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FAMILY LAW FOCUS

Dad Wants to Quit Paying Support

By the time you finish reading this case, you'll probably wonder how this teenager did such a good job of raising herself.

Mom and Dad were divorced in 1994. Their daughter lived with her mother, and Dad paid child support.

In 2011, the father petitioned to end his support payments, alleging their 19-year-old was emancipated. But the trial court found otherwise, and the Court of Appeals agreed.

Mom Moved to Be with Boyfriend

A review of evidence shows the girl lived in a small town with Mom until 2010 when the mother moved out to live with her boyfriend.

Left alone, the teen was mostly financially independent of her parents. She made "just enough to pay [her] bills" with some federal rent help and $45 weekly from Dad.

SPOTLIGHT ON:

Dad tries to stop paying child support, putting teen's education at risk.

A high school graduate, she had applied to college and was working with staff there to finish a financial aid application. The girl also was employed as a server at a restaurant.

At that time, a parent in Indiana was usually obligated to support a child until he or she was twenty-one years. Ind.Code 31-16-6-1 *et seq.*

Three Exceptions to General Rule

But there were three exceptions, one of which controlled here.

If the child is "not under the care or control of . . . either parent or . . . an individual or agency approved by the court," the court must find she is emancipated and terminate Dad's court-ordered child support. Ind.Code §31-16-6-6(b)(3).

This was not the case here.

In its analysis, the Court relied on the Indiana Supreme Court's opinion in *Dunson v. Dunson*, 769 N.E.2nd 1120 (Ind. 2002).

There, the Court declared the emancipation of a minor "requires that (1) the child initiate the action putting itself outside the parents' control and (2) the child in fact be self-supporting." *Id.* at 1123-24.

Teenager Did Not Initiate Move

Here, though, Dad moved from his child when he divorced Mom. And the mother's more recent "move was a deliberate action . . . which resulted in (the girl's) being left alone to fend for herself."

Because "[t]his move was not initiated by (the teenager), she therefore (was) not emancipated."

Having determined there was no emancipation, the Court turned to address Dad's other two issues.

First, he urged, if he is made to pay support, then Mom should be, too. The Appellate Court agreed.

Dad Asks to Add Teen's Income

Second, Dad pushed to include the girl's income in calculating his support. But the Court "refuse[d] to hold her efforts . . . against her."

Affirmed in part; remanded in part. The case was sent back to the trial court to determine the financial support due from her parents.

See *Ashabranner v. Wilkins*, 968 N.E.2d 851 (Ind.App. 2012).♦

REALITY CHECKS:

As our kids head back to school this fall, no doubt many are talking about substance abuse with their peers as well as their parents. Given the statistics, that is a conversation worth having:

√ While marijuana use was down in the late 1990s and early 2000s, five-year trends indicate significant increases among 10th- and 12th-graders.

√ In 2011, 12.5% of 8th-graders, 28.8% of 10th-graders, and 36.4% of 12th-graders reported past-year marijuana use.

√ Among all three grades, recent trends show a decline in the perceived risk of harm associated with marijuana use.

√ Tracked for the first time was the use among high school seniors of synthetic marijuana — also known as K2 or "Spice."

√ In 2010, about one in nine 12th-graders reported using Spice.

√ It appears marijuana use continues to exceed the smoking of cigarettes. Cigarette usage is down notably among students, with 2.4% of 8th-graders, 5.5% of 10th-graders, and 10.3% of 12th-graders reporting.

See drugabuse.gov/drugpages/MTF; and "2011 Monitoring the Future Survey," released by the National Institute on Drug Abuse and the University of Michigan.♦

Teen Argues No Fact Basis as to His "Intent to Arouse"

Now and again, a case occurs that leaves you sad — sad for those involved and sad for the system required to deal with such issues.

In late 2010, the State filed a petition against D.A., alleging his delinquency for having committed two felony counts of child molesting when committed by an adult.

At the time, D.A. was a 13-year-old boy, and his victim was a 3-year-old girl.

During the hearing, he and the State offered a "conditional" plea agreement whereby the State agreed to dismiss one count if he admitted to the other.

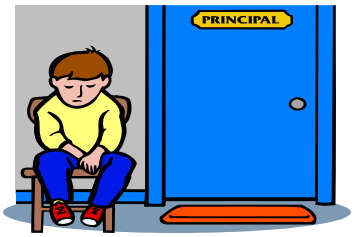
Plea Taken "Under Advisement"

If accepted, the juvenile court would take his admission "under advisement." And if he successfully completed the terms of his probation, the State would move to dismiss the count against him.

D.A. accepted the agreement, and the probation department recommended "formal probation with inpatient placement at Resolute Treatment Facility (Resolute) for sex offender counseling."

The boy refused and appealed.

On appeal, D.A. argued the factual basis was insufficient "to show his intent to arouse or to satisfy his sexual desires, which is an element of the crime of child molesting." See Ind.Code §35-42-4-3.



Teenager gets in-patient placement for sexually molesting 3-year-old.

But the Court of Appeals gave no credence to his argument.

We do not have jurisdiction to resolve this, it explained, because D.A.'s plea was "conditional."

A "conditional plea is equivalent to a withheld judgment, and, thus, there is no final judgment or appealable final order from which to appeal." Ind. Appellate Rule 5.

Boy Argued No Evidence Given

D.A. also urged "no evidence was presented by the State or Probation at the disposition hearing" and that he was unable to cross-examine the probation officer who prepared the predisposition report.

"[T]he juvenile court is (given) wide latitude and great flexibility in its dealings with juveniles," stated the Court. It will be reversed only upon an abuse of discretion.

