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FAMILY LAW FOCUS

Be Sure to Check Real Estate Title

Beware of those devilish little details of who owns what property . . . especially when you're splitting up a marital estate during a divorce.

Husband and Wife were married in 1997 and had three children.

During the spring of 1999, the Husband's parents entered into — and made payments on — a contract for the construction of a home.

In their own names, they procured title insurance as well as paid all the taxes and assessments on the property from 2001 through 2006.

Couple Paid Rent to His Parents

After construction on the house was done, Husband and Wife lived there and paid rent to his parents.

In June of 2006, the Wife filed for divorce. At the hearing, she testified she believed her Husband and his parents had titled the residence

SPOTLIGHT ON:

House should not have been included in marital estate of divorcing parties.

in his parents' names solely to deprive her of half of the property's value in the event of a divorce.

In addition, she said the couple had paid $80,000 of the house's $130,000 value from their savings. The remaining $50,000 had been a gift to them from his parents.

Documentary Evidence Is Absent

The Wife did not, though, offer any documentary evidence or bank records to support her testimony.

Not surprisingly, the Husband disputed his Wife's version, and he presented receipts to show the couple had made several rent payments.

Nonetheless, the trial court concluded the house had been put in the "nominal ownership" of his parents to deprive Wife of any benefits in it.

To equalize the property between the parties, the court gave the residence to the Husband and ordered him to pay the Wife $40,000.

On appeal, the Husband argued the court had erred when it included the house, which was titled in the name of his parents, in the couple's marital estate.

The Court of Appeals agreed.

The Husband's "parents were not joined as necessary nonparties pursuant to Trial Rule 12(B)(7) — indeed, they did not even testify at trial," the Court observed.

Is Title in Name of Nonparty?

Where a party claims a marital estate includes an equitable interest in real property that is titled in a nonparty, the Court noted, he or she should move to join the nonparty and to have the issue decided within the divorce proceedings.

"*Unless the nonparty is joined, the . . . court is powerless to adjudicate with certainty the extent of the marital property interest in the real estate, and any such determination is illusory,*" it declared.

"Without the title-holders' presence at trial, the court (had no) authority to adjudicate the issue of the ownership of that property."

Reversed and remanded with instructions to revise the decree.

See *Nicevski v. Nicevski*, 909 N.E.2d 446 (Ind.App. 2009).♦

REALITY CHECKS:

Traditionally, this country has been among those whose citizens are the best educated, with some 39% of Americans holding either a two-year or a four-year degree. Sadly, this is no longer the case.

√ Currently, the United States ranks 10th among industrialized nations in the young adults (25- to 34-year-olds) who have attained college degrees.

√ Today's top countries have young adult populations in which more than half are degree-holders.

√ Within our Hoosier state, Hamilton County leads the pack with 63.1% of its young adults holding two- or four-year degrees.

√ Other counties that head this educated "young adult" list are: Monroe, 55.7%; Tippecanoe, 49.3%; and Marion, 37.2%.

√ Those counties in Indiana with the lowest percentage of this age group to have such degrees include Scott, 12.3%; Crawford, 11.5%; and LaGrange, 11.4%.

√ If you look at residents who are 25 to 64 years old, the picture becomes bleaker. Fewer than 14% have four-year degrees, and less than 7% hold two-year degrees.

√ The degree held by 36.5% of this age group is high school.

SOURCE: Lumina Foundation for Education, Inc., November 2008.♦

Trial Court Failed to Follow Statute in Girl's Relocation

Court failed to consider the factors in custody modification for child.

In a case worthy of mention because each party appeared without counsel at a custody hearing for their young daughter, the Court of Appeals chastised both.

Urging parties who face child custody issues to get counsel, the Court stressed "the importance of presenting sufficient evidence and developing an adequate record."

This was not done.

J.J. was born in 2005. Sixteen months later, Dad's paternity of the girl was legally established.

He was ordered by the court to pay support and given visitation, while Mom was awarded custody.

Mom Wanted to Move to Florida

In 2009, Mom filed a notice of intent to move to Florida due to her husband's — not J.J.'s father — naval service. Dad petitioned to modify custody and child support.

At the hearing, he testified he was the girl's primary caregiver. Dad also admitted he did not pay his court-ordered child support.

In response, Mom explained she let him watch J.J. as she was working two, sometimes three, jobs and he was unemployed.

Dad Got Physical Custody

Finding it was in the girl's best interest for custody to be modified to Dad, the court gave him primary physical custody.

Mom appealed, claiming the court committed reversible error by failing to consider all the enumerated factors in the relocation statute at I.C. §31-17-2.2-1(b).

She was correct.

"The parties proceeded *pro se* at the custody hearing," noted the Court, "and both failed to present evidence on each of the statutory factors."

No Factors Were Considered

Because "the record before us does not lead us to the conclusion that the parties or the trial court fully considered the enumerated factors listed in §31-17-2.2-1(b), we remand this case to the trial court with instructions to conduct another hearing (on custody) and to hear evidence on each of the statutory factors."

Remanded for proceedings consistent with this opinion.

