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FAMILY LAW FOCUS

Foster Mom Is Able to Adopt Baby

Even though Grandparents opposed, single Foster Mom adopted baby.

While there is truth to be found in the saying "blood is thicker than water," the Court of Appeals found otherwise with this adoption case.

Surprisingly, the parents of the baby at issue were not the parties herein. Instead, the tug-of-war over the child was between the Grandparents and the Foster Mom.

Baby Addicted to Drugs at Birth

The infant L.M.R. tested positive for crack and marijuana at her birth in February of 2005.

SPOTLIGHT ON:

As a result, she was deemed a Child in Need of Services (CHINS) by the Marion County Department of Child Services (DCS) and taken from Mother and putative Father.

At the age of two days, the infant was placed with a Foster Mom. A college graduate and single parent, the woman was employed as a television news producer.

Each Party Petitioned to Adopt

Both parties moved to adopt the baby when she was 19 months old.

Denying the Grandparents' motion, the trial court found it would be in the child's best interests to be adopted by the Foster Mom.

The Grandparents appealed, arguing Foster Mom was a single parent with no experience in child-rearing, while they had a long marriage and had raised four children.

But the Court said no. "[W]e are not convinced that the lengthier parental history necessarily translates into better parenting," it noted.

None of Children Graduated

According to the record, none of their children, ages 23 to 28, had finished high school.

None were employed, and several of these children had fathered multiple out-of-wedlock kids.

Despite knowing L.M.R. had tested positive for drug addiction, the Grandparents refused to accept that this child had special needs.

But, stated the Court, the Foster Mom had "altered her life to focus on L.M.R.'s care and needs."

She "has established a routine in L.M.R.'s life, and, at the advice (of drug addiction experts), has engaged in particular sensory exercises to address some of the problems created by (the) addiction."

Two-parent Adoption Argued

As for Grandparents' argument the baby should only be adopted by a two-parent family, the Court pointed to the Indiana statute that authorizes single-parent adoption.

Even their claim that the DCS case manager had withheld his consent to the adoption by Foster Mom failed to move the Court.

Not only is the record void of any criticism of the Foster Mom, the Court opined, but it seems this recommendation was made by the case manager — "prior to ever even observing (Grandparents') interactions with their grandchild."

Affirmed.

See *In Re Adoption of L.M.R.*, 884 N.E.2d 931 (Ind.App. 2008).♦

REALITY CHECKS:

Once the legalities of your divorce are in the rearview mirror, you're still not finished with reshuffling your life. Here are some important things to consider:

√ Close all joint accounts with your ex-spouse, including joint credit cards and bank accounts.

√ Be sure to cancel the accounts in writing and ask that each account be reported as "closed by customer" to the credit bureaus.

√ Change all of your beneficiary designations on any life insurance policies, pensions and IRAs.

√ If you already have estate documents, you need to modify them or execute new ones.

√ If you are a woman and reclaiming your maiden name, register the name change with the Social Security Administration.

√ Check the status of your retirement accounts, particularly the ones with the Social Security Administration. Rules exist whereby you may be able to get benefits on the basis of your ex-spouse's Social Security record.

√ Be certain to look into health care coverage offered under a COBRA plan. In Indiana, you are guaranteed 36 months of health coverage in a divorce.

SITE: http://articles.moneycentral.msn.com/CollegeAndFamily/Suddenly Single/10steps.

Hubby Shifts Joint Holdings To Dissipate Marital Assets

State's "one pot" theory prohibits exclusion of marital assets.

Every once in a while, a situation comes along that really seems to "rub salt in an open wound."

Here, the Husband dissipated marital assets and then complained to the trial court that he had no liquid funds with which to pay the marital property settlement.

The court told him to take cash from his pension, and he appealed — arguing he was entitled to a larger share because of the property he had brought into the marriage.

Statute Creates Presumption

Citing Indiana Code §31-15-7-5, the Court of Appeals reminded him that this statute "creates a rebuttable presumption that an equal division of the marital property . . . is just and reasonable."

In order to challenge a court's division of property, a party "must overcome a strong presumption that the court considered and complied with the applicable statute."

Instead of offering documentary exhibits or other evidence of valuation to rebut this presumption, the Husband merely asked for all the value of their house and one-half of his pension.

The record showed he was a tenured college professor, earning $100,000 per year, and she was unemployed while being treated for clinical depression.

Husband Shifted Joint Funds

Evidence also indicated that, prior to filing, the Husband had been transferring joint funds into accounts in his sole name.

In addition, he received a cash payment after mortgaging their marital home which, at the time, had no existing mortgage.

From the funds in those accounts, he began to travel around the world, usually with a female friend whose expenses he paid.

At the hearing, when there were no liquid assets to pay the settlement, it was suggested that he tap his pension for cash.

