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FAMILY LAW FOCUS

19-year-old Repudiates His Father

Learning that "you can't have it both ways" takes some of us a lot longer than others. In the case at hand, a boy repudiated his relationship with Dad . . . yet expected help from his father with college costs.

His parents were divorced in 2000, and physical custody of nine-year-old Nathan was given to Mom.

In 2008, the trial court entered an order restoring her maiden name. It also ordered Dad to pay his ex-wife $177 weekly in child support.

Son Asked to Change Last Name

In 2009, Nathan petitioned to change his last name from his father's to his mother's maiden name.

In 2010, Mom filed a Petition to Modify, seeking aid from Dad with the expenses of college. (The 19-year-old planned to attend IUPUI while living at home with Mom.)

SPOTLIGHT ON:

Court looks at paying college costs if young adult repudiates parent.

But the court said no. Concluding Nathan had repudiated his relationship with Dad, it thereby ordered his child support be reduced.

On appeal, Mom raised two issues: 1) whether the trial court's finding of the repudiation was supported by evidence; and 2) what impact the repudiation had on Dad's court-ordered child support.

Repudiation of Parent Is Defined

According to the Court of Appeals, repudiation of a parent is "a complete refusal to participate in a relationship with his or her parent."

Based on a review of the record, there was ample — though sometimes conflicting — "he said-she said" evidence in this regard.

The Court "cannot say we are left with a firm conviction" the evidence does not support repudiation, thereby relieving Dad of further responsibility to help with college.

Does this repudiation, though, allow Dad to avoid paying court-ordered child support?

While Indiana law recognizes "a child's repudiation of a parent under certain circumstances will obviate a parent's obligation to pay certain expenses, including college expenses," noted the Court, "any such repudiation is not a 'release of a parent's . . . responsibility to the payment of child support.'"

Duty to Help with College Costs?

There is no absolute duty on the part of parents to provide a college education for their children.

In contrast, parents do have a common law duty to support their children. (This duty exists apart from any court order or statute.)

"A parent's obligation to pay child support generally continues until the child reaches twenty-one years of age," observed the Court.

"Moreover," it continued, "we [have] held that repudiation is not an acceptable justification to abate support payments for a child less than twenty-one years of age."

Affirmed in part, reversed in part, and remanded to trial court.

See *Lechien v. Wren*, 950 N.E.2d 838 (Ind.App. 2011).♦

REALITY CHECKS:

No longer can any of us comfort ourselves with the notion that kids who are rough-housing are merely "kids being kids." To the contrary, the statistics for bullying in 2010 suggest otherwise.

√ Bullying can be physical attacks, name-calling, destroying personal property or clothing, verbal abuse, starting rumors, or verbal attacks online. (We will cover cyberbullying in the Spring issue of *Family Law Focus*.)

√ One in seven students in grades K-12 is either a bully or has been a victim of bullying.

√ Over half, about 56 percent, of all students have witnessed a bullying incident while at school.

√ Nearly three-fourths say bullying is an ongoing problem.

√ Repeated bullying causes one out of every 10 students to change or drop out of school.

√ Fifteen percent of all students who don't show up for school say it is out of fear of being bullied while at school.

√ According to a Yale School of Medicine study, there is a strong linkage between bullying, being bullied and suicide.

See www.bullyingstatistics.org. At that website, you also will find ways to prevent bullying and/or deal with a bully.♦

Non-profit Corporate Entity Is Guardian of Elderly Man

With every passing day, record numbers of folks in our country become senior citizens. And with that surge of humanity come issues of caring for them as they age.

In the case herein, 65-year-old J.Y. was adjudicated as incapacitated. Diagnosed as mentally challenged, he could not manage his personal care or his finances.

Since the 1960s, Carey — a non-profit corporation specializing in support services for individuals with disabilities — has been providing daytime care for him.

Carey Increased Services to J.Y.

After his mom died, the group increased its services for J.Y.

In 2008, when J.Y. ran away from the home he shared with his sister and guardian, it became clear he needed better supervision.

Indiana Adult Protective Services stepped in, and a trial court named Carey interim guardian of J.Y.'s person and STAR Financial interim guardian of his estate.

In 2009, J.Y.'s Niece — who served as the trustee of a Special Needs Trust for her uncle — petitioned the court to appoint her as guardian of his estate and person.

The court refused, choosing to name Carey and STAR as J.Y.'s permanent guardians instead.

Adjudicated mentally incapacitated, 65-year-old needed guardian care.

The Niece appealed, claiming Carey — as a non-profit corporation — was not "qualified."

But the Court of Appeals was not convinced. Except for two situations, it observed, nowhere is "qualified" defined in either the state's Probate Code or in its guardianship statutes.

Ind.Code §29-3-7-7 only requires that "guardians execute and file bonds," and it restricts from guardianship appointment "persons who have been convicted of committing certain sexual offenses."

