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WINTER 2008
VOLUME 6 / ISSUE 3

FAMILY LAW FOCUS

New Job Causes Mom to Lose Son

Mom is torn when a new job takes her away from son in Indiana.

After being unemployed for over a year, little did Mom think her new job would cause her to lose custody of her 11-year-old son. But it did.

She and Dad divorced in 2000. They were granted joint legal custody of their two boys, and Mom was given physical custody. (The custody of the older one was not at issue.)

In 2001, Mom graduated from law school and started working in Chicago. Her position was eventually eliminated, but she finally found work in Minneapolis, Minnesota.

Mom Filed Notice to Relocate

She took the job and filed a Notice of Intent to Relocate with her son. Dad moved to modify custody.

Mom relocated in early 2006, and the parties agreed the boy would temporarily live with Dad.

After a hearing in August at which the court took evidence as to the facts of Mom's move, it denied her request to relocate the boy.

If she stayed in Minnesota, the court said Dad "shall be the residential custodial parent. In the event [she] returns to Indiana, she will be the residential custodial parent."

Mom appealed, urging the court had abused its discretion in modifying custody. The Court of Appeals agreed. Dad then filed an appeal with the Indiana Supreme Court.

Given the chance to present an "issue of first impression" about new law, the Court took the case.

Determination of Child Custody

In general, it noted, a custody order is determined "in accordance with the best interests of the child."

In so determining, a court is to weigh all relevant factors, including a nonexclusive list that is referred to as "Section 8" factors. I.C. §31-17-2-8 (2004).

Before July 1, 2006, a change of custody was supported only if the modification was in the best interests of the child and there had been "a substantial change" in one or more of the Section 8 factors.

Shortly before the hearing in this case, though, a new chapter governing relocation in custody cases went into effect. I.C. §§31-17-2.2-1 to -6 (West Supp. 2007).

It "introduce[d] some new factors that are now required to be balanced, but also expressly require[d] consideration of 'other factors affecting the best interest of the child,'" observed the Court.

New Factors Are Introduced

"[C]hapter 2.2 incorporates all of the Section 8 considerations, but adds some new ones."

The trial court's balancing of considerations, therefore, was not clearly erroneous, and its judgment is affirmed, the Court stated.

"We hold that under new chapter 2.2, a trial court may, but is not required to, order a change in custody upon relocation."

See *Baxendale v. Raich*, ___ N.E.2d ___ (Ind. Jan. 15, 2008).♦

SPOTLIGHT ON:

REALITY CHECKS:

With thousands of Baby Boomers joining the ranks of "grandparenthood" each day, AARP Financial decided to undertake a first-of-its-kind survey. Here are some of its results:

√ 66% of the grandparents report they enjoy being a grandparent more than being a parent.

√ 68% are in contact with their grandkids at least once a week.

√ Of those who provide support to their grandchildren, 83% of them say they give because it makes them happy.

√ 21% of the grandparents have provided a "significant" amount to help pay for college.

√ 22% of them have given money for their grandkids' basic needs.

√ Of the married grandparents, 97% say they have never had a major argument over the financial support of their grandkids.

√ In gifts or cash, grandparents spent a median of $150 for each grandchild over the past year.

√ 79% of them agree that children today do not understand the value of a dollar.

√ 57% are afraid that if they give their grandchildren too much they will spoil them.

SOURCE: AARP Financial may be found at *http://www.aarpfinancial.com/content/resource/gparents/gparents_research.cfm*

Husband Upset about Split of Property in "Marital Pot"

Husband claimed he was entitled to higher percentage of property.

Despite the legal issues raised here, the first question that pops to mind perhaps should be: Why did she wait so long to divorce him?

Husband and Wife wed in late 1989. He worked as a truck driver, and she stayed home as a housewife and mother of their two kids.

During that time, she was dealing with a bipolar disorder and was institutionalized three times.

Mental Illness Struck Wife

A resident of a group home for two years, Wife also was being medicated then for a "recurrent, major depressive disorder."

In spring of 2004, she filed a petition for divorce. A hearing was held, and evidence was taken.

In early 2006, the court issued a decree in which it equally split the marital pot between the two.

On appeal, Husband claimed his pension and certain pieces of real estate should not have been included in the marital pot.

But the Court of Appeals disagreed. "[A]ll marital property goes into the marital pot for division," it stated, "whether it was owned by either spouse prior to the marriage, acquired by either spouse after the marriage . . . or acquired by their joint efforts."

Husband Upset about Division

In addition to the *makeup* of the marital pot, Husband found fault with the trial court's *division* of the marital pot.

The trial court's order that he "pay all debts was erroneous," he argued. But the Appellate Court remained unconvinced.

In reviewing his contention, the Court looked to see whether there had been an abuse of discretion in making the division.

Court Looked at Factors

In splitting the assets, the trial court had weighed various factors. Among them were the length of the marriage, Husband's hiding of assets and his greater ability to earn income.

It also examined the Wife's lengthy history of mental illness and her limited work experience of barely three weeks.

Finding no abuse of discretion, the trial court was affirmed.

