

## Athletic Director Overlooks Abuse

Even the most casual of readers may be forgiven when, in considering the case at hand, Penn State and student athletes come to mind. Sadly, there is more than a passing resemblance between the two.

The male defendant here was the Athletic Director (AD) for a school corporation. His office was located at the area high school, along with that of the Coach for the girls' junior volleyball team.

### **Coach Focused on 15-year-old**

In late summer of 2007, 15-year-old K.T. joined the volleyball team. Soon she was singled out by the 40-something Coach.

According to some parents of her teammates, the AD was told of Coach's inappropriate behavior.

With many of the girls, he had engaged in such activities as "foot



### ***Girls' volleyball team coach engages in inappropriate behavior with team.***

rubs; lotion being rubbed on backs; some textings; hanging out with the girls — specifically [K.T.] — before school, by himself."

After noting these incidents in the Coach's file, the AD gave him a list of inappropriate behaviors vis-à-vis his team but did nothing more.

### **Coach Committed Sex Offenses**

At some point, the Coach committed "several sex offenses" with K.T. who turned 16 in June of 2008.

In 2010, the state police began investigating the AD, and a probable cause hearing was held in 2011.

At that time, he was charged with two counts of failure "to report that a child may be a victim of child abuse." Ind.Code Chapter 31-33-5.

The AD moved to dismiss, urging he knew nothing of the conduct in question. He also argued he could not be prosecuted as it was outside a two-year statute of limitations.

But the trial court was unimpressed. It denied his motion to dismiss and allowed him this interlocutory appeal of that decision.

On appeal, the AD raised the same arguments, but the Court of Appeals was unpersuaded as well.

Despite his contention to the contrary, "knowledge of a 'sexual relationship' between [Coach] and K.T. was not required to trigger his duty to report child abuse," it said.

### **Was Intent to Arouse Present?**

An adult may commit sexual misconduct with a minor or child seduction by fondling or touching a child (between 14 and 15 or 16 and 17 years old, respectively) with the intent to arouse or satisfy the sexual desires of the child or adult. Ind.Code §§35-42-4-7 and 9.

Those statutes, the Court observed, do not require the fondling or touching of a sexual organ.

Therefore, the evidence presented was sufficient to charge the AD and let this case go to a jury.

Affirmed in part, reversed in part and remanded. The case was sent back to the trial court to continue the proceeding.

*Gilliland v. State*, 979 N.E.2d 1049 (Ind.App. 2012).♦

### **SPOTLIGHT ON:**

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**REALITY CHECKS:**

Leave it to the Baby Boomers, the generation that does everything its own way. Even when they divorce one another, they're way out in front of everyone else.

✓ Since 1990, the divorce rate in the United States has decreased but for everyone over the age of 50. For them, it has doubled.

✓ Informally, psychologists have tagged this a "gray divorce."

✓ One out of three Boomers will face old age unmarried. As such, there are significant societal as well as personal ramifications.

✓ When a divorce happens later in life, there is less time for both parties to recover financially.

✓ In such a divorce, women are mainly affected as they earn less than men, on average, and have a longer life expectancy.

✓ Once a woman winds up being alone (widowed, divorced or never married), she is at risk of joining the 20 percent of women who live in poverty in the U.S.

✓ Single people of both sexes depend more on public benefits than the rest of the population.

✓ When the oldest of the 78 million Boomers starts turning 85 in 2031, costs will be staggering.

See "Your World: Life After Divorce" by Sally Abrahms, [aarp.org/bulletin](http://aarp.org/bulletin), June 2012. ♦

## March 1 Brings Changes to Parenting Time Guidelines

In a divorce proceeding in which child custody and parenting time are issues to be resolved, the Indiana Parenting Time Guidelines can be quite helpful.

Based on the premise it is usually in a child's best interest to have frequent and meaningful contact with each parent, the Guidelines offer a model that can be adjusted for the needs of each family.

### Guidelines Have Been Amended

Effective March 1, 2013, important changes have been made to the Guidelines. They now:

- Strongly state that a child shall not make parenting time decisions.
- Clarify the hierarchy between summer and holiday parenting time.
- Require that all notices of summer parenting time must be given in writing as well as in person.



*Parenting Time Guidelines set out parenting time in early infancy.*



*Guidelines look at activities in which children are involved.*

- Suggest that access be given to "advanced communication systems" like video chat or Skype.
- Add fall break, Martin Luther King Day and President's Day to the holiday schedule.
- Drop New Year's Eve and New Year's Day from the holiday schedule.
- Redefine the schedule for winter break.
- Suggest that parents equally split fall and spring vacation breaks on balanced school calendars.
- Define the concept of "high conflict."
- Offer "parallel parenting" and "parenting coordination" as short-term resources to help where "high conflict" persists.

