) Social security number ▶ Does your name match the name on your social security card? If not, to ensure you get credit for your earnings, contact SSA at 800-772-1213 or go to www.ssa.gov .
	Address			
	City or town, state, and ZIP code			
	(c) <input type="checkbox"/> Single or Married filing separately <input type="checkbox"/> Married filing jointly or Qualifying widow(er) <input type="checkbox"/> Head of household (Check only if you're unmarried and pay more than half the costs of keeping up a home for yourself and a qualifying individual.)			

Complete Steps 2–4 ONLY if they apply to you; otherwise, skip to Step 5. See page 2 for more information on each step, who can claim exemption from withholding, when to use the estimator at www.irs.gov/W4App, and privacy.

Step 3: Claim Dependents	If your total income will be \$200,000 or less (\$400,000 or less if married filing jointly):		
	Multiply the number of qualifying children under age 17 by \$2,000 ▶ \$		
	Multiply the number of other dependents by \$500 ▶ \$		
	Add the amounts above and enter the total here		3 \$

BUILD BACK BETTER PLAN

- \$1.75T Reconciliation Bill
- Extend the American Rescue Plan Act (ARPA) temporary expansion of the Earned Income Tax Credit eligibility, phase-in rates and amount through 2022
- No mention of Child & Dependent Care Tax Credit
- Extend the ARPA's Child Tax Credit (CTC) expansion through 2022, and make the entire CTC fully refundable on a permanent basis
 - Per www.taxfoundation.org. Last update November 5, 2021



WHY USE US DURING THE DIVORCE

- Can objectively “set the financial stage” for the client
- Review decrees to help determine if there are hidden tax traps or perhaps a more creative structure
- As CDFA and with 100% of our focus on divorce clients, this is what we do all day, every day.
- We understand the issues, but know to “stay away from legal advice”
- We don’t charge during the divorce as our goal is to work with clients long-term where we provide most value



QUESTIONS?



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Section Four

Building Your Relocation Case for Trial

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Bloomington, Indiana

Section Four

Building Your Relocation

**Case for Trial..... Timothy M. Sledd
Audrey Brittingham**

PowerPoint Presentation

In re Paternity of K.C., 171 N.E.3d 659 (2021)

Lynn v. Freeman, 157 N.E.3d 17 (2020)



BUILDING YOUR RELOCATION CASE FOR TRIAL

Timothy Sledd and Audrey Brittingham
Mallor Grodner LLP

Roadmap of Burden of Proof at Trial

- Burden shifting statute is found under Indiana Code section 31-17-2.2-5.
- Relocating Parent's Burden I.C. 31-17-2.2-5(e).
 - Good Faith and Legitimate Move
- Non-Relocating Parent's Burden
 - Relocation is not in the Child's best interests. I.C. 31-17-2.2-5(f).
 - The Court considers factors under both Indiana Code sections 31-17-2.2-5(d) and 31-17-2-8.
 - **Tip #1**: Although this is the non-relocating parent's burden, counsel for the relocating parent should prepare as though it was also their burden.

Petitioner's Burden: Good Faith

- Whether a parent's move is made in good faith lies in whether the party's reason to move is merely a pretext for thwarting a relationship with the other parent. See e.g., *Lynn v. Freeman*, 157 N.E.3d 17 (Ind. Ct. App. 2020).
 - Evidence of previous bad faith actions by a party is not necessarily evidence that their reasons for moving are merely pretextual.
 - In *Lynn v. Freeman*, Mother had committed prior acts to hinder Father's relationship with the child. However, the Court of Appeals determined that this did not warrant finding Mother's proposed relocation itself was in "Bad Faith."

Tip #2: Separate any prior bad acts by your client from their motives to relocate.

Petitioner's Burden: Legitimate

- The three most-cited, “legitimate” reasons for a move are “employment opportunities, financial considerations, and proximity to family.” See e.g., *Swadner v. Swadner* 897 N.E.2d 966, 976 (Ind. Ct. App. 2008).
- **Tip #3**: This is a non-exhaustive list. Don't be afraid to point out all of your client's reasons to relocate! For example:
 - Relocating party sought a better school district; a school district that also provided football; and a larger home for her growing family. *Gilbert v. Gilbert*, 7 N.E.3d 316, 320-21 (Ind. Ct. App. 2014).
 - Relocating party's subsequent spouse obtained employment in Hawaii. *H.H. v. A.A.*, 3 N.E.3d 30, 35 (Ind. Ct. App. 2014).
 - Relocating party was no longer able to care for thirteen acres herself and she wanted to raise the child in a different community. *B.L. v. J.S.*, 59 N.E.3d 253, 261-62 (Ind. Ct. App. 2016).

Additional Notes on Petitioner's Burden

- Do you need to separate “Good Faith” and “Legitimate”?
 - No; separate analyses are not required because these two often go hand-in-hand. *Lynn v. Freeman*, 157 N.E.3d 17 (Ind. Ct. App. 2020). However, it is probably a good idea to separate “good faith” and “legitimate” where there is a history of bad-faith acts on the part of your client.
 - In *Lynn v. Freeman*, the trial court determined that the petitioner had met her burden to show the move was legitimate, but found that she did not show the move was in “Good Faith.” The Court of Appeals reversed, stating that separate analyses of these two standards is permissive; not required.
- How rigorous is this first burden?
 - Not all that rigorous.
 - Appellate Courts have stated that if this burden was particularly difficult to meet, then it could “too often prevent trial courts from reaching and appropriately deciding the dispute based on the best interests of the child.” *T.L. v. J.L.*, 950 N.E.2d 779, 787 (Ind. Ct. App. 2011).

Non-Relocating Parent's Burden: Best Interests under I.C. 31-17-2.2-1

1. *Distance involved in 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.*

When one of the statutory factors under I.C. 31-17-2.2-1 is not on your side...

- **Distance involved in proposed change of residence;**
 - Usually, there is not much your client can do to alleviate the mileage; however, there are things your client can do to alleviate hardship; expense; and preserving parenting time.
- **The hardship and expense involved for the nonrelocating individual to exercise parenting time;**
 - Expense: If possible, the relocating party should pay for a majority of the child's traveling expenses related to parenting time.
 - Hardship: Get creative with family members willing to help in transportation or working with nonrelocating parent on meeting halfway for parenting time.
- **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;**
 - Again, get creative: Rely on extended family to facilitate exchanges; Figure out a proposed parenting time plan that provides the non-relocating parent with as much, if not more, parenting time with the child.
 - **Tip #4:** Include, as one of your exhibits, your client's proposal for parenting time. This way, the Judge has something to reference, and your client has an opportunity to show just how reasonable they are being.
 - **Tip #5:** Figure out whether the nonrelocating parent is exercising all their parenting time.

...Continued.

- 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;
 - This is the appropriate place for a non-relocating party to use evidence of former bad acts to thwart parenting time.
 - Tip #6: If your relocating client has been guilty of this in the past, explain the importance of eliminating these incidents during the pendency of the relocation case. If applicable, have your client offer make-up time to the non-relocating parent.
- The reasons provided by the:
 - a. relocating individual for seeking relocation; and*
 - b. nonrelocating parent for opposing the relocation of the child;*

Best Interest Factors

- Because the relocation necessitates a modification in custody, then the “Best Interests” factors provided in I.C. 31-17-2-8 are also considered. See *Baxendale v. Raich*, 878 N.E.2d 1252 (Ind. 2008).
- Child’s adjustment to home, school, or community
 - **Tip #7:** Consider COVID’s Effect
 - Many extracurriculars were cut short due to COVID, thus severing many ties for these children to their communities over the past year.
- Wishes of the Child
 - If under the age of 14, consider a GAL if the child is outspoken about wanting to relocate
 - If 14 or older, consider an *in camera* interview
- **Tip #8:** For all the best interest factors, in a relocation case, the key is to compare and explain why there will either be no change for the child, or that the potential change is for the child’s benefit.

Decoupling Contempt and Best Interests

- Recent Indiana case law provides that Courts cannot merely cite a party's contempt of court as a reason to modify custody. See *In the Matter of Paternity of B.Y.*, 159 N.E.3d 575 (Ind. 2020).
- You can use the same facts to prove both contempt of court AND that modification is in the child's best interests, but being in contempt of court is not, itself, a reason to modify custody. *Id.* See also *In re Paternity of K.C.*, 171 N.E.3d 659 (Ind. Ct. App. 2021) (wherein the trial court and court of appeals applied similar facts to relocation and best interests statutes; and completed a separate Contempt analysis).

When to File and Objection to Relocation

- Filing too early can lead to unnecessarily adverse opposing counsel and opposing clients.
- It can be easy to be trigger-happy on this filing. However, you want to file only when there is reasonable certainty that relocation is imminent.
- Signs of Imminent Intent to Relocate
 - Home or Apartment Shopping
 - School Shopping
 - Applying for jobs
 - Putting home on the market
 - Not renewing a lease
 - Children have not re-enrolled in school; children have been enrolled in a new school
- How to determine?
 - Send Discovery asking about these things.
 - Ask Opposing counsel directly and ask in writing.
 - Ask your client to follow up with opposing party.

Be Aware of the “Conditional Order”

- This is a tool both for and against your client, whether your client is the relocating or nonrelocating parent.
- Tip #9: Build a case that leaves the Judge with no doubt that relocation is imminent and necessary for your client.
- After conditional order is issued, the subsequent relocation of a party does not then create a “change in circumstances” to warrant a second petition to relocate. See *In re Paternity of K.C.*, 171 N.E.3d 659 (Ind. Ct. App. 2021).

In re Paternity of K.C., 171 N.E.3d 659 (2021)

171 N.E.3d 659
Court of Appeals of Indiana.

IN RE: The PATERNITY OF K.C.;
Kayley Boonstra, Appellant-Mother,
v.
Daniel Corcoran, Appellee-Father.

Court of Appeals Case No. 20A-JP-1592
|
FILED May 25, 2021

Synopsis

Background: After unmarried parents had entered into agreed paternity order, which provided that parties would share legal custody and that mother would have physical custody of the child, mother filed petition to relocate to Virginia with child's stepfather. Although trial court denied petition, stepfather moved and mother relocated to Virginia without child. Father filed motion to modify custody and support, and mother filed second petition to relocate. Father filed two contempt citations, alleging that mother failed to comply with parenting time in paternity order. Mother also filed petitions for rule to show cause involving parenting time. After a hearing, the Circuit Court, Cass County, Benjamin A. Diener, S.J., granted father's motion to modify custody, support, and parenting time, denied mother's second petition to relocate, found mother in contempt, and ordered mother to pay father attorney fees. Mother appealed.