"To require the party who has not dissipated assets to bear the attendant costs of asset dissipation would not effect a just and reasonable division," the Court noted in its opinion.

Affirmed.

Wanner v. Hutchcroft, 888 N.E.2d 260 (Ind.App. 2008).♦

High Court Tackles Child Support

Parents shared joint legal custody of their three children.

In a relatively rare foray into family law, the Indiana Supreme Court clarified "important issues about child support" with this case.

Mom and Dad wed in 1988 and subsequently had three children. In the fall of 2000, the father filed a petition for divorce.

In 2003, the trial court's decree gave legal custody to both parents with physical custody to Mom.

Dad Got Tuesdays & Thursdays

Dad's parenting time was set as Tuesdays and Thursdays after school until 7:30 p.m., as well as every other weekend and holidays.

The parties agreed the father's weekly child support obligation would be $150 for two years and that then it would be recalculated.

In 2005, Mom requested the child support be recalculated. After the hearing, the support obligation was changed to $327.20 weekly.

(Indiana Child Support Guidelines give credit against a support obligation to a noncustodial parent, based on calculations from the Parenting Time Credit Worksheet.)

Mom appealed, contending Dad had taken improper parenting time credit and had made wrongful deductions in calculating his support.

The Court of Appeals was persuaded by Dad's argument, but the Supreme Court sided with Mom.

According to the record, Dad had gotten parenting time credit for 104 overnights — 52 of which were actual overnight stays and 52 of which were for the two evenings per week he spent with the children.

Parenting Time Credit Not Given

Those evening visits did not qualify for parenting time credit, claimed Mom, and she was correct.

Neither the Commentary to the Child Support Guidelines nor the Guidelines *per se* suggests "a visit may qualify as an overnight if the child does not physically stay overnight with the noncustodial parent."

As such, "the number of visits a noncustodial parent receives parenting time credit for cannot exceed the number of visits in which the children physically stay overnight."

Mom next argued the trial court erred in letting Dad use the adjusted gross income figure from his tax return — without adding back business deductions taken for income tax purposes — as his income for calculating child support.

The Supreme Court concurred, finding the use of "the adjusted gross income from (Dad's) tax return for calculation of his child support obligation was error on multiple grounds."

Settlement Payments Disallowed

Lastly, Mom urged payments, made pursuant to the marital property settlement, should not be deductible for child support purposes.

"If one party chooses to keep the entirety of the physical assets by paying the other spouse for her share of the assets' value, the party who keeps the physical assets should not also be entitled to a deduction for the value of those assets that is being paid to the spouse," noted the Court.

"Otherwise, the party would receive the benefit of both possessing the assets and the deduction."

Reversed and remanded to the trial court to reexamine support.

See *Young v. Young*, 891 N.E.2d 1045 (Ind. 2008).♦

Dad got "creative" while computing his child support obligation to Mom.

Faxing & Confidentiality Don't Mix

*W*ord to the wise: If you expect to maintain legal privacy with your communications, be careful about faxing into an office setting.

In this case, the Parents found what they believed to be a suicide note written by their 14-year-old daughter, H.D., in the fall of 2003.

As a result, they arranged for the girl to be seen by a school counselor who recommended that she be assessed by a psychiatric nurse.

Girl Sent to Psychiatric Facility

After meeting with H.D., the nurse urged placement for her in an adolescent psychiatric hospital.

Initially, the Parents were concerned about privacy as both were teachers in the girl's school system.

They were assured, though, that H.D.'s hospitalization would be kept private and that the school would not be told. A confidentiality agreement to this effect was signed by them and the hospital.

Parents filed for invasion of privacy after news of hospitalization spread.

Unaware of this agreement, H.D.'s therapist faxed a note to her school, thanking the counselor for the referral and noting "depressional stress" issues were being addressed.

When the girl returned to class, news of her hospital stay was widespread. (The fax machine was in an office where students worked.)

School Received Two Surveys

H.D. needed to be hospitalized again. This time, two Satisfaction Surveys were sent to the school counselor by the hospital's CEO.

The Parents filed a complaint, seeking punitive damages for the invasion of privacy. The trial court dismissed their petition, saying the Medical Malpractice Act applied.

On appeal, the Parents argued the Malpractice Act's requirement — "that a proposed complaint be presented to a medical review panel and an opinion rendered" prior to its filing in court — was inapplicable.

The Court of Appeals agreed.

Faxing Needs Privacy Precautions

"We fail to see why the . . . act of faxing a patient's confidential information to a fax machine . . . without taking precautions to ensure that the materials are discreetly received by the intended recipient would necessitate consideration by a medical review panel," it noted.

Because the Parents filed claims of ordinary negligence, "we are . . . persuaded that an average juror is well equipped to consider (them)."

Reversed and remanded.

H.D. v. BHC Meadows Hosp., 884 N.E.2d 849 (Ind.App. 2008).♦

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