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FAMILY LAW FOCUS

Don't Skip Out on Paying Support

A hint for any divorced parent who is considering that he or she might skip out on his or her court-ordered child support: Don't!

The law has a long memory and an even longer reach. Just ask the Mother in the case at hand.

Divorced in 1971, she and the Father are the parents of a daughter and a son. He was born in 1970.

Father Found to Be in Contempt

In 1989, a lower court found the Father in contempt for nonpayment of support for the boy. He was ordered to pay the arrearage, plus $200 of his ex-wife's attorney's fee.

He was also to assign to her $5,000 of proceeds from an accident he suffered with his girlfriend.

Father died in 2009, and Mother filed a claim against his Estate for the unpaid support order of 1989.

SPOTLIGHT ON:

Mother scrimped without child support to make ends meet for her son.

But Father's Estate — handled by their daughter as Personal Representative — argued the statute of limitations barred Mother's claim.

Denying the Estate's Motion to Dismiss, the court awarded Mother the arrearage in child support.

Enforcing Support Obligation

The Estate appealed, contending "[a]n action to enforce a child support obligation must be commenced not later than ten (years)" after the child's 18th birthday or its emancipation, whichever occurs first. Ind.Code §34-11-2-10.

The Court of Appeals was quick to point out, though, Mother's claim was "an attempt to enforce the 1989 *judgment*, not an attempt to enforce a child support obligation."

Hence, it felt "we must address whether Mother's claim for enforcement of a money judgment is barred under Ind.Code §34-11-2-12."

This statute states that "[e]very judgment and decree of any court of record … of Indiana … shall be considered satisfied after the expiration of twenty (20) years."

Unlike other statutes of limitations, the Court noted, this one "is merely a rule of evidence that creates a rebuttable presumption."

Party Must Plead Payment

In other words, it explained, "the party seeking to avail itself of the presumption of satisfaction of a judgment after twenty years have passed must plead payment."

Here, Mother filed her claim six weeks after the 20-year period had expired. She testified, though, that she had repeatedly asked Father about the monetary settlement "from the Greensburg accident."

Because she worked with one of his sons, she knew he had received it. "But I kept asking, and (Father) said he never did get it."

It is "clear from Mother's testimony that she asserted nonpayment," observed the Court. As such, her claim was not barred by Ind.Code §34-11-2-12.

Affirmed.

Estate of Wilson v. Steward, 937 N.E.2d 826 (Ind.App. 2010).♦

REALITY CHECKS:

Many of those who survive domestic violence say their instincts warned them of danger. There are, though, early signs that a relationship might prove to be abusive. Watch out if he or she:

√ Wants to move into the relationship too quickly.

√ Demands to know where you are at all times and frequently calls, e-mails and texts you.

√ Refuses to respect the boundaries you set.

√ Is jealous without cause and accuses you of having affairs.

√ Says one thing and then does something else.

√ Blames other people for his or her behavior and refuses to take responsibility for actions.

√ Maintains the failure of his or her previous relationships was due to their former partners.

√ Insists you no longer spend time with your family and friends.

√ Criticizes you or puts you down. He or she tells you that you're stupid, lazy and/or fat or that no one will ever love you.

√ Is impulsive and rages out of control.

Indiana Domestic Violence Hotline: 1-800-332-7385

For information, see *Domestic Violence Network*, http://www.dvnconnect.org.♦

Due Process Requires More Than Party's Mere Gestures

The question posed to the Indiana Supreme Court was simple and straight-forward. The fact situation in which it arose was anything but.

In 2003, Mom — unmarried and incarcerated — gave birth to a baby boy. A co-worker of hers, N.E., assisted at the delivery.

Within weeks, a court appointed N.E. as the Child's guardian. A paternity proceeding also determined the identity of Dad.

Grandparents Filed to Adopt

The paternal Grandparents took an immediate interest in the Child and petitioned to adopt him.

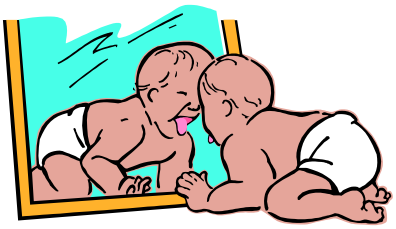
In 2004, Mom, N.E., Dad, Grandparents and Child's guardian ad litem agreed to dissolve N.E.'s guardianship and award joint legal custody to Grandparents and Mom.

The Grandparents were given physical custody of the boy.

In 2005, N.E. adopted Mom, thereby becoming Child's adoptive grandmother.

In 2007, Grandparents filed a petition to adopt the Child. This time, N.E. received no notice.

They filed an affidavit saying they did not have Mom's address or telephone number and that she was no longer in jail. "Proof of service" of their adoption petition was handled by publication.



While adults squabbled over adoption, baby boy enjoyed simple pleasures.

After the adoption was granted in 2008, Grandparents told N.E.

Two weeks later, she and Mom jointly asked to vacate the adoption. They urged it was void because neither had received notice.

They were correct. "If the notice was not adequate," explained the Court, their "motion to set aside the adoption should have been granted for the reason that the adoption would have been void."