Holdings: The Court of Appeals, [Pyle, J.](#), held that:

mother failed to demonstrate substantial change of circumstances to warrant granting of second relocation petition;

mother's relocation 800 miles away was a substantial change of circumstances for purposes of father's petition to modify custody;

modification of child custody was in child's best interest;

award of attorney's fees based on trial court's denial of mother's relocation petition was warranted;

trial court's issuance of contempt order against mother was warranted; and

trial court's order modifying child support obligations was not clearly erroneous.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Modify Custody; Motion to Relocate or Remove Child out of State; Petition to Modify Child Support; Motion to Modify Visitation Rights or Parenting Time; Motion for Contempt; Motion to Show Cause.

*663 Appeal from the Cass Circuit Court, The Honorable [Benjamin A. Diener](#), Special Judge, Trial Court Cause No. 09C01-1708-JP-58

In re Paternity of K.C., 171 N.E.3d 659 (2021)

Attorneys and Law Firms

Attorney for Appellant: [Christopher P. Phillips](#), Phillips Law Office, PC, Monticello, Indiana

Attorney for Appellee: [Braden J. Dean](#), Hillis, Hillis, Rozzi & Dean, Logansport, Indiana

[Pyle](#), Judge.

Statement of the Case

[1] Kayley Boonstra (“Mother”) appeals the trial court’s order that: (1) denied her second petition to relocate to Virginia; (2) modified custody of the parties’ son, five-year-old K.C. (“K.C.”), in favor of Daniel Corcoran (“Father”); (3) ordered her to pay \$5,406 of Father’s attorney’s fees; (4) found her in contempt; and (5) ordered her to pay \$123 per week in child support. Mother specifically argues that the trial court clearly erred when it denied her second petition to relocate and ordered her to pay \$123 per week in child support. She also argues that the trial court abused its discretion when it modified custody of the parties’ son in favor of Father, found her to be in contempt, and ordered her to pay \$5,406 of Father’s attorney’s fees. Concluding that the trial court did not clearly err or abuse its discretion, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether the trial court clearly erred when it denied Mother’s second petition to relocate.
- *664 2. Whether the trial court abused its discretion when it modified custody of K.C. in favor of Father.
3. Whether the trial court abused its discretion when it ordered Mother to pay \$5,406 of Father’s attorney’s fees.
4. Whether the trial court abused its discretion when it found Mother to be in contempt.
5. Whether the trial court clearly erred when it ordered Mother to pay \$123 per week in child support.

Facts

[3] K.C. was born in September 2014. Mother and Father never married but lived together at Father’s home in Logansport with K.C. and Mother’s son from a prior marriage. At some point, the parties ended their relationship, and, in August 2017, Father filed a petition to establish paternity of K.C.

[4] In March 2018, the parties entered into an agreed paternity order. Pursuant to the terms of this order, the parties agreed that they would share legal custody of K.C. and that Mother would have physical custody of the child. The parties further agreed that Father would exercise overnight parenting time every Wednesday night and on alternate weekends. The parties also agreed that the Indiana Parenting Time Guidelines (“the Guidelines”) would apply in all other respects. In addition, Father agreed to pay \$50.00 per week in child support.

[5] Four months later, in July 2018, Mother married Alexander Boonstra (“Stepfather”), who also lived in Logansport. In September 2018, Stepfather enlisted in the United States Air Force. Mother and Stepfather’s son was born in February 2019.

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[6] One month later, in March 2019, Mother filed a handwritten notice, wherein she advised the trial court that, in May 2019, Stepfather would be stationed at Langley Air Force Base near Norfolk, Virginia. Norfolk is located 800 miles from Logansport. Mother further told the trial court that she intended to relocate to Virginia as soon as she and Stepfather had obtained housing and that she would notify Father of her new address as soon as she knew it. The trial court treated Mother's notice as a petition to relocate.

[7] In April 2019, Father filed an objection to Mother's petition to relocate. In June 2019, the trial court held a hearing on Mother's petition to relocate and Father's objection. At the hearing, Mother told the trial court that, if it did not grant her petition to relocate, she would remain in Logansport with her three children while Stepfather moved to Virginia.

[8] On June 26, 2019, the trial court issued a detailed nine-page order denying Mother's petition to relocate. In its order, the trial court concluded that Mother had a legitimate reason for the relocation and that her request had been made in good faith because Stepfather had been assigned to a military base in Virginia. Thereafter, the trial court applied the facts of the case to the relevant factors set forth in the relocation statute, [INDIANA CODE § 31-17-2.2-1\(b\)](#), and found as follows:

1. The distance between Logansport, Indiana, and Norfolk, Virginia, is 800 miles, a drive of twelve to thirteen hours.
2. [Father] states that he has recently changed employment, due to his previous position requiring weekend hours that precluded Parenting Time, and is now working at a job that pays less but is stable and does not create this conflict. Because of the age of [K.C.], an exchange for ***665** Parenting Time would require either someone flying back and forth from Virginia to Indiana with [K.C.], or four days of driving to exchange [him]. This means that a significant amount of time spent with [K.C.] would be time spent in transit. Neither option is inexpensive, nor is either party demonstrably affluent.
3. [K.C.] is too young to engage with [Father] via social media in any meaningful way.

(App. Vol. 2 at 22).

[9] As required by the relocation statute, the trial court also considered other factors affecting K.C.'s best interest, including factors applicable in an initial custody determination as set out in [INDIANA CODE § 31-17-2-8](#). Applying those factors to the facts of this case, the trial court found, in relevant part, as follows:

- d. Here, with respect to the "interaction and interrelationship of the child with ... any other person who may significantly affect the child's best interests," is the part of the analysis most adverse to [Mother's] position...
 - i. [K.C.'s] entire family tree is located in Cass County, Indiana. [Father], both sets of grandparents, cousins, etc., are apparently either located in Cass County or its immediate vicinity.
 - ii. Not only are grandparents available for immediate support of [Father], [Mother], and all of the children in Cass County, [Father's] property is physically adjacent to his father's; support for [Father] is literally next door.

(App. Vol. 2 at 22).

[10] Based on its analysis of the relevant statutory factors, the trial court concluded as follows:

[Father] and [Mother] *formally* propose the following scenarios to [the] Court:

A. [K.C.] relocate to Norfolk, Virginia with [Mother], [Stepfather], and two half-siblings, where [Stepfather], newly inducted and newly assigned, is stationed *at this time*, and where [Mother] *may* attempt to continue her education around childcare

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for three children, including preschool children, *if it is accessible*, and without any support from family, because the entire family tree is twelve hours away, requiring that a four-year-old engage in days of travel in order for [Father] to exercise any Parenting Time[.]

Or:

B. [K.C.] remain in Logansport, where [Father], who has stable housing and employment, is surrounded by his immediate family, *and [Mother's] immediate family*, and the families' support.

At the hearing, [Mother] essentially also offered a third solution: that she simply remain in Logansport with all three children, while [Stepfather] remains in Virginia. Given the needs of [K.C.], let alone all three, the Court considers this the most appropriate solution[.]

Whether [Mother] adopts her own alternative is not for the Court to decide. [Mother's] fundamental right to travel remains within her discretion. The Court merely states its position that, between the given alternatives, [Mother's] preferred solution [to relocate with K.C. to Virginia] is not in the best interests of [K.C.]

[Mother's] Petition is therefore DENIED.

(App. Vol. 2 at 23-24) (*italics in the original*).

[11] On July 1, 2019, Stepfather signed a lease to rent a house in Virginia. Two weeks later, on July 15, 2019, Mother filed *666 a motion to correct error. While her motion was pending, Mother relocated to Virginia without K.C. On July 22, 2019, the trial court denied Mother's motion to correct error. Mother did not appeal the trial court's denials of her petition to relocate or her motion to correct error.

[12] Three months later, in October 2019, Father filed a motion to modify custody of K.C. In his motion, Father alleged that, after the trial court had issued its order denying Mother's petition to relocate, "Mother [had] relocated [to Virginia] and surrendered the care and custody of [K.C.] to Father." (App. Vol. 2 at 50). Father alleged that "there [had] been a substantial and continuing change in circumstances such that it [was] in [K.C.'s] best interest that custody of [K.C.] be modified in favor of Father." (App. Vol. 2 at 50). Father also requested a modification of child support and parenting time.

[13] The following week, Mother obtained a new attorney and filed a motion requesting a change of judge. The trial court granted Mother's motion, and the parties agreed to the selection of a Carroll Circuit Court judge as a special judge. The day that the Carroll Circuit Court judge accepted the special judge appointment, Mother filed a second petition to relocate to Virginia.

[14] In this November 2019 petition, Mother alleged that, in June 2019, the trial court had denied her petition to relocate "based upon Mother's testimony that she could maintain two (2) separate living arrangements, with Mother staying [in Logansport] and raising three children, and [Stepfather] relocating to Virginia as part of his military employment." (App. Vol. 2 at 55). According to Mother, she had been unable to maintain two separate households and had been "forced" to move to Virginia. (App. Vol. 2 at 55). Mother further alleged that K.C. was "not prospering with ... Father being responsible for his care[.]" (App. Vol. 2 at 55).

[15] During the 2019 holiday season, while Father's petition to modify custody and Mother's second petition to relocate were pending, Mother attempted to assign her parenting time to her parents ("Maternal Grandparents"). Specifically, Mother sent Father the following text:

My parents will have [K.C.] for Christmas Day as referred to in the parenting guidelines. My mom can't bring him here until the 30th so that's when he will be coming here. I will bring him back to Indiana. I already know you have an issue[] with it and I don't care to hear your response. I'm telling you this is the plan[.] If you don't plan to pick [K.C.] up [in Virginia] then he will return to Indiana [on] Jan. 14th. If you have an issue with this, you could contact your attorney.

(Trial Court's Chronological Case Summary (“CCS”), January 9, 2020 entry, Father's Contempt Citation).¹

[16] Father responded to Mother that the Guidelines did not “say [Maternal Grandparents] c[ould] have [K.C.] for [Mother's parenting] time.” (Trial Court's CCS, January 9, 2020 entry, Father's Contempt Citation). Father also contacted his attorney. Thereafter, the parties agreed that Maternal Grandmother would pick up K.C. on December 28, 2019 and that K.C. would visit Mother in Virginia. The parties further agreed that they would exchange K.C. in Charleston, West Virginia, which is midway between Logansport and Norfolk, on January 6, 2020.

*667 [17] However, on the evening of January 5, 2020, Mother texted Father and told him that she would be unable to meet him and exchange K.C. the following day because she was sick. Mother told Father that he could drive to Norfolk to pick up K.C. However, Father did not have enough time to drive twelve hours to Norfolk and then another twelve hours back to Logansport because of his employment. Father offered to wait a day or two until Mother felt better to meet in West Virginia. However, Mother told Father that she would be in Indiana on January 14.

[18] On January 9, 2020, Father filed a contempt citation requesting that the trial court require Mother to show cause why she should not be held in contempt for failing to comply with the parenting time set forth in the March 2018 agreed parenting order. Mother returned K.C. to Indiana on January 14, 2020.

