Children's Law Center of Indiana

Custody/Parenting Time
Third Party Visitation
8/8/18

In <u>**Grimes v. Houser**</u>, 108 N.E.3d 397 (Ind. Ct. App. 2018), the Court held that the trial court did not err when its dismissed Stepmother's petition for visitation on the grounds that the dissolution court had continuing and original jurisdiction.

Mother and Father divorced in 2011 after having a child. Mother was custody, and Father was given parenting time. Father eventually remarried. Mother and Father had multiple disputes over parenting time which were litigated before the dissolution court. However, in 2017, Father moved to dismiss the case for lack of activity. Mother objected, pointing to ongoing disputes and discovery, and the dissolution court denied Father's motion. After the dissolution court denied Father's motion, Stepmother filed a petition for visitation in the separate trial court, alleging that Mother prevented Stepmother from seeing the child. Mother moved to dismiss the visitation petition, arguing that the dissolution court had exclusive jurisdiction, and requested attorney's fees. The trial court granted Mother's petition without a hearing and awarded Mother attorney's fees. Stepmother appealed, arguing that the trial court should not have dismissed her petition since she was not a party to the case in the dissolution court.

The court that issues the original child custody determination retains exclusive continuing jurisdiction over child custody matters. <u>Id</u>. at 398. IC 31-21-5-2 grants exclusive, continuing jurisdiction over child custody issues to the court that issued the original child custody determination. Pursuant to IC 31-21-5-2, the dissolution court had continuing and original jurisdiction over matters concerning the child. <u>Id</u>. Consequently, the trial court did not err in dismissing Stepmother's petition. <u>Id</u>.

Stepmother's argument that she was not a party to the dissolution case, and consequently, the trial court should have heard her petition, was irrelevant to the jurisdiction matter. <u>Id</u>. at 398. The Court noted prior case law where a stepmother filed a petition to prevent the mother's visitation even though the mother's and the father's custody dispute was pending in a separate court. <u>State ex rel. Meade v. Marshall Super. Ct. II</u>, 644 N.E.2d 87 (Ind. 1994). <u>Grimes</u> at 398. In <u>Meade</u>, the Indiana Supreme Court noted that attempts to avoid the proper procedures through collateral attack are prohibited, and ordered the trial court to dismiss the stepmother's petition due to lack of jurisdiction. <u>Meade</u> at 89; <u>Grimes</u> at 398. The <u>Grimes</u> Court opined that, in light of the statute and case law, Stepmother's argument that since she was not a party to the dissolution case, she could properly file a sperate petition in another court had no relevancy to IC 31-21-5-2 and the jurisdiction matter at hand. <u>Grimes</u> at 398.

The trial court properly awarded attorney's fees to Mother because no reasonable attorney would have would considered it to be proper to litigate Stepmother's claim in a court other

than the trial court. Id. at 399. The Court examined the trial court's award of attorneys under an abuse of discretion standard. Id. at 398. IC 31-52-1-1 allows for an award of attorney's fees if a trial court finds that one of the parties "(1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless; (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or (3) litigated the action in bad faith." Id. The Court opined that based on statute and case law, it was unreasonable for an attorney to think that any court other than the trial court had jurisdiction, and to attempt to litigate Stepmother's petition elsewhere was unreasonable. Id. at 398-99. The Court also noted that Stepmother's petition was an attempt to circumvent the trial court's jurisdiction and to impose additional litigation expense son Mother. Id. at 399. Consequently, the trial court properly awarded attorney's fees to Mother. Id.