

FAMILY LAW FOCUS

Wife Gets 70% of Property in Nasty Divorce

For those who need a refresher course on the “dos and don’ts” of divorce law—and how *not* to behave in a courtroom—the Indiana Court of Appeals has some pointed advice.

In a recent case framed by a blizzard of argumentative and spiteful pleadings, it took both parties and their respective lawyers to task for being exceedingly difficult during the contentious proceedings.

Tossing Stones from Glass Houses

“The most apt observation in this regard is that each is throwing stones from a glass house,” the Court noted before beginning its lengthy analysis.

One of the numerous issues on appeal by the Husband was whether the lower court’s award of 70 percent of the marital estate to the Wife was warranted.

Indiana Code section 31-15-7-5 instructs that a court must “presume that an equal division of the marital property is just and reasonable.”

Is Division of Assets Unjust?

This presumption may be rebutted by a party, though, with relevant evidence that shows such a division would be unjust and unreasonable.

Guided by factors in this statute, assets may, in fact, be divided unevenly—as long as a court sets forth



Distribution to the wife amounts to 70 % of marital property.

its reasons for so doing.

Wife Gets 70% of Assets

To the Husband’s assertion that the distribution had been improperly based on fault-finding, the Court was forceful in supporting the 70/30 split.

The trial court was not contending that the Husband should receive less than half of the marital estate because of his parental deficiencies, it observed.

But rather it was awarding to the Wife “a greater percentage of the marital estate based upon her economic condition and earning abilities.”

Diminished Earning Potential

Even though the Wife had done well financially as a realtor while married, her earning poten-

tial had been greatly reduced after she was left virtually alone to care for the couple’s two teenagers.

“The decrease in [her] yearly salary that corresponds to her increase in parental responsibilities also supports the trial court’s conclusion,” added the Court.

Among the other issues raised by the Husband were whether he should pay for his children’s dental expenses and whether their college expenses should be included in his support order.

Dental Expenses Are Included

The Court made short work of his contention that he should not be required to pay dental expenses because he never had maintained dental insurance for his kids before.

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Court Considers Spiteful Parties

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A child support order may include “basic health and hospitalization coverage for the children,” the Court explained.

“A child’s dental needs are sufficiently related to their basic health needs” that dental benefits may be properly included.

The Court then considered the Husband’s claim that the support order for college expenditures contained no limits.

College Expenses Are Allowed

“[I]t is difficult to determine what order [he] is appealing,” the Court puzzled, “because the trial court did place such limitations upon its order.

“The trial court restricted its college expense order to four and one-half years of . . . post-high school education and required M.T. to maintain a ‘C’ average to be eligible for parental support.”

For further information, see *Thompson v. Thompson*, 811 N.E.2d 888 (Ind.App. 2004). ♦

Grandparents Get Visitation with Children Despite Mom

Never underestimate a pair of determined grandparents who, when being told they could no longer visit with their grandkids, took their battle to a judge.

In a complicated set of facts involving unmarried parents, quarreling grandparents and the murder of the father, the Court of Appeals sided with the grandparents.

Grandparent Visitation Act

According to Indiana Code 31-17-5-1 (1998), a grandparent may seek visitation if the child’s parent is deceased, the marriage of the child’s parents has been dissolved in Indiana or the child was born out of wedlock—and the paternity has been established by the father.

A trial court may award visitation to the grandparents if it concludes that contact with them is in the best interest of the child.

Best Interests of Child Is Guide

In making this determination, though, it must “presume that a fit parent’s decision (in this regard) is in the best interests of the child.”

Acting under this presumption, a trial court “must give special weight to a parent’s decision.”

This presumption, however, can be rebutted if grandparents can show that the denial of visitation is *not* in the child’s best interests.

On appeal, the Court noted that

nothing in the “special weight requirement” says that “the trial court must accept a parent’s reasons for denying or restricting visitation . . . as necessarily true.”

Court May Weigh Evidence

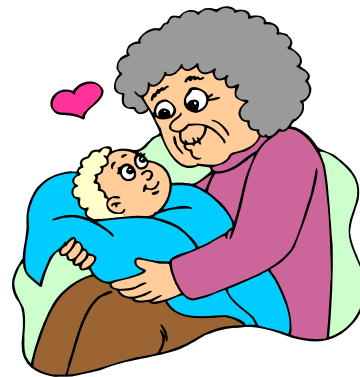
Instead, it may weigh evidence and judge witness credibility to make its own decision.

In this case, the late father’s parents had developed a close relationship with the kids. “The Children had, from time to time, lived at Grandparents’ house.”

Nonetheless, any visits by the grandparents had been cut off by the mother after the father’s death and at the urging of her parents.

The Court decided the grandparents were entitled to visitation. A child “is often served,” it noted, “by developing and maintaining contact” with grandparents. ♦

See *Megyese v. Woods*, 808 N.E.2d 1208 (Ind.App. 2004).