[19] On April 20, 2020, Mother's attorney emailed Father's attorney and advised him that Mother would like to make arrangements for K.C. to visit her again in Virginia. Mother proposed that Stepfather's father drive K.C. to Virginia on April 24 or 25. Father was concerned that Mother's email contained no information regarding the specifics of the exchange, the length of time that K.C. would stay with Mother, and the date that K.C. would be returned to Father. In addition, Father was concerned about Stepfather's father providing K.C.'s transportation to Virginia.

[20] The following day, April 21, 2020, Mother filed a rule to show cause requesting that the trial court order Father to show why he should not be held in contempt of court for denying Mother and her family in Logansport visitation and/or contact with K.C. In support of her rule to show cause, Mother referred to specific incidents where Father had refused to allow Mother to assign her parenting time to Maternal Grandparents. Mother also complained that Father had not responded to Stepfather's parents' request to see K.C.

[21] Two days later, on April 23, 2020, Father's attorney emailed Mother's attorney and advised him that Father was willing to allow K.C. to make another trip to Virginia. Father proposed exchanging K.C. in West Virginia on May 16, 2020. Father also proposed that Mother return K.C. to Indiana on June 21, 2020. Mother's counsel did not respond to Father's counsel's email.

[22] Instead, the following day, April 24, 2020, Mother texted Father at 3:30 p.m. and told him that she was in Indiana to pick up K.C. Ten to fifteen minutes later, Mother texted Father that she had picked up K.C. at Paternal Grandparents' home. Shortly thereafter, Mother and K.C. boarded an airplane to Virginia. Neither K.C. nor Father knew that K.C. would be traveling to

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Virginia. That evening, Mother gave Father no additional information and did not respond to Father's text messages inquiring about K.C.

[23] The following day, April 25, 2020, Mother texted Father and told him that K.C. was in Virginia and would be staying with Mother for the summer. On Monday, April 27, 2020, Father filed a second contempt citation and a request for an emergency hearing concerning K.C.'s return to Indiana. In the contempt citation, Father stated that he had not consented to K.C.'s removal to Virginia and that there had been no arrangement between the parties and their attorneys regarding a parenting time schedule. Father alleged that Mother had essentially relocated K.C. to Virginia in violation of the June 2019 order that had denied her petition to relocate. "Most significantly," Father asked the trial court to "schedule an emergency hearing, ... and after hearing evidence, direct ... Mother *668 to return [K.C.] to the State of Indiana immediately." (App. Vol. 2 at 60).

[24] The following day, Mother filed an objection to Father's contempt petition. She argued that she was "simply exercising [the] visitation [to which she was] entitled." (App. Vol. 2 at 61). She further argued that there was "no requirement that the parties reach an Agreement before Mother could have any visitation." (App. Vol. 2 at 61).

[25] One month later, in May 2020, Mother filed a second petition for rule to show cause because Father had enrolled K.C., who was still in Virginia, in Kindergarten in Logansport. Mother argued that she was the custodial parent and that Father had not had her approval to register their son in school. She asked the trial court to order Father to show cause why he should not be held in contempt for his actions. In June 2020, Mother filed a motion requesting that the trial court enter findings of fact and conclusions thereon when ruling on the merits of the parties' pending motions.

[26] On June 22, 2020, the trial court held the first of a two-day hearing on the parties' pending motions. Specifically, the trial court heard evidence on the following motions: (1) Father's October 2019 motion to modify custody, support, and parenting time; (2) Mother's second motion to relocate, which was filed in November 2019; (3) Father's January 2020 contempt citation; (4) Mother's April 2020 motion for rule to show cause; (5) Father's April 2020 contempt citation and emergency order for the return of K.C.; and (6) Mother's May 2020 rule to show cause.

[27] At the beginning of the hearing, Father's counsel told the trial court that he intended "to narrow or limit the [relocation] evidence to things that occurred" between the trial court's June 2019 denial of Mother's first petition to relocate and the filing of Mother's second petition to relocate in November 2019. (Tr. Vol. 2 at 11). According to Father's counsel, he was "not [t]here to relitigate." (Tr. Vol. 2 at 11). The trial court agreed with Father's counsel and stated that, "[a]s far as it relate[d] to any motion filed by [M]other to reattempt to modify based on the relocation, the Court w[ould] limit the evidence for change of circumstances from the June 26, 2019 Order[.]" (Tr. Vol. 2 at 13).

[28] At the hearing, the trial court heard testimony about the facts as set forth above. In addition, the trial court took judicial notice of the parties' 2018 agreed paternity order and the previous trial court's June 2019 order denying Mother's petition to relocate to Virginia.

[29] Additional testimony at the hearing revealed that thirty-three-year-old Father has been a construction worker for the past fourteen years. He works Monday through Friday from 7:00 a.m. until 3:30 p.m. Father earns \$21.50 per hour. In addition, Father lives in a rural area on a nine-acre property, and Paternal Grandparents live next door on a ten-acre property. K.C. and Father ride three-wheelers and camp on the property. K.C. sees Paternal Grandparents almost every day and likes to ride in Paternal Grandfather's golfcart. In addition, Father has a large extended family, which includes aunts, uncles, cousins, and cousins' children, who live in the Logansport area. Mother also has a large extended family in the Logansport area.

[30] At the hearing, Father explained that, after Mother had relocated to Virginia, Mother had begun expressing concerns about K.C.'s hygiene because K.C. had had dirt under his fingernails. Mother had also told Father that she had concerns that K.C. was

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not gaining weight. Mother advised Father that she was going to *669 schedule an appointment with K.C.'s pediatrician in Logansport to discuss her concerns about K.C.'s hygiene and weight. Father pointed out that Mother had raised these concerns when "they were getting ready to go to court." (Tr. Vol. 2 at 64). Father also explained that he had previously attempted to talk to Mother about registering K.C. for Kindergarten in Logansport. After Mother had told Father that she would not discuss K.C.'s school options with Father, he had registered K.C. for Kindergarten in Logansport.

[31] Father asked the trial court to award him legal and physical custody of K.C. and to award Mother parenting time pursuant to the Guidelines for long-distance travel. Father also asked the trial court to order Mother to pay for part of his attorney's fees.

[32] At the time of the hearing, K.C. had just completed pre-school and was scheduled to begin Kindergarten in the fall. K.C.'s pre-school teacher, Cindy Byers ("Byers"), who had been teaching at the pre-school for twenty-two years, testified at the hearing that K.C. had entered the pre-school in August 2019, when he began living with Father. At that time, K.C. did not know the letters of the alphabet or colors, but during the course of the academic year, K.C. had "done miraculously a 180 ... [and] ... [had] really excelled." (Tr. Vol. 2 at 21, 22). Byers further testified that K.C. was a "good kid all the way around." (Tr. Vol. 2 at 18). According to Byers, she had never had any concerns about K.C.'s hygiene, and he had always been properly dressed. Byers further testified that she had talked to Father daily when he had picked up K.C. from pre-school and that Father had been engaged in K.C.'s educational progress.

[33] Stepfather testified that he was aware that, at the first relocation hearing, Mother had testified that she could afford to stay in Indiana while Stepfather relocated to Virginia. When asked "why [M]other [had] said that," Stepfather responded that it "was the heat of the moment." (Tr. Vol. 2 at 137). According to Stepfather, Mother "just want[ed] to be with [K.C.] and wasn't thinking that a judge would deny her the ability to take [K.C.] with her [to Virginia]." (Tr. Vol. 2 at 137). Stepfather further testified that he and Mother had never discussed whether it was feasible for Mother to remain in Indiana while Stepfather relocated to Virginia and that it was "not at all" a feasible alternative. (Tr. Vol. 2 at 138).

[34] At the end of the first day of the hearing, the trial court, with the agreement of the parties, scheduled the second day of the hearing for one month later, in July 2020. In addition, the trial told the parties as follows:

Given the date between now and then and the parties circumstances, the guidance I'm giving [the] parties is to treat the custodial order as if Father is primary physical custodian and Mother is entitled to parenting time when distance is a major factor, which would allow her to see the child when she is in this area, or at other times permitted by that order, which I don't think will be triggered in that month interim, but that is the guidance I'm giving the parties as that is the reality after the last order and after Mother chose to relocate, that is the default status of the parties by their own choosing, is that Father's got primary physical custody of the child and Mother is now the secondary physical custodian pending further court order. That is the just the reality of the circumstances. So, I am not going to sit here and say the parties still have joint legal custody and Mother is primary physical custodian when Mother has voluntarily relinquished primary physical custody by *670 moving to Virginia. Now that is not the Court ordering that, this is just acknowledging the reality of the circumstances between now and the next hearing. So that is what the Court is saying. We will continue these proceedings and finish evidence at which time the Court will enter an official order based on the evidence presented, but for now until then treat Father like primary physical custodian.

(Tr. Vol. 2 at 157-58).

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[35] Father's counsel pointed out that Mother had had K.C. for the past two months, since she had picked him up in Logansport on April 24, 2020. According to Father's counsel, Father had just seen K.C. for the first time the previous day and should have K.C. for the rest of the summer. The trial court responded that it was not going to issue any orders but that it “would just let [the] parties know that whatever happen[ed] between [then] and the next hearing w[ould] be fair game to bring up at the next hearing and [the parties’] actions good or bad w[ould] be heavily weighed by the Court.” (Tr. Vol. 2 at 159). Following the hearing, Mother returned to Virginia with K.C.

[36] At the beginning of the second day of the hearing in July 2020, Mother's counsel asked her what had changed since the previous trial court had denied her first motion to relocate in June 2019. Mother responded that she had not been able to sustain two households, one in Indiana and another in Virginia, and that she had been forced to move to Virginia. However, when later asked why she had testified in June 2019 that she could remain in Indiana while Stepfather relocated to Virginia, Mother responded that she had “said whatever [she] c[ould] to keep [her] kids together.” (Tr. Vol. 2 at 169). Mother also testified that she was a medical assistant in Virginia. According to Mother, she earned \$14.65 an hour and worked forty hours per week.

[37] Mother further testified that she had had K.C. in her care for the past eighty-four days, since April 24, 2020 when she picked him up at Paternal Grandparents’ house in Logansport. Father's counsel objected when Mother began testifying about K.C.’s adjustment to Virginia during the past eighty-four days, and the trial court responded as follows:

I am not going to get down to the weeds as far as what is going on in Virginia. I am just not going to do it[.] So, you are asking me to undo what [the previous trial court] did[.] And so, I am entertaining as much evidence as I can, but we are getting too far in the weeds[.] [K.C.] is visiting [Virginia]. So, if you want to talk about things you witnessed while the child has been visiting, but we are not going to get into doctor's appointments, schooling, things that are of legal sediments because the child is not legally settled in Virginia. So, none of that stuff, it is not relevant. I know that you want it to be relevant based on your renewed motion. Your renewed motion is probably not even a valid motion, but we are just doing what we can to make the record so that when either of you are aggrieved you can take it above me[.]

