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FAMILY LAW FOCUS

Jail $$ Skews Support Calculation

Indiana Supreme Court addresses child support payments made by those who are confined to jail.

How's a guy supposed to pay his child support when he's locked up in jail and can't make any money?

That's a fair question . . . and one the Appellant put before the Indiana Supreme Court in this case.

Mom and Dad married in October of 1995. And seven years later, after two of Mom's nieces accused Dad of molesting them, the couple separated and filed for divorce.

Dad Agreed to Pay $277 Weekly

In a provisional agreement, Dad agreed to pay $277 per week to support the couple's two children.

This figure was based on his bi-weekly income at the time, about $3,100, from rental properties and his work as a computer consultant.

After the provisional order took effect but before the final divorce hearing, Dad was convicted of "inappropriate physical contact" with the nieces and sentenced to jail.

He was in jail during the final hearing and, therefore, earning virtually nothing. Still, he was ordered to pay the $277 per week in support.

Dad Appealed Twice

Dad appealed, first to the Court of Appeals and then to the Indiana Supreme Court.

He argued the lower court was wrong in imputing his pre-jail income to him in figuring out the amount of his child support.

The Supreme Court agreed and remanded for a recalculation.

While incarceration does not relieve parents of their child support obligations, it noted, "courts should not impute potential income to an imprisoned parent based on pre-incarceration wages or other employment-related income."

Calculations Based on Income

After looking at the approaches used in other states, the Court decided support calculations should be "based on the actual income and assets available to the parent."

This "non-imputation approach preserves the traditional rule imposing support without ignoring the realities of incarceration," it stated.

Moreover, "a court could prospectively order that child support return to the pre-incarceration level upon a prisoner's release because following release, the parent is theoretically able to return to that wage level.

"Such an order has multiple benefits," the Court observed.

Tracking of Support Obligation

"First, it encourages non-custodial parents to track carefully their support obligation, as it would require an incarcerated parent to seek modification of the order upon release," it continued.

"Second, it relieves the custodial parent from the added burden of tracking the expected release date of the obligor and filing for modification upon that release."

See *Lambert v. Lambert*, 861 N.E.2d 1176 (Ind. 2007).♦

SPOTLIGHT ON:

REALITY CHECKS:

If you are still shocked about that increase in property taxes you recently got in the mail, then perhaps these statistics will help remind you of what is really important . . . at least, you have a roof over your head.

√ The fastest growing segment of the homeless population is made up of families and children.

√ It is estimated that as many as half a million families and more than one million children reside in homeless shelters each year.

√ 26% of homeless families have one child; 28% have two; and 30% live with three or more kids.

√ One in five children, ages 17 and younger, live in poverty — that's 12.9 million children.

√ The U.S. Advisory Board on Child Abuse suggests domestic violence may be the single major precursor to child abuse and neglect fatalities in this country.

√ In a national survey, 50% of the men who often assaulted their wives also often abused their kids.

√ A recent study found school-age kids who see violence exhibit a range of problem behaviors, including depression, anxiety and violence toward peers.

SOURCES: *Capital Covenant*, Winter 2007; Family Violence Prevention Fund, *http://www.endabuse.org/programs/children/*.

Mother's Cigarettes Ignite Custody Battle over Child

Mom's cigarette habit sparks custody battle over baby daughter.

So zealous was this protective Dad in trying to save his baby from the dangers of second-hand smoke that the anti-smoking lobby should have rushed out to embrace him.

In late 1999, a court found Dad to be the father of a daughter who had been born ten months earlier.

Dad Received Parenting Time

He was ordered to pay child support and given parenting time, while Mom was awarded custody.

The following year, Dad filed an emergency petition for custody, alleging Mom was exposing their baby to second-hand smoke.

His request was denied, but Mom was ordered to stop smoking in the child's presence.

Baby Tested "Quite High"

In September 2003, when Dad picked up the child for visitation, he took her to a medical office to test her urine for exposure to nicotine. She tested "quite high."

In February 2004, he hired a private detective who videotaped Mom and others smoking close to the girl at a bowling alley.

Some five months later, Dad moved to modify the custody of his child because of concerns about second-hand smoke.

Court Heard Evidence

During the hearing, evidence was taken, and Dad's motion was ultimately denied. He then turned to the Court of Appeals.

Arguing such a modification was "in the best interests of [his baby]," he cited the "catastrophic effects exposure to [second-hand smoke] was having on her."

But the evidence, including testimony from the girl's pediatrician among others, demonstrated otherwise.

When Reversals Are Allowed

Indiana allows the Court of Appeals to reverse a lower court "only if there is no evidence to support the finding or no findings to support the judgment."

