

Children's Law Center of Indiana



Custody and Parenting Time

4/30/13

In **Troyer v. Troyer**, 987 N.E.2d 1130 (Ind. Ct. App. 2013), the Court addressed, among other issues, Mother's claim that the trial court had erred in awarding Mother and Father joint legal custody of the child, age twelve, who suffered from anorexia nervosa and major depressive disorder. Mother argued that she should have been awarded sole custody of the child. The trial court had presided over a four-day hearing, which was transcribed in an 811 page transcript. Among the findings which the Court noted as pertinent to the joint custody issue are: (1) the child has been involved in counseling since age seven for behavioral issues, and her violent outbursts have included attempts to assault both parents; (2) the child has been diagnosed with oppositional defiance disorder and it has also been suggested that she may have some form of sensory integration disorder; (3) the child's behaviors include violent outbursts and tantrums, panic attacks, self-mutilation, bingeing, and purging; (4) the child received treatment at the Eating Recovery Center from January 18, 2012, to March 21, 2012; (5) at times, Mother and Father have been able to cooperate and work together for the child's benefit, including cooperation and assistance following Mother's automobile accident, the selection of the child's therapist, the selection of the Eating Recovery Center for the child's treatment, and agreement regarding the child's extra-curricular activities; (6) at times, Mother and Father have not cooperated and communicated effectively for the child's benefit. *Id.* at 1145-46. The Court also noted the trial court's findings that Father's communication with the child has caused her emotional distress, that parenting time between Father and the child will endanger her physical health or significantly impair her emotional development, that Father has acknowledged that parenting time is not in the child's best interest at this time, and that Father is prepared and willing to work with mental health professionals to facilitate parenting time and his relationship with the child. *Id.* at 1146-47. The trial court granted joint legal custody of the child to Mother and Father and primary physical custody of the child to Mother, granted Father parenting time with the child consistent with the recommendations of her treating therapists and psychiatrist, and appointed a Parenting Coordinator to provide support, assistance and guidance for Father and Mother in co-parenting the child.

The Court opined that the trial court was in the best position to assess whether awarding the parties joint legal custody is in the child's best interests, and the Court will not second-guess that determination on appeal. *Id.* at 1148. The Court, quoting IC 31-9-2-67, observed that "joint legal custody ... means that the persons awarded joint custody will share authority and

responsibility for the major decisions concerning the child's education, health care, and religious training." *Id.* at 1144. Quoting *Swadner v. Swadner*, 897 N.E.2d 966, 974 (Ind. Ct. App. 2008) and *Arms v. Arms*, 803 N.E.2d 1201, 1210 (Ind. Ct. App. 2004), the Court said that, in awarding joint custody, the "trial courts must consider 'whether the parents have the ability to work together for the best interest of their children.'" *Troyer* at 1148. The Court did not believe that the trial court is attempting to impose an "intolerable situation upon the parties" in awarding joint legal custody in this case. *Troyer* at 1147, quoting *Periquet-Febres v. Febres*, 659 N.E.2d 602, 605 (Ind. Ct. App. 1995), *trans. denied*. The Court noted that: (1) Father and Mother have occasionally been able to cooperate for the child's benefit, such as in making joint decisions on the child's therapy, treatment, and extra-curricular activities; (2) Father asserts, and Mother does not dispute, that he has never unreasonably refused to consent to a health care provider, a change in the child's schooling, or a change in the child's religious upbringing. *Id.* The Court observed that the trial court had some evidentiary basis for concluding that Mother and Father could cooperate in making major decisions concerning the child's upbringing, such that awarding joint legal custody would be in her best interests. *Id.* at 1147-48. The Court noted that the trial court prescribed certain measures for monitoring and remedying the situation that Father's parenting time with the child would endanger her health or significantly impair her emotional development, which might ultimately lead to reconciliation for Father with the child. *Id.* at 1148. The Court reiterated that an award of joint legal custody does not require an equal division of physical custody. *Id.*