(Tr. Vol. 2 at 177-78).

[38] Mother further testified that she had been sick in January 2020 when she had been scheduled to meet Father in West Virginia to exchange K.C. According to Mother, she had not “knowingly tried to keep [K.C.] from returning to the State of Indiana.” (Tr. Vol. 2 at 180). Mother also testified that she had filed the April 2020 contempt citation because Father had not allowed her to Skype every day with K.C. When asked why she had filed the contempt citation after Father had enrolled *671 K.C. in Kindergarten in Logansport, Mother responded that she did not think that Father “had the right to do that without [her][.]” (Tr. Vol. 2 at 184). Mother further testified that she did not want K.C. to attend school in Logansport and that she did not believe that K.C. was “doing very well” in Father's care. (Tr. Vol. 2 at 188). According to Mother, K.C. was not progressing in preschool, and she believed that K.C. would “do a lot better” in her care. (Tr. Vol. 2 at 189).

[39] Mother admitted that she had picked K.C. up in Logansport on April 24, 2020 and taken him to Virginia. She had allowed Father to have two overnight visits with K.C. while she and K.C. were in Indiana for the first day of the hearing in June 2020. However, following the hearing, Mother had immediately returned to Virginia with K.C. When Mother and K.C. had recently returned to Indiana for the second day of the hearing, Father had asked to see K.C. Mother admitted that, even though K.C. had

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been in her care for the past three months, she had told Father that “the judge said that while I am in the area, I get him.” (Tr. Vol. 2 at 220). Mother explained that Father would be able to see K.C. that day after the hearing.

[40] Mother also acknowledged that the 2018 agreed paternity order had given Father parenting time for five out of every fourteen days. Father's counsel asked Mother what court order entitled her to have K.C. for the past eighty-four days, since April 24, 2020. Mother responded, “[n]one. I am his mom. I am entitled to parenting time.” (Tr. Vol. 2 at 221). Father's counsel then asked Mother if it was fair to say that “taking [K.C.] to Virginia for really what [was] then almost three full months, [was] basically the equivalent of relocating [K.C.]” (Tr. Vol. 2 at 221). Mother responded that it was not because she had not enrolled K.C. in school.

[41] During Father's closing argument, Father argued, in relevant part as follows:

And then, the only other thing I would say is that [Father] requests today that [K.C.] be returned to him[.] I think it is fair to argue that the child has been relocated. 82 out of 84 days in Virginia far exceeds, even if we were to give her the benefit of the doubt and she got parenting time pursuant to the guidelines, a seven-week summer ... 49 days. She has had [K.C.] for almost twice that long. I am asking the court to order her to return [K.C.] and also order her in the interim not to remove [K.C.] again from the State of Indiana. Beyond that judge, the attorney[’s] fee request in this case is more than reasonable. My client is asking for his [attorney's] fees ... to be paid based on the conduct of the parties[.] [Mother's] actions have complicated this case significantly[.] [Father] just wants [K.C.] back. He wants to put [K.C.] in school and get on with his life[.]

(Tr. Vol. 2 at 233-34).

[42] During Mother's closing argument, Mother argued, in relevant part, as follows:

This is mother's second bite at the apple for relocation, but the statute and case law you can file it every day of every week if circumstances are different or here, if you read the court's order the basis for the denial was that [M]other believed that she could live in both Indiana and in Virginia and maintain two separate households. She quickly figured out that she could not do that. That is a change in circumstances. She was forced to move to Virginia because her husband had to relocate and she could not maintain two separate residences[.]

(Tr. Vol. 2 at 234-35).

[43] After hearing the evidence and the parties’ arguments, the trial court stated as follows:

*672 The Court will issue written Findings and Conclusions to support its order. The oral order from the bench is not to be construed as the court's order. The written order will be the court's order[.] The parties are seeking clarity and I will try to be as clear as I can without being overtly rude, but some rudeness is necessary. Mother ... I've been on the bench eight years. This is the clearest case of facts and law I've seen. There is just no question that at every stage where you have an opportunity to make a decision, you are making the wrong decision. And you are justifying it by saying that I am the mother, the child

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is best with me and whatever I do is best for the child[.] [B]ut that is not how the law in Indiana is structured and that is not how the law in Indiana works[.] You had no legal basis to have the child from April 'til now under any court order, under any set of reality, under [any] set of circumstances you would not be authorized to have the child eighty some days out of ninety-two days[.] I am not going to pronounce from the bench what the legal custody determination will be, but the physical custody determination will be with [F]ather. And the child will be returned today. And mother's parenting time with the child shall occur in Indiana. Not in Virginia because you keep taking the child and not bringing the child back, and not following the court's orders, so until we have some clarity that you understand that the orders are meant to be followed, the child is not leaving Indiana, and if it does, someone is going to file criminal charges. And, so, that is the order of the court for now and that will provide some stability for this child who should have had stability for the past year[.] So the court will pronounce its order in written form with potentially citations to the record, and you may appeal that if you chose[.] I can only enter an order based on the evidence presented and it is expected to be followed. That will be the order of the court. We will address support in the order based on the evidence presented. Until then the immediate actions are [that the] child [is to be] returned to [F]ather today[.] Thank you. That is the order of the court.

(Tr. Vol. 2 at 236-39).

[44] In August 2020, the trial court issued a detailed fourteen-page order addressing the parties' pending motions. That order provides, in relevant part, as follows:

23. Mother testified, under oath, at the [June 2019] relocation hearing that she could stay in Indiana with [K.C.] if she was not permitted to relocate [K.C.] to Virginia.

24. Though not likely rising to the level of perjury, Mother had no intention of staying in Indiana, nor was the same financially viable to her and her family.

* * * * *

102. Mother's initial request to relocate was DENIED [on] June 26, 2019.

103. Mother relocated to Virginia ... before July 22, 2019[.]

104. This entire round of litigation was unnecessary and should have been avoided.

105. Father should not have had to expend funds to re-litigate the relocation issue.

106. All costs associated with the relocation re-litigation should be borne by Mother.

107. As permitted by [IND. CODE § 31-17-2.2-1](#), Mother is ORDERED to pay Father's reasonable attorney's fees of five thousand four hundred and six (\$5,406.00) dollars as supported by [Father's] Exhibit 8 after allotting two (2) additional hours for travel to and from *673 and attendance at the July 17, 2020 conclusion to the proceedings.

108. Judgment is entered against Mother for the benefit of Father in the sum of five thousand four hundred and six (\$5,406.00) dollars and shall accrue interest at the statutory rate.

* * * * *

116. On April 24, 2020, Mother removed [K.C.] from Indiana ... and kept [K.C.] until July 17, 2020 except for a brief visit with Father on June 22, 2020.

117. Mother has intentionally or willfully violated the Court's order from June 26, 2019 which prohibited Mother from relocating to Virginia with [K.C.]

Accordingly, Mother is ADMONISHED and ORDERED to strictly comply with this Court's orders.

(App. Vol. 2 at 77, 85-86).

[45] In addition to denying Mother's second petition to relocate, the trial court further concluded that Father had demonstrated: (1) substantial changes in many of the statutory factors that the Court may consider in [INDIANA CODE § 31-14-13-6](#); and (2) a modification of custody in favor of Father was in K.C.'s best interest. Accordingly, the trial court granted Father's motion to modify custody, support, and parenting time. The trial court also ordered that Mother was entitled to parenting time in accordance with the Guidelines where distance is a factor. In addition, pursuant to a Child Support Obligation Worksheet that the trial court had completed with the parties' reported incomes and attached to its order, the trial court ordered Mother to pay \$123 per week in child support. Lastly, the trial court denied Father's January 2020 contempt citation, Mother's April 2020 rule to show cause, and Mother's May 2020 rule to show cause.

[46] Mother now appeals.

Decision

[47] Mother argues that the trial court: (1) clearly erred when it denied her second petition to relocate; (2) abused its discretion when it modified custody of K.C. in favor of Father; (3) abused its discretion when it ordered her to pay \$5,406 of Father's attorney's fees; (4) abused its discretion when it found her to be in contempt; and (5) clearly erred when it ordered her to pay \$123.00 per week in child support. We address each of Mother's contentions in turn.

[48] At the outset, we note that Mother requested the trial court to enter findings of fact and conclusions thereon pursuant to [Trial Rule 52\(A\)](#). We, therefore, apply a two-tiered standard of review. [Maddux v. Maddux](#), 40 N.E.3d 971, 974 (Ind. Ct. App. 2015). First, we determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* The trial court's findings are controlling unless the record includes no facts to support them either directly or by inference. *Id.* Legal conclusions, however, are reviewed de novo. *Id.* at 975. We set aside a trial court's judgment only if it is clearly erroneous. *Id.* at 974. "Clear error occurs when our review of the evidence most favorable to the judgment leaves us firmly convinced that a mistake has been made." *Id.* at 974-75.

[49] We further note that there is a well-established preference in Indiana " 'for granting latitude and deference to our trial judges in family law matters.' " [Steele-Giri v. Steele](#), 51 N.E.3d 119, 124 (Ind. 2016) (quoting [In re Marriage of Richardson](#), 622 N.E.2d 178, 178 (Ind. 1993)). In this regard, the Indiana Supreme Court has explained as follows:

Appellate deference to the determinations of our trial court judges, especially in domestic relations matters, is warranted *674 because of their unique, direct interactions with the parties face-to-face, often over an extended period of time. 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.

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Best v. Best, 941 N.E.2d 499, 502 (Ind. 2011).

1. Denial of Mother's Second Relocation Petition

[50] Mother first argues that the trial court clearly erred when it denied her second petition to relocate. The gravamen of her argument is that the trial court erred when it concluded that she had failed to show a substantial change in one or more of the statutory factors found in the relocation statute.

[51] Under certain circumstances, such as those in the present case, a parent intending to move residences must file a notice of that intention. See [IND. CODE § 31-17-2.2-1](#). The relocating parent has the burden to establish that the proposed relocation is made in good faith and for a legitimate reason. See [IND. CODE § 31-17-2.2-5\(e\)](#). If that burden is met, the burden then shifts to the nonrelocating parent to show that the proposed relocation is not in the best interests of the child. See [IND. CODE § 31-17-2.2-5\(f\)](#).

[52] Although the relocation statute does not address the modification of an existing relocation order, we agree with the parties that the trial court may modify an existing relocation order where there has been a substantial change in one or more of the statutory factors that are outlined in [INDIANA CODE § 31-17-2.2-1\(c\)](#)² and where the modification is in the best interests of the child. See e.g., [INDIANA CODE § 31-17-2-21](#) (providing that a trial court may modify an existing child custody order where there has been a substantial change in one or more of the statutory factors that are outlined in [INDIANA CODE § 31-17-2-8](#) and where the modification is in the best interests of the child). We further note that the parent seeking modification of the relocation order bears the burden of demonstrating that the existing order should be modified. See e.g., [M.G. v. S.K.](#) 162 N.E.3d 544, 547 (Ind. Ct. App. 2020) (explaining that the party seeking a modification of custody bears of the burden of demonstrating that the existing order should be modified).

