

Children's Law Center of Indiana



Custody and Parenting Time

10/19/2018

In **In Re the Paternity Of C.B. and S.B.**, 112 N.E.3d 746 (Ind. Ct. App. 2018), the Court affirmed most of the trial court's findings, which were appealed by both parties on a variety of grounds, but reversed and remanded to the trial court to revisit its order of child support.

Mother and Father were never married, but were in a relationship and are the parents of two children, C.B. and S.B. Mother and Father's relationship ended in 2015 with a great deal of subsequent hostility. Mother and Father signed a joint custody agreement while the paternity action was pending, but the Guardian ad Litem recommended to the court that arrangement not continue, as Mother and Father were unable to communicate or work together, which was having a "detrimental effect" on C.B. and S.B. After a seven day, contentious hearing, the trial court awarded full physical and legal custody to Mother, with Father to have parenting time in excess of the Indiana Parenting Time Guidelines. The trial court ordered Father to pay child support, and ordered that Father take the income tax deductions for the children. Both parents appealed various aspects of the order.

Mother's argument that Father's right to appeal was forfeited failed because "**Indiana Appellate Rule 9(F)(3)(b) provides that an appellant's notice of appeal must include "[t]he date on which any Motion to Correct Error was denied or deemed denied, if applicable[.]"** Mother complains that Father's notice of appeal does not include the date of the November 16 order, but she ignores the fact that her motion to correct error was granted in part." *Id* at 750. As such, Father did not need to attached the Orders connected to her motion, even if good practice suggests doing so anyway.

Father's argument that the custody determination was erroneous failed because there is ample testimony to support the trial court's ruling. The Appellate Court observes that "**[i]n reviewing such findings, we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. In re Paternity of M.R.A., 41 N.E.3d 287, 292-93 (Ind. Ct. App. 2015)." *Id*. Here, the Court found ample evidence to support the findings and judgment of the trial court, including that Mother and Father cannot co-parent without conflict and that Mother's parenting style and supportive family network are appropriate for primary custody.**

Father's next argument is that the trial court's order of parenting time is clearly erroneous, as it reduces his parenting time from the amount he received during the pendency of the case, yet the trial court failed to make any of the findings described in Indiana Code Section 31-17-4-2 to

support restricting his parenting time. The Court finds that **no finding of endangerment was required**, because Father is ordered to receive parenting time in excess of that in the Parenting Time Guidelines, then notes that Father “cites no authority for his suggestion that an award of parenting time above the minimum specified by the Parenting Time Guidelines is unreasonable.” Id at 754.

Father next appeals various aspects of the determination of child support, including that his taxes, income, and Mother’s income were not calculated correctly. The Court rejects all his assertions, finding no abuse of discretion by the trial court. Of note is one of Father’s issues, in which he disputes the inclusion of a large structured settlement in his income calculation because it is not due to vest and pay out until after the children are of age. This Court here relies on Mehne v. Hess, 4 Neb.App. 935, 553 N.W.2d 482, 489 (1996), finding that **allocating a large payment out over a number of years is justified if it is in the children’s best interest**, and thus not error.

Father goes on to appeal the trial court’s failure to impute income to Mother, arguing that because she lives with her parents, her living expenses are greatly diminished. However, the Court here notes that it was Father’s burden to prove what, if any, living expenses were not being paid and should be imputed, and he failed to do so. The Court notes that “[w]e will reverse a trial court’s decision regarding imputation of income only for an abuse of discretion. Miller v. Miller, 72 N.E.3d 952, 954-55 (Ind. Ct. App. 2017), and declines to find an abuse of discretion in this instance. Id at 761.

Finally, Mother appeals the trial court’s decision to award the children’s tax exemptions to Father, rather than ordering Mother to sign a waiver form. The Court here agrees, noting that **“under current law the court cannot award an exemption to a parent, but the court may order a parent to release or sign over the exemption for one or more of the children to the other parent pursuant to Internal Revenue Code § 152(e).”** Id at 762. The trial court is reversed and remanded on this issue. Mother also contends the trial court erred by failing to order that Father may only take tax deductions if he at least 95% current on child support payments, as described in Guideline 9. The Court agrees and remands on this issue.