

Children's Law Center of Indiana



Custody and Parenting Time

6/19/13

In **Campbell v. Campbell**, 993 N.E.2d 205 (Ind. Ct. App. 2013), a dissolution of marriage case, the Court, *inter alia*, affirmed the trial court's custody order and reversed the trial court's order requiring Paternal Grandparents and Maternal Grandmother to participate in family therapy with Father, Mother, and the three children of the marriage. Father and Mother were married in June 2005 and had two children together. Mother also adopted Father's birth son (Adopted Son) from a previous relationship. On February 11, 2011, Mother filed a petition for dissolution of marriage. After a hearing, the court entered a provisional order which found, *inter alia*, that the parties would share legal and physical custody of the children. The court heard evidence on the pending dissolution on July 16, July 31, and August 6, 2012, and, on August 20, 2012, entered a provisional order that the children were to attend school in the school district of Mother's residence pending issuance of the final decree. On September 11, 2012, the court issued a decree of dissolution of marriage, which, among other provisions, found that Mother should have sole legal and physical custody of the three children, awarded Indiana Guidelines parenting time to Father, ordered Father to pay weekly child support, and ordered Maternal Grandmother and Paternal Grandparents to participate in extensive family therapy with Mother, Father and the children. Among the trial court's findings were that: (1) the children, ages 11, 6, and 4, interact well and have a loving relationship with both parents; (2) Mother has been the stay-at-home parent of the children for most of their lives, and the children are closely and emotionally bonded with Mother; (3) the children have strong relationships with their siblings, Mother has been the primary caretaker of Adopted Son, and his significant relationship with his siblings is an important factor; (4) Adopted Son has made misrepresentations about actions in his life, as a method to seek attention, that should be addressed in counseling; (5) the extended families of both parties have rendered significant assistance and the children should continue to have contact in both homes with the extended family members; (6) the children will not be attending the same Christian school they had attended as neither the parties nor other family members can afford to continue to pay the private educational expenses; (7) the children's adjustment to community is well established and the children are adaptable and should be able to make new friendships at the school system in Mother's school district; (8) Mother has a painful bladder condition that requires significant medication, but Mother has properly administered the medication as prescribed and it is not an impediment to her for providing good parenting; (9) Father has abused alcohol and on one occasion urinated on [Father's other son's] bed while the child slept; (10) Adopted Son's biological mother, who has had limited contact with him, suffers from significant mental illness, and Mother has been reluctant to allow Adopted Son to have unsupervised contact with his biological mother; (11) supervised contact for Adopted Son with

his biological mother should be continued, if Father wishes to allow that during his parenting time and Mother, as legal custodian, does not object.

The Court could not say that the trial court abused its discretion in awarding custody to Mother or that the judgment is clearly erroneous. *Id.* at 211. The Court, citing Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997), said that: (1) trial court's findings will be set aside if they are clearly erroneous; (2) findings are clearly erroneous only when the record contains no facts to support them either directly or by inference; (3) a judgment is clearly erroneous if it applies the wrong legal standard to properly found facts; (4) to determine that a finding or conclusion is clearly erroneous, the Court's review of the evidence must leave the Court with the firm conviction that a mistake has been made. Campbell at 209. The Court observed that a trial court's custody determination is afforded considerable deference as it is the trial court that sees the parties, observes their conduct and demeanor, and hears their testimony. *Id.* at 209, citing Kondamuri v. Kondamuri, 852 N.E.2d 939, 945-46 (Ind. Ct. App. 2006). Father argued that the trial court abused its discretion in granting Mother custody of Adopted Son where there was substantial evidence that Adopted Son requires special attention and care, Father was his only consistent parent since birth, and Mother treated him differently than the other two children and attempted to hinder his contact with his biological mother's family. Father also contended that the trial court abused its discretion in finding that Mother's illness and medication consumption does not affect her ability to parent the children. Father also asserted that the instances of his alcohol use were isolated and remote to his present condition. Mother argued, inter alia, that at the time of the trial, she had been raising Adopted Son for at least seven of his eleven years, that the parties had a long history of being unable to work together or communicate amicably about the children, the children were not adjusting well to a shared custody arrangement, and that Father ignored or discounted his DUI during the pendency of the divorce and his history of repeated alcohol use during the marriage. The Court observed that the trial court had heard testimony from Mother, Father, Paternal Grandparents, the sister of Adopted Son's biological mother, and the Domestic Relations Counseling Bureau (DRCB) evaluator. *Id.* at 211. The Court also noted that Mother presented the DRBC report, which included observations made during home visits of the parties' residences, and information from the grandparents, Adopted Son's doctor, the Child Protective Services caseworker who had investigated allegations concerning Adopted Son, and a teacher and the director at the school which Adopted Son had attended. *Id.* The Court said that, while the evidence was conflicting in a number of respects, the trial court in custody disputes "is often called upon to make Solomon-like decisions in complex and sensitive matters", quoting Trost-Steffen v. Steffen, 772 N.E.2d 500, 509 (Ind. Ct. App. 2002), *trans. denied*. Campbell at 211.

The Court found that Paternal Grandparents and Maternal grandmother were not parties to the dissolution nor had they intervened in the dissolution proceeding; therefore, the Court reversed the order requiring Paternal Grandparents and Maternal Grandmother to participate in family therapy. *Id.* at 212. The Court observed that dissolution proceedings must comply with the Indiana Rules of Civil Procedure, citing IC 31-15-2-1. *Id.* The Court noted Ind. Trial Rule 4(A), which provides that "[t]he court acquires jurisdiction over a party or person who under these rules commences or joins in the action, is served with summons or enters an

appearance, or who is subjected to the power of the court under any other law.” Id. The Court also noted that Ind. Trial Rule 24 governs the right or ability to intervene in a matter and sets forth a procedure for doing so and that the parties do not point to the record to show that any of the Grandparents were served with a summons. Id. The Court remanded for modification of the decree consistent with the opinion on this issue. Id.