"Person" Can Be Other Entities

Carey claimed anyone (natural person or otherwise) in the guardianship laws' definition of "person" may serve, and the Court agreed.

In this definition, it noted, a "non-profit corporation" is listed, and Carey is not thereby disqualified by statute. As such, it may be named guardian of J.Y.'s person.

Affirmed.

See *Guardianship of J.Y.*, 942 N.E.2d 148 (Ind.App. 2011).♦

Mom Seeks to Relocate Her Kids

Reminiscent of the biblical story about King Solomon and the identity of a baby's real mother, the Court of Appeals was asked where the kids herein should live.

The problem in this case was that Mom wanted to move her ten-year-old and seven-year-old sons to be with her family in Tennessee.

Dad opposed the move. A life-long resident in central Indiana, he had been an officer in his city's police department for 25 years.

Mom Awarded Physical Custody

Wed in 1999, Mom and Dad had two children before divorcing in 2009. By agreement, they had joint legal custody, and Mom was awarded primary physical custody.

In January 2010, Mom filed a Notice of Intent to Relocate their kids, and Dad filed an objection.

After a hearing was held in May, the trial court concluded the mother "ha[d] failed to meet her burden of proof that the proposed relocation (was) for a legitimate reason and in good faith."

Dad consistently coached his boys in various sports through the years.

On appeal, Mom argued the court's decision was erroneous. But the Court of Appeals disagreed.

Restating the position of the Indiana Supreme Court, it took notice of the "preference for granting latitude and deference to our trial judges in family law matters."

Trial Judges Interact with Parties

These judges have "unique, direct interactions with the parties face-to-face."

Thus "enabled to assess credibility and character through both factual testimony and intuitive discernment," it continued, "our trial judges are in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children."

Therefore, we "will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment."

Relocation Statutes Control Move

The Court then examined the move in light of the relocation statutes (Ind.Code §31-17-2.2-1 *et seq.)*

Among the factors to be considered are: distance involved; hardship and expense for nonrelocating parent; and feasibility of preserving relationship between that parent and child. Ind.Code §31-17-2.2-1(b).

The record was full of conflicting evidence. But Mom was able to show to the Court, on appeal, that her reasons for moving were legitimate and in good faith.

She was not able to convince it, however, this move was in the best interests of her children.

After noting the six-hour drive each way, the Court declared there was evidence to support the lower court's finding that this "relocation would have a significant adverse effect on Father's strong and supportive relationship" with the kids.

"Adverse Impact" on Children

Furthermore, it explained, the disruption to their stability would have a "substantial adverse impact" on their relationships with friends at school and neighbors.

The issue is not what the Court might have done but if the lower court's findings were sufficient to sustain its decision. "Based upon our review," it said, "we must answer this question affirmatively."

Affirmed.

See *T.L. v. J.L.*, 950 N.E.2d 779 (Ind.App. 2011).♦

While Mom worked at her job, Dad provided after-school care for boys.

Juvenile Court Admits Confession

Police officers as well as detective appeared to investigate a break-in.

When childish pranks turn into crimes, courts are called upon to ensure juveniles are given the full range of constitutional protections.

In this case, 13-year-old D.M. and a friend entered a house via a garage code they had obtained.

Not only did they go into the house without permission but they took personal property as well.

The boys were arrested within the hour and taken to the scene. There D.M. talked with his Mother in the back seat of a detective's car before confessing his participation.

His case was filed in juvenile court. It determined the boy was "a delinquent child for committing acts that would constitute Class B felony burglary and Class D felony theft if committed by an adult."

On appeal, the teen argued his confession should have been suppressed because he was deprived of an opportunity for a meaningful consultation with his Mother.

He also contended the waiver of his rights was not done knowingly, intelligently and voluntarily.

High Court Was Not Impressed

The Indiana Supreme Court, where D.M.'s case finally landed, was unimpressed with his claims.

Pursuant to Ind.Code §31-32-5-1(2), there are four requirements that must be satisfied before a juvenile's statements made during a custodial interrogation can be used.

First, the juvenile and his or her parent must be adequately advised of the juvenile's rights, the Court explained.

Second, the juvenile must be given an opportunity "for meaningful consultation" with the parent.

Third, both must knowingly, intelligently and voluntarily waive the juvenile's rights. And, finally, any statements must be voluntary.

Here, there is "substantial evidence of probative value" that D.M. and his Mother were able to have a meaningful consultation.

The record indicates the detective advised both about the boy's rights before the two signed the "advisement section" of a waiver.

The officer exited the car, leaving them alone to talk. When he returned, Mom said they were done.

She and D.M. signed the waiver again — after reading it and hearing the detective read it. Then the questioning began, and D.M. confessed.

Trial court decision affirmed.

See *D.M. v. State*, 949 N.E.2d 327 (Ind. 2011).♦

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