[53] Here, Mother argues that the previous trial court denied her first petition to relocate because she had offered to stay in Indiana with her three children while Stepfather relocated to Virginia. According to Mother, a single substantial change of circumstances occurred when *675 she was forced to relocate to Virginia because she and Stepfather could not afford to maintain two households.

[54] However, our review of the evidence reveals that, at the hearing on the second relocation petition, Stepfather was asked why Mother had testified that she could afford to stay in Indiana while Stepfather relocated to Virginia. Stepfather responded that Mother made this statement in “the heat of the moment[]” because she “just want[ed] to be with [K.C.] and wasn't thinking that a judge would deny her the ability to take [K.C.] with her [to Virginia].” (Tr. Vol. 2 at 137). Stepfather further testified that he and Mother had never discussed whether it was feasible for Mother to remain in Indiana while Stepfather relocated to Virginia and that it was “not at all” a feasible alternative. (Tr. Vol. 2 at 138).

[55] Mother's response to the same question was that she had simply said whatever she could to keep her kids together. We further note that Mother immediately relocated to Virginia without K.C. following the hearing on her first relocation petition and did not raise this alleged changed circumstance in her motion to correct error.

[56] Here, the trial court found that, “[t]hough not likely rising to the level of perjury, Mother had no intention of staying in Indiana, nor was the same financially viable to her and her family.” (App. Vol. 2 at 77). The evidence supports this finding. Further, because Mother had never planned to stay in Indiana with her three children and had always intended to relocate to Virginia with Stepfather, Mother has failed to meet her burden to demonstrate that her relocation to Virginia was a substantial change in one or more of the relocation factors. Accordingly, the trial court did not err in denying Mother's second petition to relocate.

2. Child Custody Modification

[57] Mother next argues that the trial court abused its discretion in modifying custody of K.C. in favor of Father. We review custody modifications for an abuse of discretion. *In re Paternity of C.S.*, 964 N.E.2d 879, 883 (Ind. Ct. App. 2012), *trans. denied*. We will not reweigh the evidence or judge the credibility of witnesses. *Id.* Rather, we will reverse the trial court's custody determination only where the trial court's decision is clearly against the logic and effect of the facts and circumstances or the reasonable inferences drawn therefrom.

[58] [INDIANA CODE § 31-14-13-6](#) provides that a trial court may not modify an existing child custody order unless: (1) the modification is in the best interests of the child; and (2) there has been a substantial change in one or more of the statutory factors that the trial court may consider under [INDIANA CODE § 31-14-13-2](#). These factors include:

- (1) The age and sex of the child.
- (2) The wishes of the child's 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 parents;
 - (B) the child's siblings; and
 - (C) any other person who may significantly affect the child's best interest.
- (5) The child's adjustment to 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.
- ***676** (8) Evidence that the child has been cared for by a de facto custodian[.]

[IND. CODE § 31-14-13-2](#). A change in conditions must be judged in the context of the whole environment, and it is the effect upon the child that renders a change substantial or inconsequential. *In re Winkler*, 725 N.E.2d 124, 128 (Ind. Ct. App. 2000). Further, whether a custodial parent's move out of state causes substantial change in the statutory factors depends upon the facts of each case. *Hanks v. Arnold*, 674 N.E.2d 1005, 1008 (Ind. Ct. App. 1996).

[59] Here, our review of the evidence reveals that Mother relocated 800 miles to Norfolk, Virginia and left five-year-old K.C. with Father. The drive from Logansport to Norfolk is twelve to thirteen hours. Because of K.C.'s young age, an exchange for parenting time would require a parent or other relative to either fly back and forth from Virginia to Indiana with K.C. or make a very long car ride with a significant amount of the visit spent in transit. K.C.'s young age precludes meaningful visits on social media. This evidence supports the trial court's finding that there was a substantial change in one or more of the factors listed in [INDIANA CODE § 31-14-13-2](#).

[60] The trial court also found that a modification of custody was in K.C.'s best interests. Our review of the record reveals that K.C. has a close relationship with Father and Paternal Grandparents, who live next door to Father. K.C. attended preschool in Indiana, and his teacher testified that Father had been engaged in K.C.'s educational progress. We further note that Mother's act

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of keeping K.C. in Virginia for three months undermined K.C.'s relationship with Father. The totality of this evidence supports the trial court's determination that a modification of custody was in K.C.'s best interests. Mother's argument is an invitation for us to judge the credibility of witnesses and reweigh the evidence, which we cannot do. See *Paternity of C.S.*, 964 N.E.2d at 883. The trial court did not abuse its discretion in modifying custody of K.C. in favor of Father.

3. Attorney's Fees

[61] Mother further argues that the trial court abused its discretion in ordering her to pay \$5,406 of Father's attorney's fees. Mother specifically argues that she “presumes that the Court [was] suggesting that her litigation was in bad faith. Mother contends that this finding is ... egregious in that there had been a change of circumstances from the original hearing of June 2019, in that she determined that she could not have maintained two (2) separate residences in Logansport, Indiana and Norfolk, Virginia[.]” (Mother's Br. 24-25).

[62] The trial court ordered Mother to pay Father's attorney's fees pursuant to [INDIANA CODE § 31-17-2.2-1\(f\)](#), which provides that the trial court “may award reasonable attorney's fees for a motion filed under this [relocation] section in accordance with IC 31-15-10 and [IC 34-52-1-1\(b\)](#).” [INDIANA CODE § 34-52-1-1\(b\)](#) provides as follows:

(b) In any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
- (3) litigated the action in bad faith.

***677** [63] The trial court's decision to award attorney's fees pursuant to [INDIANA CODE § 34-52-1-1](#) is subject to a multi-level review. *In re Moeder*, 27 N.E.3d 1089, 1101 (Ind. Ct. App. 2015). First, we review the trial court's findings of fact under the clearly erroneous standard. *Id.* Next, we review *de novo* the court's legal conclusions regarding whether the parties' claim was frivolous, unreasonable, or groundless. *Id.* Finally, we review the trial court's decision to award attorney's fees for an abuse of discretion. *Id.* at 1101-02. A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances or if the trial court has misinterpreted the law. *Id.* at 1102.

[64] A claim or defense is “frivolous” if it is taken primarily for the purpose of harassment, if the attorney is unable to make a good faith and rational argument on the merits of the action, or if the lawyer is unable to support the action taken by a good faith and rational argument for an extension, modification, or reversal of existing law. *Id.* A claim or defense is “unreasonable” if, based on the totality of the circumstances, including the law and facts known at the time of filing, no reasonable attorney would consider that claim or defense was worthy of litigation. *Id.* A claim or defense is “groundless” if no facts exist which support the legal claim presented by the losing party. *Id.* Bad faith is demonstrated where the party presenting the claim is affirmatively operating with furtive design or ill will. *Id.* A claim or defense is not groundless or frivolous merely because a party loses on the merits. *Id.*

[65] Broadly stated, [INDIANA CODE § 34-52-1-1](#) strikes a balance between respect for an attorney's duty of zealous advocacy and the important policy of discouraging unnecessary and unwarranted litigation. *Mitchell v. Mitchell*, 695 N.E.2d 920, 924 (Ind. 1998) (citing a prior version of the statute). Subsections (b)(1) and (b)(2) of the statute focus on the legal and factual basis of the claim or defense and the arguments supporting the claim or defense. *Id.* On the other hand, subsection (b)(3), by its terms, requires scrutiny of the motive or purpose of the non-prevailing party. *Id.* Further, because the statute lists the grounds

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for awarding attorney's fees in the disjunctive, a party is required to demonstrate the existence of only one ground in order to justify an award of attorney's fees. *In re Moeder*, 27 N.E.3d at 1102.

[66] Here, the trial court did not specify the statutory subsection that it relied upon to award the attorney's fees. However, our review of the trial court's order reveals that the trial court concluded that Mother had brought a groundless action because no facts existed to support her claim. Specifically, the trial court found that, although not likely rising to the level of perjury, Mother had no intention of staying in Indiana when she had testified to that fact at the hearing on her first petition to relocate. Because Mother had never planned to stay in Indiana with her three children and had always intended to relocate to Virginia with Stepfather, there were no facts to support her claim that there had been a substantial change in one or more of the statutory factors that are outlined in the relocation statute when she relocated to Virginia. As Mother presented no evidence to support her claim, the trial court did not err in concluding that Mother's claim was groundless. Accordingly, the trial court did not abuse its discretion when it ordered Mother to pay \$5,406 of Father's attorney's fees.³

*678 4. Contempt

[67] Mother also argues that the trial court abused its discretion when it granted Father's April 2020 contempt citation and found her in contempt for relocating K.C. to Virginia in willful violation of the previous trial court's June 26, 2019 denying her first petition to relocate. She specifically argues that "there is no evidence before the Trial Court that Mother ever relocated [K.C.] to Virginia in contravention of the Court's June 26, 2019 Order." (Mother's Br. 23).

[68] Contempt of court " 'involves disobedience of a court which undermines the court's authority, justice, and dignity.' " *Henderson v. Henderson*, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010) (quoting *Srivastava v. Indianapolis Hebrew Congregation, Inc.*, 779 N.E.2d 52, 60 (Ind. Ct. App. 2002), *trans. denied.*) " 'Willful disobedience of any lawfully entered court order of which the offender had notice is indirect contempt.' " *Henderson*, 919 N.E.2d at 1210 (quoting *Francies v. Francies*, 759 N.E.2d 1106, 1118 (Ind. Ct. App. 2001), *trans. denied.*)

[69] The determination of whether a party is in contempt of court is a matter within the trial court's discretion, and the trial court's decision will only be reversed for an abuse of that discretion. *Williamson v. Creamer*, 722 N.E.2d 863, 865 (Ind. Ct. App. 2000). A trial court has abused its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. *Id.* When reviewing a contempt order, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Rather, our review is limited to considering the evidence and the reasonable inferences to be drawn therefrom that support the trial court's judgment. *Id.* " 'Unless after a review of the entire record we have a firm and definite belief a mistake has been made by the trial court, the trial court's judgment will be affirmed.' " *Id.* (quoting *In re Marriage of Glendenning*, 684 N.E.2d 1175, 1179 (Ind. Ct. App. 1997), *trans. denied.*). Further, this Court will only reverse a trial court's contempt judgment if there is not evidence to support it. *Williamson*, 722 N.E.2d at 865.

