

Children's Law Center of Indiana



Custody and Parenting Time

12/12/13

In **Lindquist v. Lindquist**, 999 N.E. 2d 907 (Ind. Ct. App. 2013), the Court affirmed the trial court's determination that Mother was in contempt for denying Father his Christmas 2013 parenting time. The Court reversed the portion of the trial court's order restricting Mother from allowing the three children of the marriage to spend time with Mother's boyfriend (Boyfriend) unless Mother is also present. The Court remanded with instructions that the trial court craft an order permitting the children to maintain their relationship with Boyfriend and to spend unsupervised time with him so long as that relationship does not interfere with or impede Father's opportunity to exercise his parenting time in accordance with the Guidelines. *Id.* at 913. Mother and Father were married and are the parents of triplet girls born on November 26, 2002. Parents separated shortly before the children became two years old, and the marriage was dissolved in July 2005. The trial court awarded joint legal custody of the children to Parents, and Mother was awarded primary physical custody. Father was awarded parenting time as the parties could agree, or, in the event of a dispute, parenting time would be decided in accordance with the Guidelines. Before the marriage was dissolved, Mother began a romantic relationship with Boyfriend. Mother and the children began living with Boyfriend when the children were three years old. Mother and Boyfriend never married, but lived together with the children for nearly seven years. Although Mother and the children eventually moved out, Mother and Boyfriend continued their relationship. In June 2011, Mother filed a petition to establish parenting time because she and Father could not agree on a schedule, particularly with regard to the children's participation in extracurricular activities. Father filed a petition for rule to show cause in September 2011, and the trial court order the parties to attend mediation. The parties proceeded to mediation and filed an agreed order with the trial court on August 17, 2012, which settled most of the issues, except for Mother's alleged contempt and her perpetuation of the relationship between Boyfriend and the children. The parties agreed to follow the Indiana Parenting Time Guidelines, but Mother allegedly violated the agreed order by refusing Father any parenting time on Christmas Eve or Christmas Day in 2012. Mother permitted the children to vacation with Boyfriend and his family in Mother's absence.

The court held a hearing in May 2013 during which the evidence established that: (1) Mother and Boyfriend had not been living together for nearly a year and a half; (2) the children were nine years old when Mother and Boyfriend stopped living together; (3) after the separation, Mother permitted Boyfriend to take the children to doctor appointments on multiple occasions without Mother being present; (4) Boyfriend has had the children in his home on many occasions, has hosted slumber parties for them, has taken them on vacations without Mother, and has attended

their extracurricular activities on a regular basis. Boyfriend testified that the children often refer to him as “Dad”, he has “outfitted” his residence with young children in mind, including swings, a trampoline, all terrain vehicles, a playhouse and cabin, and numerous animals, and he assists Mother financially on a regular basis, which has included thousands of dollars since they stopped living together. Boyfriend also has opened saving accounts for the children, told the children about the accounts, and has provided for them in his will. A clinical child psychologist testified at the hearing that children benefit from strong stable bonds from people who are “not necessarily family or paid providers” and that continuing Boyfriend’s relationship with the children would be in their best interests. Father testified that he is equally available and desires to spend as much time as he can with the children, but Mother has refused him several opportunities to do so. Father also testified that the relationship Mother is fostering between the children and Boyfriend is undermining Father’s relationship with the children, and that the children compare him to Boyfriend during parenting time. The trial court issued its order on May 13, 2013 and found Mother in willful contempt for refusing Father parenting time during Christmas 2012. The court gave Father make-up time with the children for what would normally be Mother’s Memorial Day holiday weekend. The court also prohibited Mother from allowing the children to spend one on one time with Boyfriend or any time with him unless she is present. Mother appealed the order regarding the children’s contact with Boyfriend, but did not challenge the contempt order.

The Court found the trial court’s order with regard to the children’s contact with Boyfriend to be too broad and restrictive because there was no evidence that Boyfriend either abused or neglected them and the evidence showed that it was in the children’s best interest to continue that relationship. *Id.* at 912. Mother contended that the trial court’s order violated her fundamental constitutional rights in raising her children by restricting their relationship with Boyfriend and because there was no showing that any harm resulted to the children. Mother argued that Father presented no evidence that the children’s relationship and unsupervised time with Boyfriend undermined or damaged Father’s own relationship with the children. In support of her argument, Mother cited Troxel v. Granville, 530 U.S. 57, 60 (2000), where the United States Supreme Court addressed a dispute between a parent and grandparents who sought visitation with their grandchildren over the parent’s objections. The Lindquist Court responded that, unlike the dispute in Troxel, the situation in this case involves two natural parents with equal rights following the dissolution of marriage. Lindquist at 911. The Court looked to Section I(C)(3) of the Parenting Time Guidelines, which requires that the parent needing child care shall first offer the other parent the opportunity for additional parenting time, and Section A of the Guidelines, which encourages parents to recognize a child’s need for the development of meaningful relationships with other significant adults “as long as these relationships do not interfere with or replace the child’s primary relationship with the parents.” Lindquist at 912. The Court observed that, although the evidence established that Boyfriend has developed a positive and meaningful relationship with the children he has no “parental right” to see and visit with the children, but Father does. *Id.* The Court opined that Boyfriend should be able to continue seeing the children so long as his relationship with them does not undermine or damage the relationship with Father. *Id.* The Court added that Father must be given the opportunity to exercise additional parenting time under Section I (C)(3) of the Guidelines. *Id.*

The Court found Mother’s argument that the trial court’s order violated her First Amendment right of association failed. *Id.* at 913. Quoting *Sills v. Irelan*, 663 N.E. 2d 1210, 1213 (Ind. Ct. App. 1996), the Court noted that the freedom of association “is a constitutional right which is included in the bundle of First Amendment rights made applicable to the States by the due process clause of the Fourteenth Amendment.” *Lindquist* at 913. The Court observed that there is nothing in the trial court’s order that prohibits or prevents Mother from associating with Boyfriend now or in the future. *Id.* The Court said that, while Mother has the freedom to associate with Boyfriend, that right does not trump Father’s liberty interest in raising his children. *Id.*, citing *Guardianship of B.H.*, 770 N.E. 2d 283, 286 (Ind. 2002).