

# Children's Law Center of Indiana



## Custody and Parenting Time

6/10/15

In **Richardson v. Richardson**, 34 N.E.3d 696 (Ind. Ct. App. 2015), the Court affirmed the dissolution court's degree, which: (1) granted Husband sole legal and physical custody of the child of the marriage (W.R.); (2) granted Husband visitation with Wife's minor daughter (L.O.); and (3) found Wife in contempt for her willful interference with Husband's parenting time with W.R. and his visitation with L.O. *Id.* at 699. L.O., Husband's stepdaughter, was born on August 16, 2003, and is the daughter of Wife and Robert Osborne (Osborne). On April 27, 2006, the Marion Circuit Court entered its order establishing Osborne's paternity of L.O. and granted custody to Wife. The order provided for Osborne to pay child support and to exercise parenting time with L.O. "by agreement or further order of this court." Thereafter, Wife began a relationship with Husband, gave birth to W.R. on March 29, 2007, and Husband signed a paternity affidavit immediately after W.R.'s birth. Wife and Husband were married on October 4, 2008, and they agree that Husband is the father of W.R.

On March 21, 2013, when W.R. was almost six years old and L.O. was nine years old, Husband filed for dissolution of marriage. The dissolution court's preliminary order, issued on May 21, 2013, gave Husband and Wife joint legal custody of W.R., with Wife having primary physical custody. Husband was granted parenting time with W.R. according to the Indiana Parenting Time Guidelines. Finding that Husband had a "very significant relationship with L.O., who considers him her father, the dissolution court concluded that it was in L.O.'s best interests for Husband to have visitation with her consistent with his parenting time with W.R. "so that the children can stay together." On March 14, 2014, Husband filed a petition for contempt against Wife, alleging that she had twice interfered with his parenting time with W.R. and his visitation with L.O. in violation of the preliminary order. After a hearing, the court issued its dissolution decree on September 10, 2014. The court awarded Husband sole legal custody of W.R., concluding that this custody arrangement was in the child's best interests because Wife's testimony showed she was unable to appropriately co-parent with Husband due to her anger. The dissolution court also ordered Wife to assure that L.O. spent time with Husband and W.R. on weekends when W.R. spent time with Husband, and that both parties insure that the two children spend holidays together as much as possible. The court found that: (1) L.O.'s adjudicated father, Osborne, had not been consistently involved in her life; (2) L.O. regarded Husband as her father, and he was the only father she had ever known; (3) Osborne was not exercising parenting time with L.O. The dissolution court noted that, during the parties' marriage, Husband provided emotional, physical, and educational support to L.O., and he had been a de facto custodian and the male role model in her life. The dissolution court also found that Wife was in contempt of its

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preliminary order due to her willful interference with Husband's parenting time and visitation orders. Wife appealed.

**The Court determined that the dissolution court had authority to order Husband's visitation with his stepdaughter L.O.** *Id.* at 702. The Court said it is well established that stepparents have standing to seek visitation rights and that a trial court has authority to grant visitation to stepparents (multiple citations omitted). *Id.* at 701. Citing *A.C. v. N.J.*, 1 N.E.3d 685, 697 (Ind. Ct. App. 2013), the Court observed that: (1) a stepparent relationship is a strong indicator that a custodial and parental relationship exists; and (2) by recognizing a right to visitation in nonparent third parties such as stepparents, the Court has acknowledged that a child's best interest in maintaining relationships with those who have acted in a parental capacity will sometimes trump a natural parent's right to direct the child's upbringing. *Richardson* at 701. The Indiana Supreme Court has recognized that a stepparent may be granted visitation upon establishing the existence of a custodial and parental relationship and that visitation is in the child's best interests. *Worrell v. Elkhart Cnty. Office of Family & Children*, 704 N.E.2d 1027, 1028 (Ind. 1998). *Richardson* at 701.

Wife argued that the dissolution court did not have the authority to grant stepparent visitation because the Marion Circuit Court had previously entered a judgement concerning the support, custody, and parenting time of L.O. in the 2006 order establishing Osborne's paternity. The Court responded that Wife was correct that the dissolution court did not have the authority to adjudicate any matters of custody or parenting time between Wife and Osbourne that were already determined in the paternity case, but said that the dissolution court did not do so in this case. *Id.* The Court opined that the matters addressed in the paternity order and the dissolution order were wholly separate. *Id.* at 702. The Court found there was no conflict between the orders because: (1) the paternity court order adjudicated support, custody, and parenting time of L.O. between Wife and Osborne; and (2) the dissolution court's order adjudicated visitation of L.O. as between Wife and Husband as part of the dissolution of their marriage. *Id.* at 701-02. The Court said that Husband's exercise of his right to visitation with L.O. may be only to the detriment of Wife's custodial time with L.O., and the dissolution court's visitation order in no way deprived Osborne of his right or ability to exercise parenting time with L.O. *Id.* at 702.