[70] Here, in June 2019, the previous trial court denied Mother's first petition to relocate to Virginia. Mother subsequently absconded with K.C. to Virginia and kept him there for three months, from April 2020 until July 2020, even though Father had filed a contempt citation and a request for an emergency hearing concerning K.C.'s return to Indiana. The trial *679 court in this case concluded that Mother's act of keeping K.C. in Virginia for three months constituted a relocation. After reviewing the entire record in this case, we do not have a firm and definite belief that the trial court has made a mistake. See *Williamson*, 722 N.E.2d at 865. Mother's argument that she had not relocated K.C. to Virginia and was merely exercising parenting time with him for three months is a request that we reweigh the evidence. This we cannot do. See *id.* The trial court did not abuse its discretion when it found Mother to be in contempt.⁴

5. Child Support

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[71] Lastly, Mother argues that the trial court clearly erred when it ordered her to pay \$123.00 per week in child support. Specifically, she argues that the trial court clearly erred because it failed to award her parenting time credit.

[72] A trial court's calculation of a child support obligation is presumptively valid and will be reversed only if it is clearly erroneous or contrary to law. *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* In conducting our review, we will not reweigh the evidence and will consider only the evidence most favorable to the judgment. *Saalfrank v. Saalfrank*, 899 N.E.2d 671, 674 (Ind. Ct. App. 2008).

[73] The commentary to the Child Support Guidelines provides that, “[t]he computation of the parenting time credit will require a determination of the annual number of overnights of parenting time exercised by the parent who is to pay child support, the use of the standard Child Support Obligation Worksheet, a Parenting Time Table, and a Parenting Time Credit Worksheet.” Ind. Child Support Guideline 6. Here, however, Mother failed to provide the trial court with a Parenting Time Credit Worksheet. Indeed, Mother also failed to provide the trial court with a Child Support Obligation Worksheet, and her only testimony relevant to child support was that she earned \$14.65 per hour and that she worked forty hours per week. The trial court applied this figure when it completed the Child Support Obligation Worksheet that it attached to its order. The trial court's child support determination is not clearly against the logic and effect of the facts and circumstances before it. Accordingly, the trial court did not clearly err when it ordered Mother to pay \$123 per week in child support.

[74] Affirmed.

Najam, J., and Tavitas, J., concur.

All Citations

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Footnotes

- 1 Mother did not include a copy of Father's January 9, 2020 Contempt Citation in her Appendix.
- 2 Those factors include:
 - (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 ... 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.
- 3 Mother also argues that the trial court abused its discretion when it ordered her to pay \$5,406 of Father's attorney's fees because Father earns \$7.00 an hour more than she does and is, therefore, in a better position to pay his own attorney's

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fees. In support of her argument, Mother directs us to *Haley v. Haley*, 771 N.E.2d 743 (Ind. Ct. App. 2002). In the *Haley* case, we discussed INDIANA CODE § 31-17-7-1, which authorizes the trial court to order a party to pay a reasonable amount for the cost of the other party maintaining an action for a custody modification and for attorney's fees. *Id.* at 753. When awarding attorney's fees pursuant to INDIANA CODE § 31-17-7-1, the trial court may consider the economic resources and relative earning ability of the parties. *Id.* When one party is in a superior position to pay fees over the other party, an award of attorney's fees is proper. *Id.* Here, however, the trial court did not order Mother to pay Father's attorney's fees pursuant to INDIANA CODE § 31-17-7-1. Rather, the trial court ordered Mother to pay Father's attorney's fees pursuant to INDIANA CODE § 34-52-1-1. Mother's argument therefore fails.

We further note that we need not review the amount of the award because Mother challenges only the trial court's decision to award attorney's fees. See *Mitchell v. Mitchell*, 695 N.E.2d 920, 924 (Ind. 1998). She does not challenge the computation method or the amount awarded.

- 4 We further note that Mother's brief and conclusory argument that she did not have notice of the contempt or the opportunity to be heard because the trial court did not follow the proper procedure also fails. Mother had notice that Father's contempt citation would be addressed at the hearing along with several other motions, and she also admitted to the actions that formed the basis of the contempt citation. We find no error here. See *Mitchell v. Stevenson*, 677 N.E.2d 551, 561 (Ind. Ct. App. 1997).

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Lynn v. Freeman, 157 N.E.3d 17 (2020)

157 N.E.3d 17
Court of Appeals of Indiana.

Tiffani L. (Freeman) LYNN, Appellant-Respondent,
v.
Andrew S. FREEMAN, Appellee-Petitioner

Court of Appeals Case No. 19A-DC-2014

|
Filed September 22, 2020

Synopsis

Background: After parties entered into mediated settlement agreement dissolving their marriage which awarded them joint legal custody of children, granted mother primary physical custody of children, and granted father parenting time in excess of that provided by parenting time guidelines, mother filed notice of intent to move 80 miles away. Father filed timely objection and moved to modify custody. Following hearing, the Circuit Court, St. Joseph County, [John E. Broden, J.](#), and [William L. Wilson](#), Magistrate Judge, denied mother's motion to relocate and expressly made no determination on father's motion to modify. Mother appealed.

Holdings: The Court of Appeals, [Altice, J.](#), held that:

mother met her initial burden of establishing that her proposed relocation 80 miles away was made in good faith and for legitimate reason, and

trial court's determination that relocation was not in child's best interests was well supported by court's findings and evidence presented.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Relocate or Remove Child out of State.

*18 Appeal from the St. Joseph Circuit Court, The Honorable [John E. Broden](#), Judge, The Honorable [William L. Wilson](#), Magistrate, Trial Court Cause No. 71C01-1701-DC-68

Attorneys and Law Firms

Attorneys for Appellant: [Bryan H. Babb](#), [Timothy J. O'Hara](#), Indianapolis, Indiana

Attorney for Appellee: [Gregory K. Blanford](#), South Bend, Indiana

[Altice](#), Judge.

Case Summary

Lynn v. Freeman, 157 N.E.3d 17 (2020)

[1] Tiffani L. (Freeman) Lynn (Mother) and Andrew S. Freeman (Father) entered into a Mediated Settlement Agreement (the Dissolution Agreement), dissolving their marriage and, among other things, settling custody and parenting time issues *19 related to their minor son M.F. (Child). Pursuant to the Dissolution Agreement, which was accepted by the trial court, the parties shared joint legal custody, Mother had primary physical custody, and Father had parenting time exceeding that provided in the Indiana Parenting Time Guidelines (the Guidelines).

[2] Four months after the Dissolution Agreement, Mother filed a notice of intent to move about eighty miles away. Father filed a timely objection to the relocation and filed a motion to modify custody. Following a hearing that spanned four days and had six witnesses, the trial court issued a lengthy order denying Mother's request to relocate on two grounds. First, the court determined that although the proposed relocation was for a legitimate purpose, it was not made in good faith. Second, and alternatively, the court found that the proposed relocation would not be in Child's best interests. The court expressly made no determination regarding Father's motion to modify custody.

[3] On appeal, Mother contends that the trial court misinterpreted [Ind. Code § 31-17-2.2-5\(e\)](#)'s requirement that she establish “the proposed relocation is made in good faith and for a legitimate reason.” She also contends that the trial court's determination regarding Child's best interests is “legally flawed” and not based on a “fair and correct legal analysis” of the factors listed in I.C. § 31-17-2.2-2.5(c). *Appellant's Brief* at 10.

[4] We affirm.

Facts & Procedural History

[5] Mother and Father's six-year marriage was dissolved on December 15, 2017, about a year after Father filed for dissolution. Child, born in May 2012, was five years old at the time of dissolution. Mother was pregnant with Matthew Lynn's (Lynn) child, with whom she had been in a relationship since March 2017. ¹

[6] The Dissolution Agreement, which Mother and Father entered into during a lengthy mediation session, constituted a comprehensive settlement agreement. With respect to custody of Child, it provided for the parties to share temporary joint legal custody, ² Mother to have primary physical custody, and Father to have parenting time beyond that provided in the Guidelines. Specifically, with respect to regular parenting time, the Dissolution Agreement provided that Father would have Child during the school year on every Wednesday for an overnight from after school until the beginning of school the next day and on alternating weekends from immediately after school on Friday until he took Child to school Monday morning. The Dissolution Agreement expressly provided what schools Child shall attend from elementary through high school.

[7] In January 2018, Lynn moved into Mother's home in Granger and proposed marriage to her. They were married on February 16, 2018. Lynn is a certified public accountant specializing in mergers and acquisitions consulting. At the time he *20 and Mother began their relationship, he was employed in South Bend by Crowe Horwath, an international accounting firm. He ended his tenure with this company in August 2017, when his practice group relocated to Florida. Lynn initially searched for employment opportunities in the South Bend area but eventually had to expand his search by early 2018. In April 2018, Lynn accepted a position with BDO in Chicago, another international accounting firm, and began commuting for work.

[8] On April 17, 2018, Mother filed her notice of intent to move residence (the Notice), in which she noted Lynn's employment in Chicago. Mother indicated that their new residence had yet to be determined but that the family intended to move to the White Oak area of Munster. Regarding Father's regular parenting time, the Notice provided:

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[Mother] agrees to provide either physical transportation or the expense of transportation to comply with the previous agreed upon parenting time schedule, which said schedule will necessarily need to be modified to a minor extent To be specific, [Mother] agrees to provide transportation or the expense for the every other weekend visits. [Mother] will bring [Child] to Granger after school on Friday and pick him up on Sunday evening at 7:30 p.m. In the mid-week, [Mother] proposes that Father shall have his parenting time in Munster after school until 7:30 p.m.

Appellant's Appendix at 45. Two days later, Father filed an objection to the Notice, as well as a petition to modify custody.

[9] On May 2, 2018, the parties entered into a stipulated order, agreeing to have Michael Jenuwine, Ph.D., J.D. perform an evaluation and provide recommendations to the trial court regarding the issues of legal custody, physical custody, and parenting time. They also agreed that neither party would relocate with Child away from St. Joseph County until such time as the custody evaluation was concluded and the trial court ruled on the matter.

[10] Dr. Jenuwine filed his thirty-four-page forensic psychological evaluation (the Evaluation) with the trial court on December 7, 2018. At the conclusion of the Evaluation, Dr. Jenuwine made the following recommendations:

It is recommended that [Father] and [Mother] set aside their personal differences and attempt to meet [Child's] developmental needs as described above. Research suggests that children whose parents continue in conflict following custody litigation are at a high risk for emotional disorders and poor school performance.... Father and Mother have created a conflicted binuclear family in which [Child] is caught in the middle.

The co-parental relationship between divorced parents is something that is constructed, and not something that simply can be carried over from pre-separation patterns. In order for Mother and Father to effectively negotiate with each other in making decisions on behalf of [Child], they need to step out of their current conflict and begin working collaboratively on forming a positive co-parenting relationship. [They] need to move away from a litigation/battle mode and to begin to develop a new foundation of trust towards a common goal of [Child's] future. It may be beneficial for Mother and Father to be encouraged to return to counseling targeted at parents engaged in conflictual relationships....

