Paternity

4/20/2006

In **Fuchs v. Martin**, 845 N.E.2d 1038 (Ind. 2006), the Supreme Court summarily affirmed the portions of the Court of Appeals opinion at 836 N.E.2d 1038 (Ind. Ct. App. 2005) which affirmed the trial court's order of joint legal custody with primary physical custody in the mother, and which reversed the trial court's parenting time credit and remanded it to the trial court to enter a corrected support order. The Supreme Court, unlike the Court of Appeals, however, affirmed the trial court's order requiring the parties to submit future conflicts and parenting disputes to mediation as a prerequisite to trial court adjudication of such disputes. The trial court's order provided with regard to further disputes:

> The parties are first to attempt to settle any further disputes concerning [their child] themselves. If they fail to agree, then the parties are ordered to submit future conflicts and parenting disputes to mediation with either Susan Macey or David Rimstidt at Van Winkle Baten & Rimstidt Dispute Resolution…. The parties are to pay for mediation fees and costs at the rate of 69% for Father and 31% for Mother. The parties are not to return to court for adjudication of any dispute without first submitting the same to mediation.

Transfer was requested on the mandatory mediation provision of the trial court's order. The Court delineated three issues with respect to the mandatory mediation provision: (1) whether a court order, or a local court rule, may require mediation as a precondition to court hearings; (2) whether mediation may be required as a precondition for filing of post-decree proceedings; and (3) whether a trial court must be authorized by local rules before ordering mediation. The Court also indicated that Father did not challenge, and it was not addressing, whether the trial court erred in its designation of two named mediators in the event the parties were unable to otherwise agree, but noted that the designation and selection of mediators is governed by Indiana Alternative Dispute Resolution Rule 2.4.

Trial courts and local court rules may require parties to engage in mediation as a prerequisite to contested court trials or hearings. Id. at 1042. Father urged that any requirement for mandatory mediation as a prerequisite to court hearings, whether by court order or local rule, was an improper restriction upon litigants' access to courts and also made the general claim that the requirement violated Article 1, Section 12, of the Indiana Constitution which states: "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without

denial; speedily, and without delay." The Court (1) quoted excerpts from ADR Rules 2.1 and 2.2 and Section I(E)(2) of the Indiana Parenting Time Guidelines regarding the trial courts' authority to refer cases to mediation and attendant procedural requirements; (2) noted that it has become commonplace for Indiana trial courts to require parties to engage in mediation before proceeding to contested final hearings; (3) compared an order to mediate to the requirements imposed by the rules governing discovery and other pre-trial procedure, which it stated are prerequisites for eligibility for final hearings, but do not prevent a party from obtaining a judicial resolution of a case or obstruct a party's access to the courts; and (4) held that Father had not demonstrated any violation of Article 1, Section 12, of the Indiana Constitution. Id. at 1041.

A trial court may, in the exercise of sound discretion in discrete cases, order mediation as a prerequisite to the filing of requests for future proceedings therein. Id. at 1042. The Court observed that courts are authorized to refer cases to mediation only after the expiration of fifteen days after the period allowed for peremptory change of judge under Trial Rule 76(B), (A.D.R.2.2) and, thus, although there may be cases in which it would be advisable for parties to submit their dispute to mediation before commencing an action in court, there is no authority for courts to impose any such requirement as a prerequisite for the initial filing of a new action. A.D.R. 8. The Court found that a judicial requirement for mediation as a precondition to a party filing requests for court action after the initial commencement of a case, however, does not run afoul of the rules, so long as it complies with the timing requirements in A.D.R. 2.2 and contemplates the right of any party to file a written objection with the court ruling thereon after consideration of the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution of the dispute through the mediation process. Id.

The fact that local rules may establish a general requirement for mediation in some situations does not limit a court from ordering it under other circumstances. The trial court's authority to order preliminary mediation as a prerequisite to seeking court resolution of the parties' post-decree disagreements did not require authorization from the local rules, and it was not precluded by those in Marion County. Id. at 1043. The Court observed that the Court of Appeals reversed the trial court's mediation order and expressed its belief that the order was unsupported by two local court rules – Marion Circuit and Superior Family Law Rule 2(H) and Marion Circuit and Superior Court Civil Division Rule 16.3(C)(2). The Court held that although Ind. Trial Rule 81(A) strongly encourages courts to adopt a single set of local rules, which may reflect different practices due to geographic, jurisdictional and other variables, the power of an individual trial court to order mediation in a specific case is not limited by such rules. Id. at 1042-43.