



Selected Case Law on Modification of Custody in Indiana¹

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This provides a summary of some of Indiana's case law on custody modification between parents in selected dissolution and paternity cases. The paper is arranged by topics, and the case discussed are only published opinions of the Indiana Supreme and Appellate Courts.

A. Relocation:

In In re Paternity of W.R.H., 120 N.E.3d 1039, 1043 (Ind. Ct. App. 2019), the Court held that because Father did not put Mother on notice that he was seeking a change in legal custody, the modification with regards to legal custody was improper. IC 31-17-2.2-1 does not automatically place legal custody at issue any time there is a hearing on a proposed relocation, and the issue of legal custody was not tried by the consent of the parties; therefore, the trial court erred by entering an order modifying legal custody. Indiana case law prohibits a trial court from making a sua sponte change in custody, as a party or parties have not been properly put on notice that issue will be addressed. Father argued that legal custody was automatically at issue pursuant to the relocation statutes, and Mother should have been on notice. IC 31-17-2.2-1(b) provides that "Upon the motion of a party, the court shall the matter for a hearing to review and modify, if appropriate, a custody order, parenting time order, grandparent visitation order, or child support order." Father argued this means that both physical and legal custody are at issue any time a parent requests a hearing regarding the other parent's notice of intent to relocate. The Court opined that this was an inaccurate misreading of the statute, noting that prior case law already determined that the motion to which the statute refers is a motion to modify an existing custody (or other) order. If a parent files a motion to modify physical custody, then the trial court must address the motion so requesting a modification of physical custody; if a motion is filed regarding legal custody, then the court would address that issue. The requests of the parties frame the issues to be considered at the hearing. The Court acknowledged that legal and physical custody matters often overlap, but while physical distance affects physical custody, it may not affect legal custody at all, as distances may not prevent parents from effectively communicating about decision relating to the child's health, education, religious training, and other important matters. If Father had explicitly put legal custody at issue with his motion, it is very possible Mother would have presented evidence relevant to address that specific issue. Instead, Father's motion asked the trial court to modify child support, deny Mother's proposed relocation with the child, and award Father physical custody if Mother decided to move. Father put Mother on

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notice regarding the possibility of a modification in physical custody; if he wanted a change in legal custody, he should have so indicated.

In Hamilton v. Hamilton, 103 N.E.3d 690, 694-96 (Ind. Ct. App. 2018) *trans. denied*, the Court held there was no abuse of discretion on the part of the trial court in awarding Father custody and holding that the evidence at trial supports the trial court's award of custody. The Court first noted that IC 31-17-2-8 provides that there is no preference for either parent in an initial custody determination, and referenced the best interests factors which a court must consider in making its custody determination. IC 31-17-2.2-2 provides that if relocation is at issue during an initial custody hearing, then the court may consider the relocation factors as part of the initial custody determination. Those factors are: (1) The distance involved in the proposed change of residence; (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation; (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties; (4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual's contact with the child; (5) The reasons provided by the (A) relocating individual for seeking relocation; and (B) nonrelocating parent for opposing the relocation of the child; and (6) Other factors affecting the best interest of the child. The relocating parent has the burden to show that the relocation is made in good faith and for a legitimate purpose. The Court noted: (1) The trial court found that the best interest of L.H. was served by primary physical custody with Father, who was maintaining a residence in the area that L.H. considered home; (2) L.H. has a minor sibling and grandparent caregivers in the Indianapolis area, and it would be difficult to foster those bonds from Maryland; (3) Mother would have an easier time visiting L.H. than Father would due to her additional income and work flexibility; (4) the trial court specifically noted Mother's actions in researching and planning her move without informing Father, and (5) Mother's minimization of Father's role in parenting L.H.

In B.L. v. J.S., 59 N.E.3d 253, 266 (Ind. Ct. App. 2016), the Court held there was sufficient evidence to support the trial court's finding that Mother's relocation from Fortville, Indiana to Fishers, Indiana was in good faith and for a legitimate purpose. The Court concluded the trial court did not abuse its discretion by allowing Mother to relocate. The Court noted Mother's testimony on her reasons for relocating: (1) she realized over time that the house was very big and there were thirteen acres of property to maintain; (2) her shopping, work, doctor, and dentist appointments were in the Fishers area; (3) she wished to live in a neighborhood where she and the child could ride bikes, walk, and have interaction with other people; (4) her relocation was not intended to thwart Father's efforts to spend more time with the child; (5) her proposed move was only twenty minutes driving time from Father's residence and would not hinder any of his parenting time or make it unreasonably difficult for him to pick up the child after school, attend church, or participate in the child's other activities. The Court noted the trial court's conclusions that the distance involved in Mother's proposed change of residence was minimal; Father would be able to exercise the same parenting time; the feasibility of preserving the relationship of the child with Father was excellent; both parties had the financial resources such that the expense of the increase in driving time was not a consideration; there was no established pattern of conduct by Mother to thwart Father's contact with the child; Father had ample additional parenting time

in the past. The Court observed that it was the prerogative of the trial court to accord more weight to the evidence favoring Mother, and it was not the Court's role to reweigh evidence or assess witness credibility. The Court noted the trial court's conclusions that Mother had met her burden of proof and Father had failed to meet his burden of proof that the proposed relocation was not in the child's best interest.