Service by Publication Failed

Service by publication (printed notice in a newspaper) is inadequate "when a diligent effort has not been made to ascertain a party's whereabouts," it observed.

"When notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."

Remanded with directions.

See *In Re Adoption of L.D.*, 938 N.E.2d 666 (Ind. 2010).♦

Wedding Triggers Custody Battle

Every so often, a case comes along that begs comparison to the old saying about pasta. You know the one: throw spaghetti against the wall to see what sticks.

Here, it was the Mother who was "pitching pasta" at the Court of Appeals, raising issue after issue with the hope one of them would prove reversible error.

Married in 1995, she and the Father had a son and a daughter before divorcing in 2006.

Mom Shares Custody with Ex

Both parties agreed to a dissolution decree. It provided that they would share joint legal custody of the kids, with Mother having primary physical custody.

In 2008, Father wanted more time with his kids. He filed a petition to modify physical custody or, in the alternative, parenting time.

In response, she filed cross-petitions to modify custody and child support as well as a request that the court find him in contempt for failure to pay child support.

Evidence was presented at a hearing, including a report given by an evaluator from the Domestic Relations Counseling Bureau (DRCB). In addition, the court interviewed the son in chambers.

Dad Explains Reason for Filing

Among the testimony was an explanation by the Father (who was engaged to a woman with two children) as to wanting more time.

Dad hopes to blend his family with new wife and her kids.

"The very most important thing is that I would like to have fifty percent of the time with my kids," he told the trial court.

"[A]nd with this building of a (new) family, I think they should be part of that so they don't have to feel like outsiders to the family."

Instead of giving Mother sole legal custody as she asked, the court felt joint legal custody of the kids should continue. Father, however, was given additional parenting time.

Mom Argues Abuse of Discretion

Mother appealed, claiming the court "abused its discretion by ordering a *de facto* modification of custody to joint physical custody" to give him more parenting time.

Many of her issues on appeal, in fact, are grounded on what she considered the court's failure to follow Indiana law on custody changes.

In the initial custody determination, both parents are presumed equally entitled to custody. But the one seeking any modification bears the burden of showing that the existing custody should be altered.

Such a change may not happen unless it is in the best interests of the child and "there is a substantial change" in one or more of the factors the court may consider under Ind.Code §31-17-2-8.

The trial court is mandated to consider "all relevant factors," including the age and sex of child, the wishes of a parent or parents, the wishes of child and the interactions of child with others in his or her life. Ind.Code §31-17-2-8.

Remarriage Is Not Change

Taken by itself, Father's remarriage was not a change in circumstances sufficient to support a change in custody, noted the Court.

But when taken in conjunction with other factors, it said, "they may together constitute a substantial change in circumstances."

The evidence indicated that Father wanted more time with his children; his son wanted more time with him. And all were wanting to forge new relationships to accomplish becoming a blended family.

"Mindful of the . . . deference we accord our trial courts in family law matters, we cannot say the trial court abused its discretion."

Affirmed.

See *Julie C. v. Andrew C.*, 924 N.E.2d 1249 (Ind.App. 2010).♦

Dad Wins Right to Raise His Son

Father is given another chance to form a relationship with his son.

If you are a parent, chances are the order of the trial court in this case will make sense. If you are also a lawyer, it becomes murkier.

It is this very ambivalence, in fact, that is reflected in the Indiana Supreme Court's ruling. Of the five justices, four affirmed and one dissented with a written opinion.

The facts spin around the involuntary termination of a father's parental rights. (His paternity was not established until September 2008.)

In 2006, a Son was born out of wedlock. He was one of Mom's seven children, then ranging in age from birth to fourteen years.

Because of allegations of her drug use, lack of supervision and medical neglect of her kids, she tangled with the Perry County Department of Child Services (DCS).

In 2007, the kids were put into foster care. At the hearing, the trial court declared each was a Child in Need of Services (CHINS), and a reunification plan was made for the Mom. She refused to cooperate.

Lower Court Terminates Rights

DCS then petitioned the parental rights of both parents be terminated. In 2009, such was granted.

On appeal, Dad argued there was insufficient evidence in the record to support this court order. And the Supreme Court agreed.

To terminate a parent-child relationship involving a CHINS, certain allegations must be made. Ind.Code §31-35-2-4(b)(2).

One addresses the "reasonable probability that the conditions that resulted in the child's removal . . . outside the home of the parents will not be remedied." Ind.Code §31-35-2-4(b)(2)(B)(i).

The evidence, though, indicated Dad did not live in the home. "[T]he conditions that resulted in (Son's) removal . . . cannot be attributed to Father," observed the Court.

"Therefore, the inquiry (here) is whether there is a reasonable probability that the reason for placement outside the home of the parents will not be remedied."

While the record shows the father never bonded with Son during months of supervised visits, DCS never identified those conditions that were factors in placing the boy into foster care instead with Dad. The father's termination of parental rights was thereby reversed.

Reversed with written dissent.

See *In Re I.A.*, 934 N.E.2d 1127 (Ind. 2010).♦

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