In Re Paternity of J.J., 911 N.E.2d 725 (Ind.App. 2009).♦

Lesbian Mom Bars Grandparents

Occasionally, the Court of Appeals is called upon to render an opinion when, in fact, there's more going on than a legal dispute.

Such was the case here.

In October 2001, Mother gave birth to a son out of wedlock. During her complicated pregnancy and for five years thereafter, she and C.L.H. lived with her parents.

Mother, who worked as a Certified Public Accountant, started back to her job in July 2002, and the Grandparents became the boy's caregivers until mid-2007.

Mother Started Dating Woman

Earlier that year, Mother had met K.W., a woman, and the two began dating.

When she told her parents of the new relationship, Grandmother declared that she was endangering C.L.H. as the woman believed homosexuality was a sin.

In mid-2007, K.W. quit her job and moved into Mother's new house to be the caregiver to C.L.H.

During the following months, Mother was the recipient of hateful comments about her sexual orientation from her parents.

She tried to continue her relationship with them, nonetheless, despite their obvious disapproval of her relationship with K.W.

The difficult situation went from bad to worse. Finally, Mother stopped talking with her parents and barred them from seeing her son.

In April 2008, the Grandparents filed a petition for visitation under the Grandparent's Visitation Act.

Grandparent Visitation Ordered

After acknowledging the parties had reasons for their positions, the trial court ordered that Grandparents were to have visitation with C.L.H. for ten hours per month.

Mother appealed, claiming that because she is a fit parent (a point undisputed by Grandparents), there is a presumption that her decision on the issue of grandparent visitation is in C.L.H.'s best interests.

Her decision on this matter, she argued, "should be upheld in light of the significant family discord."

The Court of Appeals agreed.

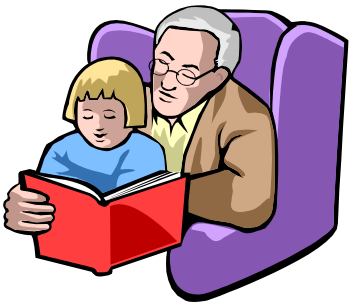
"The ultimate question," explained the Court, "is whether visitation in the face of family discord is in the child's best interest."

Look at Totality of Circumstances

"That question can only be answered by looking at the totality of the circumstances presented."

The record reveals "a significant level of discord between Grandparents and Mother due to Mother's relationship with K.W. and K.W.'s relationship with C.L.H."

While the trial court concluded the parties had "hurt" one another, its order did not indicate that it considered the totality of the circumstances in determining the best interests of the little boy.



Grandparents petitioned to continue their contacts with young grandson.

The court also failed to make a finding about the validity or reasonableness of Mother's decision — in view of her feeling physically threatened by Grandfather.

"Open Hostility" toward Mother

While Grandparents were entitled to their opinions concerning Mother's relationship with K.W., their "open hostility toward Mother created an unhealthy environment for C.L.H."

Perhaps the parties might reach a private reconciliation at a later date, the Court suggested.

But, under the circumstances, Grandparents have failed to show "it is in the best interests of C.L.H. for the State to intervene and compel visitation against the well-founded concerns of Mother, who is a fit parent."

Reversed.

See *In Re Visitation of C.L.H.*, 908 N.E.2d 320 (Ind.App. 2009).♦

Court Upholds Parent-Child Bond

Despite being in jail, Father vowed to turn his life around for his son.

Sometimes, a court's granting a motion by the Indiana Department of Child Services ("State") to terminate, involuntarily, a parent-child relationship makes perfect sense.

And then there are those "hope-for-the-best" cases like this one.

Despite repeated drug convictions, jail time for each parent, probation violations and a string of foster homes for their child — the Supreme Court declined to sever their parent-child relationship.

Vacating the Court of Appeals' opinion that reversed the trial court, it affirmed the initial decision.

Why?

The Court concluded there was evidence from the record to support the trial court's refusal to terminate and, thus, its conclusion was not "clearly erroneous."

Parents Fully Cooperated in Jail

A review of the record shows "[t]he parents [had] fully cooperated with the services required of them while incarcerated."

One or both of them had completed court-ordered drug and/or alcohol programs. They also had finished parenting classes as well as college and vocational courses.

Furthermore, they "had a relationship with the child prior [to] their imprisonment and [tried] to keep the child in the care of relatives prior to their convictions."

Because their "ability to establish a stable and appropriate life upon release can be observed and determined [in] a relatively quick period of time," the Court noted, "the child's need of permanency is not severely prejudiced."

Indeed, the parents appear to be trying. Testimony offered at the oral argument for this appeal indicated both had been released from jail.

The Mother had completed her bachelor's degree, and the Father had gotten housing and found a full-time job installing carpets.

See *In Re J.M.*, 908 N.E.2d 191 (Ind. 2009).♦

Print or E-mail?

Family Law Focus, our firm's quarterly publication that highlights some of the recent cases in domestic law, is now available via e-mail.

Should you wish to receive it electronically, please e-mail us at: FamilyLawFocus@nbbplaw.com, and your name will be added to our list of PDF recipients.

Back issues of NBBP's newsletter are posted on our website.♦

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