At this time, [Child's] relocation to Munster would not be in his best interests. As outlined above, numerous risk factors increase the likelihood that such a move would negatively impact [Child]. Neither [Father] nor [Mother] have provided evidence to suggest that they have *21 proactively taken measures to escape the current adversarial stance toward child custody with each other, pursued services to improve co-parent communication, honestly encouraged a positive relationship between [Child] and the other parent, or worked to actively resolve parenting conflicts rather than engaging outside individuals to bolster their positions. If [Mother] moves to Munster with [Child] at this time, multiple risk factors make it more likely that [Child's] relationship with his father will suffer and deteriorate, and that his long-term emotional well-being may be jeopardized.

At this time, the evaluator reserves any further recommendations concerning the petitioned change of custody until such time that the court or parties specifically requests them.

Exhibits Vol. 5 at 36-37.

[11] Unsatisfied with the Evaluation, Mother asked two other psychologists to review it. In February 2019, Jeff Burnett, Ph.D., offered some critiques but ultimately reported to Mother's counsel that he believed "Dr. Jenuwine conducted a thorough

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evaluation” and that the Evaluation met relevant professional standards and provided sufficient data to support Dr. Jenuwine's conclusion that relocation would not be in Child's best interests. *Id.* at 38. Dr. Burnett opined that this conclusion was not “too anecdotal and speculative.” *Id.* In May 2019, Warren Sibilla, Jr., Ph.D., provided Mother's counsel with a detailed written critique of the Evaluation, noting several perceived errors or omissions.

[12] An evidentiary hearing was held over four days, commencing on July 22, 2019, and concluding on August 1, 2019. The trial court, without objection from either party, bifurcated the hearing and indicated that it would first determine whether to permit Mother's proposed relocation and then, based on that ruling, leave it to the parties to determine whether to continue to pursue custody modification.

[13] The witnesses at the hearing included Mother, Father, Lynn, Dr. Jenuwine, Dr. Sibilla, and Dr. Burnett, and Wax's deposition was admitted into evidence along with other evidentiary exhibits. Dr. Jenuwine testified in detail regarding the factors he considered in reaching his opinion that relocation was not in Child's best interests, an opinion that he still held at the time of trial. Dr. Jenuwine explained that he only made a recommendation regarding relocation – not custody modification – because Mother had indicated that she would not move if the trial court did not allow her to relocate with Child. Mother later testified, however, that she was no longer sure her family could remain local regardless of the court's decision regarding relocation. Mother indicated that she and Lynn could instead relocate to the Chesterton/Valparaiso area, which was about sixty miles away rather than eighty. Mother presented a detailed parenting time proposal that significantly reduced Father's overnights, but she also testified that she was willing to keep parenting time unchanged and provide transportation on Monday and Thursday mornings, though she felt that might not be best for Child. Father expressed doubt regarding whether Mother would actually follow through with her proposals, including providing regular transportation with her growing family,³ and he detailed past efforts by Mother to thwart his parenting time.

[14] On August 28, 2019, the trial court entered a lengthy order denying Mother's request to relocate with Child and indicating *22 that Father's request to modify custody remained pending, with its future possibly depending on Mother's decision whether to relocate without Child. Mother now appeals. Additional information will be provided below as needed.

Discussion & Decision

Standard of Review

[15] While neither party requested special findings pursuant to [Ind. Trial Rule 52\(A\)](#), the trial court's order contained findings of fact and conclusions thereon. Under such circumstances, the sua sponte findings control only as to the issues they cover and are reviewed for clear error, and a general judgment standard applies to any issues upon which there are no findings. [Gold v. Weather](#), 14 N.E.3d 836, 841 (Ind. Ct. App. 2014), *trans. denied*. We may affirm a general judgment entered with partial findings on any theory supported by the evidence adduced at trial. *Id.*

[16] On review, we will consider only the evidence most favorable to the trial court's judgment and will not reweigh evidence or reassess the credibility of witnesses. *Id.* Indeed, our Supreme Court has made clear that “in family law matters, trial courts are afforded considerable deference.” [D.C. v. J.A.C.](#), 977 N.E.2d 951, 953 (Ind. 2012). This is because

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

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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.

Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 210 N.E.2d 850, 852 (1965) (footnote omitted)); see also *Gold*, 14 N.E.3d at 841 (“We accord this deference because trial courts directly interact with the parties and are thus in a superior position ‘to assess credibility and character through both factual testimony and intuitive discernment.’”) (quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011)).

Relocation Statutes

[17] I.C. Chap. 31-17-2.2 governs the proposed relocation of a parent subject to parenting time or custody orders or proceedings. The statutory provisions were substantially amended in 2019 shortly before the evidentiary hearing in this case. See P.L. 186-2019, §§ 10 through 15 (effective July 1, 2019). We will refer to the applicable amended statutes.

[18] Under certain circumstances, such as those present in this case, a parent intending to move residences must file a notice of that intention. See I.C. § 31-17-2.2-1 (a) and (b); see also I.C. § 31-17-2.2-3 (setting out required contents of the notice). The nonrelocating parent may respond in one of three ways: (1) state no objection; (2) state no objection to the relocation but file a motion requesting modification of custody, parenting time, or child support and a request for a hearing; or (3) state an objection to the relocation, file a motion requesting a temporary or permanent order preventing the relocation of the child and for a modification of custody, parenting time, or child support as a result of relocation, and request a hearing. See I.C. § 31-17-2.2-5(a). Here, Father proceeded under the third option.

[19] On the request of a party, the trial court is required to “hold a full evidentiary hearing to allow or restrain the relocation of the child and to review and modify, if appropriate, a custody order, parenting time order, [] or child support order.” I.C. § 31-17-2.2-5(d); see also I.C. § 31-17-2.2-5- *23 1(c). At this hearing, the relocating parent has the initial burden to establish that “the proposed relocation is made in good faith and for a legitimate reason.” I.C. § 31-17-2.2-5(e). If that burden is met, the burden then shifts to the nonrelocating parent to show that the proposed relocation is not in the best interests of the child. I.C. § 31-17-2.2-5(f).

[20] In this case, the trial court determined both that Mother failed to establish that the proposed relocation was made in good faith and that, in any event, Father established that the proposed relocation was not in Child's best interests. On appeal, Mother challenges both of these bases for the trial court's denial of her relocation with Child. We will address each in turn.

Mother's Burden

[21] Pursuant to I.C. § 31-17-2.2-5(e) (Section 5(e)), Mother had the initial burden at the evidentiary hearing of establishing that the proposed relocation was “made in good faith and for a legitimate reason.” The trial court determined that although made for a legitimate purpose – Lynn's new employment,⁴ the proposed relocation was not made in good faith.

[22] With respect to its good faith determination, the trial court began by discussing the timing of the Notice in relation to the Dissolution Agreement and other events and described the timing as “awfully convenient.” *Appellant's Appendix* at 78. The trial court impliedly agreed with Father's suggestion that Mother may have entered into the Dissolution Agreement with no intention

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of staying in the South Bend area for long. Next, the court noted the “almost unheard of” number of motions filed or actions taken by Mother where she attempted to change Father's parenting time in some fashion. *Id.* at 79. The trial court continued:

On its face, [the list of motions] reveals that Mother and Father are prone to disagree about their parenting time schedule Digging deeper, however, reveals some evidence that may shed light on Mother's motivations. Specifically, in July of 2017, Mother filed her renewed motion to have Father's parenting time supervised. The basis for this motion was that on the July 4, 2017 holiday, Father and [Child] went to a gathering at a home with then five-year-old [Child] was able to ignite some fireworks while other adults were around. Mother knew this because she had gone so far as to hire a private investigator to follow Father and [Child] The Court held an evidentiary hearing on Mother's renewed motion, viewed the video recording of the event in question, and denied Mother's motion. The Court was bothered then (and is bothered today) by Mother's mindset that allowed her to believe hiring a private investigator was a good idea.... The Court cannot believe that Mother hired the investigator for any reason other than to try to place tight limits on Father's ability to have a relationship with [Child]....

Although not raised by Father, the Court is concerned about Mother's repeated attacks on Father's choices with regard to [Child]. Specifically, Mother believes that Father allows [Child] to participate in unsafe activities such as snowmobiling or riding a small motorcycle. Mother spent a portion of her case criticizing Dr. Jenuwine's report for not taking these activities into consideration. The problem with Mother's argument on *24 this point is that even accepting that her safety concerns are legitimate, they will not be eliminated by the proposed relocation.... That Mother would spend so much time criticizing Father's choices (which are his to make, no matter how unwise they may seem to the Court or Mother) further illustrates that Mother desires to control Father's influence on [Child] rather than nurture the father-son relationship.

Mother attempts to demonstrate good faith by pointing to her proposal that she bear the burden of providing the transportation so that Father's parenting time schedule can continue unchanged, along with her willingness to pay for hotel accommodations “On paper,” Mother's ideas have appeal. When the Court considers the practicality of Mother's proposals, however, doubts arise. As an example, Mother proposes that Father could keep his Wednesday overnights by picking up [Child] after school in his new community. In turn, Mother would pick up [Child] from Father's home on Thursday morning and get him to school. This would require Mother to pack up both her one-year-old and new infant for a one-hour drive to St. Joseph County, followed by a one-hour drive back to her chosen community. Regardless of Mother's good intentions, the Court has doubts that Mother's willingness will stand the test of time – not to mention inclement winter weather in Northern Indiana.

When considering Mother's credibility as a witness, her court filings, and the timeline of events leading up to the notice of intent to relocate, the Court cannot avoid having serious doubts about Mother's good intentions. Throughout this case, Mother has revealed a sense of entitlement to dictate how Father will exercise his relationship with [Child]. The deposition of Rozi Wax presents an interesting illustration of this mindset: Mother and Father were working with Ms. Wax on reaching an agreement concerning [Child's] attendance at his taekwondo classes that occurred during Mother's parenting time.... At the last minute, however, Mother refused to commit to the plan, explaining only that she doesn't “trust” Father. The Court cannot understand what Mother's lack of trust has to do with a plan for getting [Child] to his classes. After this breakdown, the parties did not work further with Ms. Wax. This incident bolsters the Court's conclusions about Mother's world view. Mother's defenders will be more than likely to say that the Court has misinterpreted Mother's intentions. This might be so if the Court was looking at only one item. When the Court looks at the entire picture, however, there is sufficient evidence to suggest that the Court is not misinterpreting her intentions.

Because of events surrounding Mother's efforts to limit Father's parenting time in some fashion along with the events leading up to the notice of intent to relocate, combined with the Court's doubts as to the good intentions on Mother's part, the Court concludes that Mother's proposed relocation is not made in good faith.

Id. at 80-82 (footnotes omitted).

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[23] On appeal, Mother makes much of the fact that the trial court parsed her burden into two requirements – good faith and a legitimate reason. She urges that Section 5(e)'s requirement that “the proposed relocation is made in good faith and for a legitimate reason” is a “unitary standard that is satisfied when the evidence establishes that a parent seeks to relocate in order to live closer to family members, *25 for financial reasons, or for employment opportunities.” *Appellant's Brief* at 9-10.