See *Parenting Time Guidelines*, [in.gov/judiciary/rules/parenting](http://in.gov/judiciary/rules/parenting). ♦

# Dad Stops Move to Another State

When both mother and father are good parents, how does a court decide who gets custody if one wants to move out-of-state?

Here, the mother (Mom) and father (Dad) married in 1997, and their son was born six years later.

When the boy was five, they divorced and agreed to share legal custody of their child.

Mom was given “physical residential custody,” subject to Dad’s parenting time, which consisted of three overnight visits per week and two weekends per month.

## **Mom Filed Notice to Relocate**

In June 2010, Mom filed a Notice of Intent to Relocate to Nashville, Tennessee. In August, Dad filed a Motion to Modify Custody and prevent the boy’s relocation.

Several months later, the trial court held an evidentiary hearing.

It took testimony from a court-appointed Guardian Ad Litem for the child as well as from Mom, Dad, both grandmothers and the boy’s godfather, among others.

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The court granted Dad’s Motion to Modify but ordered he and Mom would retain joint legal custody.

## **Dad Got Primary Custody of Son**

Dad became the primary physical custodian, and Mom was granted parenting time during school breaks and on any other occasions she may be visiting central Indiana.

Mom appealed, and the Court of Appeals reversed the lower court. Dad then appealed to the Indiana Supreme Court. It granted transfer and agreed to take the case.

When a notice of intent to relocate is filed by a parent, the Court noted, the nonrelocating parent may object by moving to modify custody or prevent the relocation. Ind.Code §31-17-2.2-1(b); 31-17-2.2-5(a).

## **Relocating Parent Bears Burden**

If the relocating parent shows the proposed move is made in good faith and for a legitimate reason, the “burden shifts to the nonrelocating parent to show that [it] is not in the best interest of the child.”

In making this decision, a court must weigh specific factors as set forth in Ind.Code §31-17-2.2-1(b).

In this case, the trial court concluded Mom had met the initial burden of showing a legitimate reason and good faith in relocating.

It then looked at whether the relocation was in the boy’s best interest and decided it was not.



*In most of his Son’s daily activities, Dad was extensively involved.*

Not only was Dad extensively involved in the boy’s activities and education, it reasoned, but the child’s grandparents and extended family participated in his daily life.

## **Mother’s New Salary Was Focus**

The Court of Appeals found the “best interest” determination to be erroneous, focusing instead on Mom’s job and salary increase.

But the Supreme Court said no. “On appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal.”

## **No Substitution of Judgment**

This Court “will not substitute [its] own judgment if any evidence or legitimate inferences support the trial court’s judgment.”

And here, the trial court did make “sufficient and supportable findings to sustain its decision.”

Trial court is affirmed.

See *D.C. v. J.A.C.*, 977 N.E.2d 951 (Ind. 2012). ♦

# 9-year-old Must Do DCS Interview



## *Court of Appeals okayed interview of younger child with DCS.*

Despite Mom's contention that her nine-year-old daughter G.W. should not be made available for an interview with the Indiana Department of Child Services (DCS), the Court of Appeals and the Supreme Court thought otherwise.

G.W. and her twelve-year-old sister M.F. lived with their mother and Stepdad in a small town.

In late 2011, the older girl told Mom that Stepdad "kissed her and rubbed her legs while they watched television and had cuddled with her in bed and touched her bottom."

In response to these revelations, the mother took M.F. to counseling,

and DCS was notified.

Soon thereafter, DCS initiated a child protection assessment during which "[a]n interview with the subject child" was included. See Ind.Code §31-33-8-7(b).

At this interview, M.F. recanted her allegations, explaining she was angry with her mother for not spending enough time with her.

### **Mom Refused to Allow Interview**

Despite her recantations, DCS requested an interview with G.W. which the mother refused.

A trial court, however, later compelled her to make the girl available for the DCS interview.

Mom appealed, contending the court erred in allowing an interview of a child who was not the subject of an abuse investigation.

But the Court of Appeals disagreed. Ind.Code §31-33-8-7(a)(3) "specifically contemplates that DCS may interview those 'other

children' to determine their conditions and obtain a court order if necessary to facilitate such interviews."

### **No Prohibitions Were Cited**

Mom questioned the intrusiveness of this interview as well as the proposed arrangements for it. But she failed to cite statutory or constitutional prohibitions against it.

Her claim that an interview was unnecessary "disregard[ed] DCS's threshold obligation to assess the 'conditions of other children in the home.'" Ind.Code §31-33-8-7(a)(3).

M.F.'s allegations were serious, and the girls are relatively close in age, noted the Court. Even though Mom vouched for G.W.'s safety, it did not mean that DCS's and the court's concerns were unwarranted.

Affirmed with dissent; Indiana Supreme Court denied transfer and refused to take appeal.

See *In Re G.W.*, 977 N.E.2d 381 (Ind.App. 2012).♦

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