**The Court found that the evidence and reasonable inferences supported the dissolution court's finding that visitation with Husband was in the best interests of his stepdaughter, L.O.** *Id.* at 703. The Court noted that: (1) Husband had provided financial, emotional, physical, and educational support to L.O. for almost eight years; (2) Husband came into L.O.'s life when she was only two years old, and he is the only father she has ever known; (3) L.O. has always referred to Husband as "dad" or "daddy". *Id.* at 702. The Court said there was no question that L.O. had an interest in maintaining a relationship with someone who had acted in such a significant parental capacity in her life. *Id.* The Court noted that the visitation order also provided for L.O. to spend time with her half-brother, W.R., and that it was in the children's best interests to continue to spend time together. *Id.* at 702-03.

Wife also argued that she was entitled to the parental presumption as stated in IC 31-17-5, the Grandparent Visitation Statute. The Court responded that, until the Indiana Supreme Court declares otherwise, the Court of Appeals declined to extend the parental presumptions applicable

to a statutory grandparent visitation proceeding to a stepparent visitation order issued pursuant to a dissolution decree. Id. at 702 n.4.

**The Court concluded that the dissolution court did not abuse its discretion in finding Wife in contempt of its preliminary order.** Id. at 703. During the hearing, Wife admitted that she did not allow Husband his parenting time with W.R. and his visitation with L.O. on two weekends, but gave the trial court explanations and excuses for her behavior. The Court observed: (1) the dissolution court did not find Wife's excuses credible and found that her interference with Husband's parenting time and visitation was willful; and (2) Wife was inviting the Court of Appeals to reweigh the evidence in her favor, which the Court may not do. Id. at 703.

**The Court concluded that Wife failed to show that the trial judge was biased against her.** Id. at 704. Wife asserted that the court's order regarding custody of W.R. should be reversed because the trial judge was biased against her. Citing Carter v. Knox Cnty. Office of Family & Children, 761 N.E.2d 431, 435 (Ind. Ct. App. 2001), the Court noted that: (1) the law presumes that a trial judge is unbiased; (2) to overcome that presumption, the party asserting bias must establish that the trial judge has a personal prejudice for or against a party; (3) clear bias or prejudice exists only where there is an undisputed claim or the judge has expressed an opinion on the merits of the controversy before him or her. Richardson at 703. Quoting Flowers v. State, 738 N.E.2d 1051, 1061 (Ind. 2000), the Court observed that a party "must show that the trial judge's action and demeanor crossed the barrier of impartiality and prejudiced" that party's case. Richardson at 703-04.

Wife complained the record supported a finding that the trial judge was personally biased against her. She accused the judge of being "combative" with her, improperly commenting on her mental stability, and stating that her behavior was not age-appropriate. Quoting In Re J.K., 30 N.E.3d 695, 698 (Ind. 2015), the Court observed that Indiana's Appellate Courts "afford trial judges ample latitude to run the courtroom and maintain discipline and control of the trial." Richardson at 704. The Court concluded that Wife failed to show that the trial judge's actions or demeanor crossed the barrier of impartiality. Id. The Court observed that Wife exhibited emotional, irrational, and uncooperative behavior, often giving evasive and equivocal answers to clear and direct questions. Id. The Court said that the trial court intervened to admonish Wife, to maintain control of the trial, and to aid in the factfinding necessary to determine the best interests of the children. Id.

**The Court opined that the trial court did not abuse its discretion in granting Husband sole legal and physical custody of W.R., a custody arrangement which had not been requested by the parties.** Id. at 704. Citing Lindquist v. Lindquist, 999 N.E.2d 907, 911 (Ind. Ct. App. 2013), the Court noted that the trial court's foremost consideration in custody matters is the best interests of the child. Richardson at 704. The Court said there was no authority for Wife's proposition that a trial court is precluded from entering a custody arrangement not specifically advanced by either party. Id.