[24] In the vast majority of cases, the legitimacy of the reason for a proposed relocation and the good faith behind it will go hand in hand and entail no separate analysis. We do not agree with Mother, however, that a trial court is barred from analyzing them separately in appropriate cases. This ensures, for example, that a parent cannot assert an objectively legitimate reason for a proposed move solely as a pretext for distancing a child from the nonrelocating parent. *See Gold*, 14 N.E.3d at 842 (observing that “our court has generally required that the moving parent demonstrate an objective basis – that is, “more than a mere pretext” – for relocating”); *T.L. v. J.L.*, 950 N.E.2d 779, 787 (Ind. Ct. App. 2011) (noting that “the statute requires that a legitimate reason be objectively shown, and by requiring that the relocation be in good faith, demands that the objective reason be more than a mere pretext”). That said, we do not agree with the trial court's good faith analysis here.

[25] “It is commonly understood in today's society that individuals move in order to live closer to family members, for financial reasons, and for employment opportunities.” *Gold*, 14 N.E.3d at 842. We have inferred that these and similar reasons are what the legislature intended in requiring that relocations be proposed in good faith and for legitimate reasons. *See id.*; *T.L.*, 950 N.E.2d at 788. Here, Mother proposed objectively legitimate reasons for the relocating. That is, her husband is employed in Chicago, which requires him to either make an arduous daily commute or stay in Chicago during the work week, keeping him away from his young family and causing stress in their marriage. The trial court properly found that this was a legitimate reason for relocating.

[26] Further, the trial court did not discount the evidence related to Lynn's lengthy job search and ultimate employment in Chicago. Indeed, the trial court recognized the “untenable situation” faced by the couple due to Lynn's employment. *Appellant's Appendix* at 84. We agree with Mother that the circumstances here do not support the trial court's determination that her proposed relocation was made in bad faith. While the evidence supports a finding that Mother might have acted in bad faith during the mediation that resulted in the Dissolution Agreement and that she has actively sought to hinder Father's relationship with Child, there is no evidence that the reasons she provided for needing to move were merely pretextual. *Cf. T.L.*, 950 N.E.2d at 787 (“*Indiana Code section 31-17-2.2-5* does not by its terms require that desire for distance from a former spouse form no part of the subjective motivation for relocation.”).

[27] As we have previously observed, if the requirement of a legitimate and good faith reason posed an inordinately high bar for a relocating parent to meet, it could too often prevent trial courts from reaching and appropriately deciding the dispute based on the best interests of the child. *Id.* at 788. Except where the stated reasons for relocation are solely pretextual (or illegitimate on their face), a rather low bar in application, we prefer for the resolution of relocation disputes to turn on a judicial determination of the best interests of the child. *See id.* Thus, we conclude that the trial court's detailed analysis, as set out above, is more applicable to the best interest inquiry, which we examine next. *See id.* (holding that trial court erred in concluding that Mother's proposed relocation was not in good faith and for a legitimate reason but noting, “our inquiry does not end there, because the trial court also determined that relocation was not in the *26 children's best interests,” and ultimately affirming on that ground); *see also H.H. v. A.A.*, 3 N.E.3d 30, 36 (Ind. Ct. App. 2014) (same).

Father's Burden

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[28] Mother also claims that the trial court erred in determining that the requested relocation was not in Child's best interests. She suggests that the trial court's legal analysis is flawed because its consideration of the best interest factors listed in [I.C. § 31-17-2.2-1](#) did not take into account whether to modify the custody order. Further, she asserts that Dr. Jenuwine never bothered to consider Mother's parenting time proposal when making his recommendation regarding Child's best interests.

[29] Initially, we observe that the parties acquiesced below to the trial court's suggestion that they first litigate the issue of whether Mother should be permitted to relocate with Child. Mother, therefore, cannot be heard to complain that the trial court did not consider Father's motion to modify the custody order along with her request to relocate.

[30] [I.C. § 31-17-2.2-1\(c\)](#) (Section 1(c)) provides:

(c) 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, ... or child support order.... The court shall take into account the following in determining whether to modify a custody order, parenting time 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
- (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.
- (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 reference to other factors includes those factors applicable in an initial custody determination as set out in [I.C. § 31-17-2-8](#), such as, among other things, the child's age and sex, the child's relationship with parents, siblings, and others, and the child's adjustment to home, school, and the community. See [D.C., 977 N.E.2d at 954](#); [In re Marriage of Harpenau](#), 17 N.E.3d 342, 346 (Ind. Ct. App. 2014).

[31] Although Section 1(c) references the best interest factors in relation to determining whether to modify custody or parenting time, our courts have indicated that the factors also apply to the basic determination of whether relocation is in the child's best interests. See [H.H., 3 N.E.3d at 36-39](#) (applying the statutory factors to a decision solely regarding whether to permit relocation); [T.L., 950 N.E.2d at 789-90](#) (same); see also [D.C., 977 N.E.2d at 954](#) (“court must weigh the following factors [set out in Section 1(c)] in considering a proposed relocation”); [Baxendale v. Raich](#), 878 N.E.2d 1252, 1256 n. 5 (Ind. 2008) (observing that regardless of *27 whether the order was reviewed as on a petition to modify or a petition to prevent relocation, the result would be the same “because when a relocation is made in good faith, ... both analyses ultimately turn on the ‘best interests of the child’ ”).⁵ “In general, the trial 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, such as siblings or other persons who may significantly affect the children's best interests, as relevant to every change of custody.” [Dixon v. Dixon](#), 982 N.E.2d 24, 26 (Ind. Ct. App. 2013).

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[32] In determining that relocation was not in Child's best interests, the trial court provided extensive findings and analysis, much of which we will summarize. The court first found that the distance involved was not insignificant and would require making a two-hour round trip for each drop off and pickup for parenting time. While Mother offered to bear the majority of the traveling, thus reducing the hardship on Father and making parenting time more feasible, the trial court questioned the practicality of her proposal and whether her willingness would stand the test of time. Specifically, the court noted that Mother will have an infant and another young child to care for during these long drives and that winter weather in the area can be particularly inclement. Additionally, as set out in the previous section, the trial court went to great lengths to detail Mother's history of efforts to limit and control Father's relationship with Child, a factor that appeared significantly weighty to the trial court.

[33] Regarding more general considerations, the trial court addressed Child's adjustment to his homes, school, churches, and community in the South Bend area, his active involvement in taekwondo and outdoor activities with Father, and Child's extended family members on both sides that live in the South Bend area, whom he would likely not see as often if he relocated. The court noted, however, that if Child relocated, he would undoubtedly adjust just fine to many of these changes and he would benefit from having more time with Lynn.

[34] The trial court then turned back to considering the effects of relocation on Child's relationship with Father:

[T]he Court is concerned that even a relatively short distance will have a negative effect on [Child's] relationship with Father. Notably, Mother did not offer any expert evidence that [Child's] relationship with Father would be improved or unaffected. At best, Mother was able to raise questions about whether Dr. Jenuwine considered the concerns Mother reported to him about Father's history and unsafe recreational activities with [Child]. Dr. Jenuwine, however, testified that he did consider these various items but that he concluded they were not relevant to the facts of this case.

The Court also believes that the likely negative effects on the relationship between [Child] and Father are not outweighed by the benefits to Mother's family that would result from the proposed *28 relocation. As noted above, the Court understands that the current commuting that Mr. Lynn undertakes is a real grind, and that the efforts made to reduce the grinding commute each week (renting a condominium in Chicago so that Mr. Lynn can spend a few nights each week there) also have a negative effect on Mr. Lynn and Mother's nuclear family. This case, however, is not about what makes life easier for the adults in [Child's] life. Ultimately, the case is about whether the proposed relocation is in [Child's] best interests. With the credible evidence presented to the Court, the Court concludes that Father has met his burden of showing that the proposed relocation is not in [Child's] best interests.

Appellant's Appendix at 84.

[35] Contrary to Mother's rather bald assertion, the trial court's consideration of the factors relevant to the best interest determination in this case was not "halfbaked." *Appellant's Reply Brief* at 18. The trial court was not required to make specific findings relating to each statutory factor. See *H.H.*, 3 N.E.3d at 36. Moreover, with respect to Mother's concerns regarding Dr. Jenuwine's failure to consider certain circumstances, we reiterate that the trial court expressly considered Mother's proposal regarding parenting time and transportation and indicated a disinclination to believe that her offer would stand the test of time.⁶

[36] Applying our standard of review and affording the trial court the considerable deference due in family law matters, the issue is not whether we would have made the same decision as the trial court. See *D.C.*, 977 N.E.2d at 957-58; *T.L.*, 950 N.E.2d at 790. Here, the trial court's best interest determination was well supported by the court's findings and the evidence presented below, and neither the judgment nor the findings were clearly erroneous. Accordingly, we must affirm.

[37] Judgment affirmed.

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Riley, J. and May, J., concur.

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Footnotes

- 1 Mother also has an older son, O.G., from a prior relationship.
- 2 Joint legal custody was a temporary provision, as the Dissolution Agreement required Mother and Father to complete high conflict counseling with Roxi Wax at Lincoln Therapeutic Group with a completion target of April 1, 2018. Thereafter, the issue of whether joint legal custody would continue was set for a review hearing on April 12, 2018, with the assistance of an anticipated final report from Wax. The parties did not successfully complete counseling, which ended in March when Mother indicated that she simply could not trust Father. The hearing contemplated by the Dissolution Agreement does not appear to have been held.
- 3 Mother was pregnant with her and Lynn's second child at the time of the hearing.
- 4 In this regard, the trial court recognized the unpleasant commute between the South Bend area and Chicago, as well as the negative effect of daily separation on Mother and Lynn's marriage.
- 5 In *Gilbert v. Gilbert*, 7 N.E.3d 316 (Ind. Ct. App. 2014), the majority refused to apply the factors specifically set out in the relocation statute (now Section 1(c)) and instead indicated that the general best interest factors of I.C. § 31-17-2-8 applied because the father's sole contention on appeal was that the trial court abused its discretion by granting the mother permission to relocate. *Gilbert* appears to be an outlier in this respect. Moreover, we observe that Mother and Father both relied on Section 1(c) when presenting evidence and arguments to the trial court.
- 6 In its order, the trial court stated that although the Evaluation by Dr. Jenuwine and the critiques by Drs. Burnett and Sibilla were helpful, "ultimately the Court's conclusion [was] based largely on the facts of this case and less on the psychologists' opinions." *Appellant's Appendix* at 77.

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Section

Five

Navigating the Unruly Client

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Section Five

**Navigating the Unruly Client.....Elizabeth Eichholtz Walker
Kenneth C. Pierce, II**

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Section Six

Settling the Unsettled: Term Sheets and MOU's in Mediation

Richard A. Mann
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Section Six

**Settling the Unsettled: Term Sheets
and MOU's in Mediation.....Richard A. Mann**

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