See *Hill v. Hill*, 863 N.E.2d 456 (Ind.App. 2007).♦

Dad Fights over Adoption of Baby

Third-party Custodians obtained custody despite plea of biological Dad.

How could the Court of Appeals turn its back on the pleas of a biological Dad — and award his child to third-party Custodians?

That's a good question and one which was put before the Appellate Court in this very unusual case.

On January 16, 2002, a teenage Mom gave birth to baby A.B.

Mom Signs Adoption Consent

The next day, she terminated her parent-child relationship with the little girl and filed a voluntary consent to her adoption.

Physical custody of the baby was transferred to the Catholic Charities Diocese of Fort Wayne-South Bend (Catholic Charities).

The same day, Mom completed an affidavit, stating A.B. was conceived as the result of rape.

(Later this information proved to be inaccurate. Prior to the birth, Dad had registered with Indiana's putative father registry.)

Also on that day, the Custodians picked up A.B. from the hospital and assumed custody of her.

They did so pursuant to an agreement with Catholic Charities in which they agreed "no promise or representation" was made as to the permanency of the placement.

Custodians File Adoption Petition

In February of 2002, the Custodians filed a petition to adopt A.B.

In April, Dad petitioned to establish paternity of A.B. and contest her adoption. He was found to be A.B.'s biological Dad in June.

Three years later, the Custodians' adoption petition was denied, but they were given custody of A.B.

According to the court, the child had known only them as her primary parents, and a significant emotional bond existed between them.

In determining Dad to be unfit as a custodial parent, the court cited his criminal history, drug usage, financial instability and a lifestyle that "did not offer a healthy environment for a small female child."

Dad Fights Adoption on Appeal

Dad appealed, arguing the trial court had erred in awarding custody of A.B. to third-party Custodians.

But the Court of Appeals disagreed. In a case such as this, the issue is not merely the "fault" of the biological parent.

"Rather, it is whether the important and strong presumption that a child's interests are best served by placement with the biological parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person," the Court explained.

"This determination falls within the trial court's sound discretion, and its judgment must be afforded deferential review."

Such was the case herein.

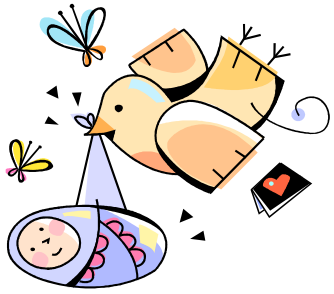
A.B. Placed with Custodians

"The trial court was clearly convinced that placement with the [Custodians] represented a substantial and significant advantage to A.B.," noted the Court.

Giving "the trial court the appropriate deference, as we must," it continued, "we cannot conclude its findings are clearly erroneous or that its judgment is against the logic and effect of the evidence."

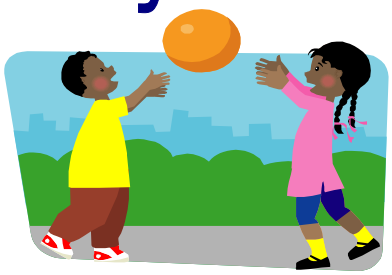
The trial court was affirmed.

See *Blasius v. Wilhoff*, 863 N.E.2d 1223 (Ind.App. 2007).♦



A.B.'s custodial situation is as odd as a baby being delivered by a stork.

Why Is Custodial Mom Paying $?



Despite having custody of children, Mom still paid Dad child support.

Why would a Mom — who was awarded physical custody of her two children — be ordered by a trial court to make support payments to their noncustodial Dad?

Not only did this seem unfair, but it was a question that ended up in the Court of Appeals — and then in the Indiana Supreme Court.

Mom Got Physical Custody

Mom and Dad were divorced in 2003. They were granted joint legal custody of the kids with Mom getting primary physical custody.

Dad began paying $108 weekly in child support, consistent with the Indiana Child Support Guidelines.

In 2005, Dad petitioned to modify child support when he found that he was paying more than his share.

The court decided, under the Guidelines, this led to a "negative credit" which necessitated modifying the child support order.

Mom Made Payments to Dad

Accordingly, an order requiring Mom to pay $92 weekly to Dad, the noncustodial parent, was entered.

Mom appealed, contending that the Guidelines could not result in a custodial parent paying support to the noncustodial parent.

The Court of Appeals agreed. It reversed and remanded, concluding "neither party owes the other."

The Indiana Supreme Court, though, took a closer look at the Guidelines with this case.

While "the Guidelines do not authorize 'the payment of child support from a custodial to a noncustodial parent,' that does not automatically render the trial court's resolution of this matter invalid," it noted.

There is a rebuttable presumption neither party owes the other unless a court finds the award reached through application of the Guidelines would be unjust, it said.

The court must then enter written findings articulating the facts supporting that conclusion.

Court Has Authority to Deviate

"Given this deviation authority, a court could order a custodial parent to pay child support to a noncustodial parent . . . if the court had concluded that it would be unjust not to do so and the court had made the written finding mandated by Child Support Rule 3."

But the trial court did not make the required findings herein. Thusly, its decision was reversed and remanded for further consideration.

See *Grant v. Hager*, 868 N.E.2d 801 (Ind. 2007).♦

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