From time to time, the children had lived with the grandparents.

Court Tackles Duty Owed by Therapy Group

Even though the Court of Appeals decided that a group of therapists owed no duty in the death of a former patient, this case does raise some troubling concerns.

Here, the biological parents of a child—who had been taken from them as a “child in need of services”—argued that the group had a duty to prevent the boy’s death.

REALITY CHECKS:

- ✓ For assistance with matters of domestic abuse, call the statewide 24-Hour Crisis Line at **1-800-332-7385**. A person with the Indiana Coalition Against Domestic Violence will answer to help you.
- ✓ Go to any fire station for emergency help 24 hours a day.
- ✓ Have a safety plan. Pack a bag with at least one change of clothes for you and your children.
- ✓ Take along your address book with numbers of friends, relatives, therapists, doctors and lawyers.
- ✓ Be sure you have some money, change for a pay phone, and extra keys to your house and your car.
- ✓ Pack any necessary medicine.
- ✓ Take important papers, such as your lease; checking and savings account numbers; any No Violent Contact Order/Protective Order; birth certificates; social security numbers and Medicaid cards. ♦

The 10-year-old had been in foster care since he was four, but the parents had visited occasionally.

Signs of “Traumatized Child”

After each visit, the boy would need counseling where “he exhibited signs of a traumatized child, including aggressive play with themes of anger, loss, death, violation, and post-traumatic stress.”

When their visits were stopped periodically, he would no longer engage in that kind of play . . . , becoming a “happy and thriving” boy.

At one point, while placed with the family of his paternal aunt, there was reported abuse that was based upon bruises on his back. After a proper investigation, the authorities concluded no abuse had occurred.

“Roughhousing” with Cousins

When asked about the bruises, the boy told a therapist that he often “roughhouses” with his cousins.

Finally, the counseling group was asked to evaluate the child in preparation for terminating the rights of his biological parents.

After two play therapy sessions and speaking with his foster mother and school officials, a second therapist concluded he was doing well and needed no further treatment.

Boy Dies by Strangulation

Six months later, the boy was found dead at his aunt’s home. He had a dog collar—with its strap tied



Was “roughhousing” the cause of the 10-year-old’s death?

to a doorknob—around his neck. A cousin was allegedly at home alone with him at the time.

In considering whether the group had a duty to prevent the death, a court must balance the relationship of the parties, the reasonable foreseeability of the harm and public policy issues.

Therapist-Patient Relationship

Because the therapist-patient relationship had ended at least six months before the death, the Court found no duty was owed.

There was also no reasonable foreseeability of harm. Because it is unknown whether the death was a suicide or a homicide, it is “unclear what harm (the group) was supposed to prevent.”

Finally, the Court said, this was not a situation in which there was a public policy for finding the group had a duty to prevent the death under such circumstances. ♦

See *T.M. v State*, 804 N.E.2d 773 (Ind.App.2004).

Judge Finds Contempt for Ignoring Court Orders

A word to the wise: If you are in a courtroom, you would be well advised to do as the judge directs.

The Wife in a divorce action failed to do that, however—to the peril of her case as well as herself.

Testing the judge's patience, the Wife repeatedly ignored his orders. She ultimately, though, was found in contempt and ordered to pay \$2100.

On appeal, she argued about two

findings of contempt, but the Court of Appeals was not impressed.

“Contempt Involves Disobedience”

“‘Contempt of court involves disobedience . . . which undermines the court's authority, justice, and dignity,’” it observed. “It includes any act that tends to deter the court from the performance of its duties.”

A “‘[w]illful disobedience of any lawfully entered court order of which the offender had notice is indirect contempt.’”

In May 2002, the Wife was ordered to undergo psychological testing, but she refused to sign the consent necessary for her evaluation.

Judge Orders Evaluation Done

At an October hearing, she was ordered by the judge to sign this form and to complete the assessment.

A month later, she signed the consent but “wrote that she was doing so ‘under duress and per the court order of October 24, 2002.’”

She then filed a complaint



Judge finds the wife in contempt for refusing to cooperate.

against the psychologist, prompting him to withdraw from the case—and the evaluation was never completed.

Wife Refused to Do Discovery

The Wife also was cited for contempt for refusing to answer the Husband's interrogatories and his requests for production.

Because a “party's remedy for an erroneous order is appeal . . .,” the Court concluded, “[s]he was required to comply with the orders and to challenge the merits of the orders through the proper channels.”

See *Lasater v. Lasater*, 809 N.E.2d 380 (Ind.App. 2004). ♦

We Are Now NBB with New Partner

If you are wondering about the change in our law firm's name, we are pleased to announce that Alan A. Bouwkamp—formerly “Of Counsel” with us—has become a partner.

Joining him is LaDonna Lam, a paralegal who comes to us from a law firm in Muncie, Indiana. We are delighted to welcome them!

Please be sure to note our new e-mail address at nbblaw.com. ♦

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