In the situation herein, there was abundant evidence that supported the trial court in its decision of leaving the child in the mother's custody.

The trial court was affirmed.

See *Heagy v. Kean*, 864 N.E.2d 383 (Ind.App. 2007).♦

Patient Fights Forced Medication

Patient skipped her appointments scheduled for needed injections.

At first glance, the fact situation upon which this case is based seems to apply to a very few.

How many folks, after all, are put in the situation of having to take medicine for an indefinite period of time against their will?

Nonetheless, the issues raised herein are noteworthy, especially for those involved in health care.

The Appellant J.S. is a 48-year-old woman who has been diagnosed with a "psychotic disorder, not otherwise specified" with "many of the typical symptoms of schizophrenia, the paranoid type."

Persistent Uncontrolled Epilepsy

Her diagnosis, made when she was a teenager, was complicated by the fact she "[has] a persistent uncontrolled epileptic disorder."

In 2001, J.S. was involuntarily committed after refusing her medicine. Believing it and her food were being poisoned, she would not eat and lost a significant amount of weight.

For the next several years, J.S. vacillated between doing relatively well when she was taking her medicine and "suffering from severe seizure disorder/chronic paranoid schizophrenia" when she was off her medicine.

Given Meds without Consent

During such times, she would be hospitalized and given medication, usually without her consent.

In late 2004, J.S. began skipping appointments, at which she received needed injections, after being released from the med/psych unit.

The treatment center (Center), filed a motion to recommit her, and a hearing was held accordingly.

In its Findings of Fact, the court stated J.S. "is suffering from a mental illness which disturbs her thinking, her behavior, her feelings, and will impair her ability to function in the absence of medication."

Court Grants Petition

The court granted the petition, and J.S. appealed.

Among the issues raised, she argued the commitment order allowed for "the indefinite forced administration of the medication" and, as such, was contrary to state law.

Not so, stated the Court of Appeals, citing Ind. Code §12-26-15-1 (a) that requires at least the annual review of such commitment orders.

"By statute, J.S.'s commitment and forced medication order are not indefinite," the Court observed.

"While it would have been better . . . to include the periodic report deadline in (the court's) latest commitment and forced medication order, the statutory review requirement exists regardless of whether the . . . order mentions it.

Authorization of Medication

"Thus, we conclude that the trial court's order does not authorize the indefinite forced administration of medication."

Once again, J.S. appealed, this time to the state Supreme Court.

The Court, though, refused to address itself to the case, or in legal language, it denied transfer. Therefore, the decision by the Court of Appeals is the final word.

A dissent (at 859 N.E.2d 666 (Ind. 2007) was written by Justice Rucker.

See *J.S. v. Center for Behavioral Health*, 846 N.E.2d 1106 (Ind.App. 2006).♦

Most effective form of medication for patient was given by injection.

Guardianship Poses Tough Issues

Girl lived with her grandparents who served as her guardians.

From just about every perspective, this case was difficult . . . and even the court seemed uneasy about its placement of the little girl.

In April of 2005, the maternal Grandparents were named Guardians of their 4-year-old granddaughter. She had been living with them for all but two months of her life.

Parents Unfit to Parent

At the guardianship hearing, where evidence of the parents' substance abuse, chronic unemployment, criminal activity and mental instability was heard, the trial court declared this appointment was "in the best interests of the child."

Five months later, Mom asked that the guardianship be terminated.

At this hearing, the evidence presented about the parents' life was mixed, but the court ended the guardianship and returned the girl.

Court Defines Its Job

"[I]t is not the court[']s job to place children where they may have more opportunities," it observed, "but to keep them with their parents when possible and when safe."

The Grandparents appealed, arguing the court abused its discretion in taking the girl from them.

In order to review its decision under an abuse of discretion standard, the Court of Appeals can only look at the trial court's findings of fact and conclusions thereon.

Is Judgment Clearly Erroneous?

"We may not set aside the findings or judgment unless they are clearly erroneous," the Court noted.

"Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference."

And "[a] judgment is clearly erroneous if it relies on an incorrect legal standard," it continued.

Here, "[w]e cannot say that the (Grandparents) proved by clear and convincing evidence that (their) guardianship should continue.

Parenting Evidence Is Conflicting

"The evidence regarding whether the (Parents) are currently unfit to parent . . . is conflicting.

"In essence, the (Grandparents) request that we reweigh the evidence and judge the witnesses' credibility, which we cannot do.

"We conclude that the trial court's termination of the guardianship is not clearly erroneous."

The trial court's holding is affirmed, with a dissent.

See *In Re Guardianship of J.K.*, 862 N.E.2d 686 (Ind.App. 2007).♦

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