

Children's Law Center of Indiana



Custody and Parenting Time

10/7/14

In **In Re Paternity of J.G.**, 19 N.E.3d 278 (Ind. Ct. App. 2014), the Court affirmed the trial court's order granting Father's request to modify the child's custody. *Id.* at 283. The child was born on September 29, 2005 in Louisville, Kentucky. Following the child's birth, Mother and the child moved around the country multiple times, to multiple states, periodically returning to Indiana. Father and paternal grandmother (Grandmother) live in Crawford County, Indiana. In August 2008, Mother filed a request for food stamps in Kansas, and was required to request child support from Father. The State of Kansas forwarded the request to the Crawford County prosecutor pursuant to the Uniform Interstate Family Support Act (UIFSA). The Crawford County prosecutor opened a paternity case, and on January 22, 2009, the trial court entered an order establishing Father's paternity and ordering him to pay child support in the amount of \$53 per week. The trial court also ordered, pursuant to an agreement reached by Mother and Father, that Mother would have custody of the child and Father would have parenting time and telephone contact according to an agreed-upon schedule. At the time the order was entered, Mother and the child had relocated to Kansas. Father exercised parenting time sporadically from 2010 through 2012, and the child spent all of the summer of 2012 with Father. Mother agreed to relocate to Indiana. Father and Grandmother enrolled the child in school in Marengo in Crawford County; the child attended this school for the first semester of the 2012-13 school year. Mother relocated to Indiana in November 2012 and moved into a boarding house. During the winter break, Mother moved the child to Las Vegas, Nevada without informing Father. Father learned of the child's absence when the school staff called after she failed to report for classes at the beginning of the new semester. At first, Mother claimed that the child was absent from school because she was sick, but eventually Father and Grandmother learned that Mother had moved the child to Nevada.

Immediately upon learning what had happened, Father filed a pro se minute entry with the trial court, in which he requested a hearing on a change of custody. The trial court ordered Mother to bring the child with her to the next hearing and appointed a Guardian ad Litem for the child. After a hearing on May 2, 2013, the trial court found that Mother's move to Nevada with the child was inappropriate, and that Mother was in contempt of court for failing to return the child to Indiana and for interfering with Father's parenting time. The trial court also awarded temporary custody to Father, and imposed a ninety-day sentence for contempt on Mother, but later vacated that punishment. On December 10 and 11, 2013, the trial court held an evidentiary hearing on Father's request to modify custody. Father, Mother, the Guardian ad Litem, and other

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witnesses testified. The Guardian ad Litem recommended that Father be given custody of the child. On December 16, 2013, the trial court granted Father's custody modification request. The Court held, inter alia, that modification was in the child's best interests, that Father would have sole legal and physical custody of the child, and that Mother's Christmas 2013 and spring break 2014 would be exercised only in the Indiana and Northern Kentucky area. The court also ordered Mother to pay child support to Father in the amount of \$33 per week. Mother appealed.

The Court found that the trial court had subject matter jurisdiction over the child's custody and parenting time. *Id.* at 282. Mother's first argument was that the trial court lacked subject matter jurisdiction over this cause. The Court observed that the cause was originally opened as a paternity cause pursuant to the UIFSA, which primarily governs proceedings regarding spousal support, child support, and paternity. *Id.* at 281. The Court noted that IC 31-18-7-2, the section on UIFSA jurisdiction, 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 the child." *Id.* at 281-82. The Court disagreed with Mother's argument that, because there was never an explicit stipulation that the trial court would have jurisdiction over anything other than paternity and child support, the trial court lacked subject matter jurisdiction to consider those issues. *Id.* at 282. The Court opined that the parties implicitly stipulated to the trial court's subject matter jurisdiction on visitation and custody under the UIFSA by entering into an agreement on these issues, placing it on the record in the paternity proceeding, and having the trial court incorporate it into an order. *Id.* The Court found that the stipulation had full force and effect throughout the continuing litigation of those same issues over the years. *Id.*

The Court found that the evidence supported the trial court's conclusions that modification of custody was in the child's best interests and that there had been a substantial change in one or more of the statutory factors. *Id.* at 283. Mother's second argument was that the trial court erred by modifying the existing order regarding child custody. Quoting *K.I. Ex. Rel. J.I. v. J.H.*, 903 N.E.2d 453, 457 (Ind. 2009), the Court noted that it reviews "custody modifications for abuse of discretion with a preference for granting latitude and deference to our trial judges in family law matters." *J.G.* at 282. The Court looked to IC 31-14-13-6, which states that a trial court may modify a child custody order upon a showing that modification is in the child's best interests and that there has been a substantial change in the relevant factors. *Id.* The Court also reviewed the custody factors listed at IC 31-14-13-2. *Id.* The Court noted the following evidence which supported the trial court's decision to modify custody of the child from Mother to Father: (1) Mother and the child have had countless residences, in multiple states, with many difference roommates, and were homeless for a period of time; (2) Mother had an unstable employment history, and, at the time of the hearings, was unemployed and had been unemployed for some time; (3) when Mother brought the child to Father's care in the summer of 2012, the child had ringworm in multiple places and bedbug bites over her whole body; (4) Mother agreed to relocate to Indiana and asked that the child be enrolled in school in Indiana in 2012, but relocated with the child out of state during winter break without notifying Father, lied to him about the child's absence from school, and prevented Father from having contact with the child; (5) Father had stable employment as a truck driver, was at home during the evenings, and had a good

support system in place, including his wife and Grandmother to help care for the child; (6) the Guardian ad Litem testified that the child was very happy at school, achieved good grades, had no trouble at school, and was “really close” to Father and his wife; (7) the Guardian ad Litem also testified that Father’s home was appropriate, the child had her own bedroom with appropriate clothing, and maintained good hygiene in Father’s care; (8) the Guardian ad Litem concluded that the stability offered by Father was preferable to the instability the child had experienced with Mother. Id. at 283.

Although Mother made much of the fact that Father did not file a motion opposing the relocation pursuant to IC 31-17-2.2-1(b), the Court observed that filing such a motion would have been impossible, given that Mother did not notify Father or the trial court before relocation as required by IC 31-17-2.2-1(a). Id. The Court noted the statute contemplates that modification may be warranted when a relocation occurs, and did not find that the trial court erred in modifying the existing custody order. Id.