

Children's Law Center of Indiana



Custody and Parenting Time

3/28/2014

In **In Re Paternity of D.T.**, 6 N.E.3d 471 (Ind. Ct. App. 2014), the Court reversed and remanded the trial court's order awarding custody of the child to Father. *Id.* at 376. The child was born out of wedlock in Anderson, Indiana. Father was listed as the child's father on the birth certificate, but paternity was not established. Father was convicted of strangulation, criminal confinement, and domestic battery committed against the Mother in the child's presence in July 2010. The court in that cause issued a no-contact order. Mother and the child moved to Mississippi, and Mother filed an action against Father in Mississippi, seeking to establish Father's paternity of the two-year-old child, and to enforce child support and obtain Medicaid benefits. Because Father resided in Anderson, Indiana, the Mississippi Department of Human Services transmitted a request for a paternity determination and child support enforcement under the Uniform Interstate Family Support Act (UIFSA) to the Indiana Central Registry Child Support Division. The Madison County Prosecutor, acting as an intervening party, filed a UIFSA action in the Madison Circuit Court (trial court) to support the Mississippi request. On November 8, 2012, the trial court issued a summons ordering Father to appear at a hearing on February 19, 2013, at which time he admitted paternity of the child.

Mother and the child they lived together in Mississippi until November 2011. The child lived with Father in Anderson from November 2011 to June 2012, in Mississippi with Mother from June 2012 to October 2012, and again in Anderson with Father from October 2012, to January 2013, when he returned to Mother's home in Mississippi. On February 13, 2013, Mother brought the child back to Indiana and placed him in her own mother's care while she moved to a new apartment in Mississippi. Father requested the child's presence at a memorial service for paternal grandmother, to which Mother consented. When Father was supposed to meet Mother in Tennessee to return the child to her, he told Mother that the memorial service had been postponed, and that he needed to keep the child for a while longer, to which Mother consented. When the child had not been returned to her by mid-April, Mother traveled to Indiana, seeking to retrieve him and take him to her new apartment in Mississippi. Mother retrieved the child from the babysitter in Anderson and went to a local store, where police approached her and informed her that Father had been granted custody of the child pursuant to an April 5, 2013 order issued by the Indiana trial court. Mother discovered that Father had filed a pro se motion for full custody of the child in the trial court in March 2013, and had listed his own aunt's address as Mother's

address for service of process. Neither Mother nor the Mississippi court had received service of process concerning any proceedings connected with Father's Indiana custody motion.

Mother filed a motion to correct error, which the trial court denied. On July 31, 2013, Mother filed an emergency motion to vacate the custody order pursuant to Indiana Trial Rule 60(B)(6). On August 1, 2013, the Madison County Prosecutor filed a motion to dismiss the UIFSA cause without prejudice based on the trial court's award of custody to Father. The trial court conducted a hearing on Mother's emergency motion on August 6, 2013, and thereafter issued an order denying her motion. Among its findings were: (1) Mother had not established that an emergency existed; (2) although Mother did not participate in the hearing on April 4, 2013, the evidence demonstrated that paternity had been established, Father had custody of the child since February 2013, Father had enrolled the child in school, and Father had made sure that the child's medical and dental needs were met. Mother appealed the trial court's order denying her Trial Rule 60 (B)(6) motion to vacate.

The Court held that the custody order was void due to lack of subject matter jurisdiction; therefore, the trial court clearly erred in denying Mother's Trial Rule 60(B)(6) motion to vacate the custody order. *Id.* at 476. The Court looked to Trial Rule 60(B)(6), which states that a trial court "may relieve a party... from judgment, including judgment by default, for the following reasons... (6) the judgment is void." *Id.* at 475. Although Mother characterized her motion as an "emergency" motion and the trial court found that Mother had not established that an emergency existed, the Court observed that Trial Rule 60(B)(6) does not require a showing of "emergency" circumstances; it simply requires that the judgment be "void." *Id.* Mother submitted that the custody order was void based on (1) the trial court's lack of subject matter jurisdiction under UIFSA to make any custody determination; and (2) the trial court's lack of personal jurisdiction over her due to defective service of process. The Court found the trial court's lack of subject matter jurisdiction to be dispositive. *Id.*

Quoting *Marriage of Thomas v. Smith*, 794 N.E.2d 500, 503 (Ind. Ct. App. 2003), *trans. denied*, the Court noted that, "[a] judgment entered by a court that lacks subject matter jurisdiction is void and may be attacked at any time." *D.T.* at 475. The Court observed that IC 31-18-7-2, which governs subject matter jurisdiction in UIFSA proceedings states, "Nothing in this chapter shall be construed to confer jurisdiction on the court to determine issues of custody, parenting time, or the surname of a child. However, the parties may stipulate to the jurisdiction of the court with regard to custody, parenting time, or the surname of a child." *Id.* The Court also noted that the UIFSA limits the class of cases that a UIFSA court has the power to decide to those falling within the general category of support enforcement, citing *In Re Marriage of Truax*, 522 N.E.2d 402, 405 (Ind. Ct. App. 1988), *trans. denied*. *D.T.* at 475.

The Court observed that, in the *D.T.* case, the cause of action was before the Indiana trial court as a UIFSA action, sent from Mississippi (the initiating state) to Indiana (the responding state) pursuant to IC 31-18-1-9, -18. *Id.* The Court noted that the Enforcement Transmittal Request clearly listed the cause as a IV-D action, listed the Mississippi cause number as well as the cause number of the "Responding Tribunal" (the trial court), and indicated that enforcement was

sought under UIFSA for the establishment of paternity and the establishment of an order for current and retroactive child support, including medical support. Id. The Court also noted that the February 19, 2013 paternity order, signed by the trial court commissioner and judge, specified that the cause was before the IV-D commissioner for UIFSA. Id. The Court observed that the trial court adjudicated Father's pro se custody request as part of the UIFSA cause of action, even though UIFSA specifies that the court lacked jurisdiction to make such a determination absent a stipulation between the parties, the record was devoid of documentation indicating such stipulation, and Mother had never received notice of the custody hearing. Id. at 476. The Court said that the UIFSA cause of action impermissibly morphed into a custody order that was void for lack of subject matter jurisdiction. Id.

The Court briefly addressed the trial court's lack of personal jurisdiction only as it related to the question of whether Mother had consented to the trial court's jurisdiction and observed that Mother could not have anticipated that the trial court would entertain a motion for custody by dovetailing it into the UIFSA action. Id. at 476 n.2. The Court concluded that Mother neither stipulated to the adjudication of custody nor consented to the trial court's exercise of jurisdiction over her. Id. The Court further concluded that the UIFSA proceeding should be reinstated, and reversed and remanded for proceedings consistent with the decision. Id. at 476.