Affirmed.

See *D.A. v. State*, 967 N.E.2d 59 (Ind.App. 2012).♦

Parents Battle over Kindergarten

For many kids, the transition between pre-school and kindergarten is hard enough . . . without adding the emotional upheavals of a custody battle between parents.

In this case, C.S. was born in 2006 to unwed parents who lived together in Bloomington, Indiana.

When the boy was six months old, Mom enrolled at Indiana University (IU). And Dad was employed in the area at the Crane Naval Surface Warfare Facility.

Military Deploys Mother to Iraq

In 2007, Mom enlisted in the military. Two years later, she was sent to Iraq. Before leaving, she and Dad ended their relationship.

Upon her return, she continued as a student at IU. In addition, she and Dad entered into an agreed entry, approved by the trial court, to share joint legal custody and equal physical custody of C.S.

This arrangement worked until Mom graduated and took a job in Kentucky. In May of 2010, she filed a Notice to Relocate from the Bloomington area. In it, she asked that C.S. be relocated with her.

Dad filed a Petition to Modify Custody, contending "a substantial change in circumstances had occurred because C.S. was 'set to begin kindergarten.'"

Primary Custody Shifts to Dad

After a hearing, the trial court granted Dad's petition and ordered primary custody be given to him.

On appeal, Mom claimed there was no Indiana case law supporting the proposition "that the mere fact of a child being eligible to attend school, but not yet attending school, (was) a change so substantial as to warrant modification of custody."

She further argued that no substantial change had taken place because "school attendance in Indiana is not mandatory until age 7."

Modifying Custody under Statute

In its analysis, the Court of Appeals examined how a custody order should be modified under Ind.Code §31-17-2-21(a).

Any modification (in the original custody decision) must be in the child's best interests and there must be a substantial change in one or more of the factors a court may consider under Ind.Code §31-17-2-8.

Here, it was the wish of the parents that their son start kindergarten.

The mother even testified "he's more than ready for kindergarten. I mean, he's excelled at all the tests he's been given."

Then Mom changed her mind and offered another plan instead.

She urged that equal custody be continued until C.S. was seven. Or, in the alternative, "he should begin kindergarten in both Kentucky and Indiana on alternating weeks and the current custody arrangement should be maintained."

Courts Focus on "Best Interests"

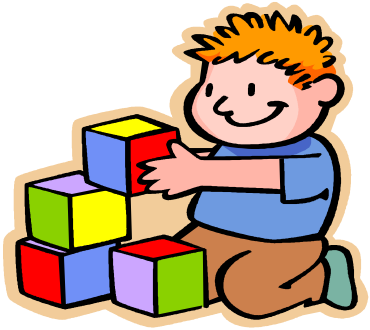
The Court of Appeals refused to get caught up in her tortuous reasoning. Like the trial court, it focused on C.S.'s best interests.

Mom's "plan of having C.S. alternate weeks at different schools was impractical," the Court stated.

Indeed, her "proposals (were) not based on the child's best interests. Rather, they (were) intended to maximize her contact with C.S. . . . at the expense of (his) stability."

Affirmed.

See *In Re Paternity of C.S.*, 964 N.E.2d 879 (Ind.App. 2012).♦



The youngster did well in preschools located in Indiana and Kentucky.

Firm Updates List

As we update our mailing list, you may discover that you are receiving **FAMILY LAW FOCUS.** If you wish not to receive our quarterly newsletter, please so inform NBBP Administrator Jane Callahan at jcallahan@nbbplaw.com.♦

Pair Fights over Items in Divorce

Couple fights over nearly every piece in their marital estate during divorce.

In distributing marital property during a divorce, a trial court must "slice and dice" with a sure hand.

In the case herein, Husband and Wife wed in 2000. She had adult children from an earlier marriage and a minor child, D.H., born in 1993. He also had kids from a prior marriage and adopted D.H. in 2001.

The couple purchased a residence for $230,000. The down payment was $105,000 . . . $80,000 came from the sale of Wife's house and the rest was from Wife's father.

In 2009, the Husband filed for a divorce. The final hearing was held in the spring of 2011.

Essentially, the court split their assets equally. It also ordered him to pay $6240 in back child support ($65 weekly from the filing date).

The Wife appealed, urging the court abused its discretion when it divided their marital estate. But the Court of Appeals disagreed.

In a dissolution, it observed, a court is required to divide marital property in a "just and reasonable manner." Ind.Code §31-15-7-4(b).

Did Court Abuse Its Discretion?

According to Wife, though, the court abused its discretion by failing to take into account her contribution of assets into the marriage.

A review of the evidence revealed that despite her substantial down payment on the house, it was then worth $200,000. In addition, their residence was subject to almost $198,000 in mortgages.

"The equity in the marital residence provided by Wife," said the Court, "is now minimal due to additional mortgages on the property."

The Indiana Supreme Court in *Fobar v. Vonderahe*, 771 N.E.2nd 57 (Ind. 2002) made short work of the parties' quibbles about individual items in their marital estate.

Disposition Is "Not Item by Item"

A "trial court's disposition is to be considered as a whole," noted the high Court, "not item by item."

As for the Wife's claim she was entitled to more child support, the Court of Appeals agreed.

"Because Husband's actual income during the relevant period is known," the Court stated, "we conclude the trial court abused its discretion" in using a sum based on his current unemployment benefits.

Affirmed in part, reversed in part, and remanded for a recalculation of Husband's child support.

Morgal-Henrich v. Henrich, 970 N.E.2d 207 (Ind.App. 2012).♦

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