



Custody and Parenting Time

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In **Hecht v. Hecht**, 142 N.E.3d 1022 (Ind. Ct. App. 2020), the Court held (1) the trial court applied the correct legal standard used for a modification of legal custody, despite the fact that the trial court did not cite all three relevant statutory sections previously held to be necessary and (2) the trial court did not abuse its discretion when awarding Mother sole legal custody of the child.

Mother and Father married in 2012. The parties had two children, B.H. and T.H., before divorcing in 2017. The divorce decree, which incorporated the parties' settlement agreement, provided that the parties would share joint legal and physical custody of the children. In 2018, Mother filed a Petition to Modify Custody, Parenting Time, and Related Matters, seeking sole legal and primary physical custody of the children. Father filed countermotions, asking the trial court to award him sole legal and primary physical custody of the children. The trial court found no grounds to change legal or physical custody of B.H. or physical custody of T.H., but found that Mother should be granted sole *legal* custody of T.H.

Father appealed, raising two issues for review: (1) whether the trial court applied the wrong legal standard when it awarded Mother sole legal custody of T.H.; and (2) whether the trial court abused its discretion in awarding sole legal custody of T.H. to Mother. T.H. has a rare genetic disorder that requires special medical care and individualized educational support. Mother and Father disagreed about the best course of action for T.H. Specifically, they disagreed about whether T.H. should matriculate to the second grade and whether T.H.'s impulsivity should be treated with medication. *Id.* at 1027. T.H.'s educational team believed T.H. was not intellectually prepared for second grade, but nevertheless recommended that T.H. continue moving forward with her classmates. *Id.* The educational team further recommended waiting until high school before holding back T.H. Mother disagreed with the recommendation. Father agreed with the recommendation.

The trial court applied the proper legal standard when it awarded Mother sole legal custody of T.H. *Id.* at 1030. In determining that Mother should have sole legal custody of T.H., the trial court cited Indiana Code sections 31-17-2-13, 31-9-2-67, and 31-17-2-15. *Id.* at 1029. The trial court, in its July 2019 order, stated the following:

Indiana Code § 31-17-2-13 provides that a court “may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.” Parties that share legal custody “share authority and responsibility for the major decisions concerning the child’s upbringing, including the child’s education, health care, and religious training.” Ind. Code § 31-[9]-2-67.” *Id.*

The trial court's order also noted that IC 31-9-2-15 provides the factors a court must consider when determining whether to award joint legal custody. Id.

Father argued, on appeal, that the trial court must consider Indiana Code sections 31-17-2-8, 31-17-2-15, and 31-17-2-21. Id. at 1030. Section 21 provides that (a) the court may not modify a child custody order unless (1) modification is in the best interest of the child and (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8...of this chapter. (b) In making its determination, the court shall consider the factors listed under section 8 of this chapter. Id. Section 8 lists the best interest factors which must be considered in making an initial custody determination. Id. Section 15, as noted above, lists the factors to be considered by the trial court to determine whether an award of joint legal custody would be in the best interests of the child.

The Court held in Julie C. v. Andrew that the trial court must consider three statutes when modifying legal custody: Section 8, Section 15, and Section 21. Julie C. v. Andrew C., 924 N.E.2d 1249, 1259-60 (Ind. Ct. App. 2010). Here, the trial court did not specifically reference Section 8 or Section 21 nor use the precise language "substantial change." Nevertheless, the Court found that the trial court applied the correct legal standard and considered all of the required statutory factors. Hecht, 142 N.E.3d at 1031. The Court may presume trial courts know and follow the law. Id. at 1031 (citing Ramsey v. Ramsey, 863 N.E.2d 1232, 1239 (Ind. Ct. App. 2007)). Additionally, the trial court considered all of the factors in Section 15, which overlaps significantly with Section 8. Id. The Court notes that the trial court was not required to make specific findings regarding each of the factors unless a party requested such findings pursuant to Trial Rule 52(A). Id. (citing Russell v. Russell, 682 N.E.2d 513, 515 (Ind. 1997)). Neither party requested such findings.

The trial court did not abuse its discretion in awarding sole legal custody of T.H. to Mother. Id. at 1032-33. The Court reviewed the trial court's order which clarified that the custody modification was due to a substantial change in the parties' ability and willingness to effectively communicate about T.H. Id. at 1032. The Court, in reviewing the trial court's order, found ample evidence to support the trial court's decision which included evidence showing that Father didn't tell Mother his opinions about T.H.'s medical and educational needs, that Father wanted T.H. to engage in behavior therapy but took no steps to make it happen, and that Father wouldn't share with Mother his thoughts and research about behavioral therapy options Id. at 1033.