In Milcherska v. Hoerstman, 56 N.E.3d 634, 638-40 (Ind. Ct. App. 2016), the Court affirmed the probate court's denial of Mother's request to relocate with the parties' eleven-year-old child from Mishawaka, Indiana to Texas, where Mother had accepted new employment. Paternity had been established, and Mother and Father shared joint custody of the child, exercising parenting time on alternate weeks. Father objected to Mother's requested relocation. After hearing evidence, including testimony from the guardian ad litem and the therapist who was treating the child for anxiety, the probate court denied Mother's relocation request. Father did not dispute that Mother's relocation was made in good faith and for a legitimate reason. Father argued that relocation was not in the child's best interest. The Court noted the following evidence in support of the probate court's denial of Mother's relocation request: (1) the child's expressed wishes to remain in Indiana with Father; (2) the child's therapist testified that the potential move to Texas caused severe anxiety for the child, the child was significantly more anxious when she was with Mother, and was emotionally more connected to Father; (3) the child was diagnosed with Generalized Anxiety Disorder and Adjustment Disorder with Anxiety, with the latter being directly related to the move to Texas; (4) the guardian ad litem testified that the child "gets her emotional stability from her father", and has many close friends and family in the Mishawaka community; and (5) both the child's therapist and guardian ad litem testified that remaining with Father in Indiana was in the child's best interests.

In In Re Marriage of Harpenau, 17 N.E.3d 342, 347-49 (Ind. Ct. App. 2014), the Court affirmed the trial court's decision modifying primary physical custody of the parties' two children from Mother to Father due to Mother's proposed relocation from Floyd County, Indiana to Scott County, Indiana. The parties' older child was six years old and their younger child was four years old when the marriage was dissolved. The parties entered into a settlement agreement, approved by the Perry Circuit Court (trial court), which provided that Mother and Father would have joint legal custody, Mother would be the children's primary physical custodian during the school year, Father would have weekly parenting time during the school year from Friday at 5:00 p.m. until Sunday at noon, and, during the children's summer break, Mother's parenting time would be the same as Father's parenting time was during the school year. The parties also agreed that Mother would relocate to Floyd County, Indiana, and Father would relocate to a new residence in Perry County. Two months after the dissolution, Mother filed a notice of intent to move with the children to Boyfriend's residence in Scott County. In response, Father filed a petition to modify custody, requesting that he be awarded primary physical custody, and objecting to Mother's relocation. After a hearing on Father's requests, the trial court issued an order stating that Mother had proven her proposed relocation was made in good faith and for a legitimate reason, but Father had met his burden of showing that the proposed relocation was not in the children's best interests. The trial court granted Father's petition to modify custody and ordered that Father would be the children's primary physical custodian, and Mother would have the same parenting time schedule that Father had been granted in the dissolution decree. The Court found the trial court's decision that Mother's proposed relocation was not in the children's

best interests was supported by the record and was not an abuse of discretion. The Court said that the trial court should consider all of the enumerated statutory factors listed at IC 31-17-2.2-1; therefore, the parent seeking modification must present evidence on each of these factors. The Court found that there was sufficient evidence of each relevant factor to support the trial court's decision to modify custody. The Court noted that: (1) Father lived on a 160 acre property in Perry County which was also home to the children's paternal grandparents and paternal great-grandmother; (2) both Father's and Mother's relatives lived close to Father's home; (3) the oldest child had started kindergarten in Perry County; (4) the house Mother proposed to move to in Scott County was wholly owned by Boyfriend; (5) there was no specific testimony about the length of the relationship between Mother and Boyfriend or the children and Boyfriend. The Court noted that the children's stability and permanency were promoted by the change in custody because, in Father's custody, the children were able to stay in a familiar place, be close to their extended family, and to continue with their current babysitter and in their current school.

In DeCloedt v. Wagaman, 15 N.E.3d 123, 131 (Ind. Ct. App. 2014), the Court affirmed the dissolution court's order denying Mother's motion to relocate from Indiana to Orange County, California. The Court also affirmed the trial court's order which granted Father custody of the child. At the time of their dissolution, the parties agreed that Mother would have sole legal and physical custody of the child, and Father would have parenting time under the Guidelines. Two years later, Mother filed a motion to relocate with the four-year-old child to California so that Mother could reside with her new husband. Since the dissolution, Father had been consistent in his payment of child support and had exercised parenting time regularly according to the Guidelines, including for a week when Mother traveled out of state. Father, who lived in the former marital residence in Columbia City, Indiana, with his fiancée and her children, objected to Mother's relocation and requested a modification of custody. Father conceded that Mother had demonstrated a good faith and legitimate reason for moving to California, so the burden shifted to Father to show that the proposed relocation was not in the child's best interests. After hearing evidence, the dissolution court entered findings and conclusions, and ordered that it was in the child's best interest to reside with Father in Indiana. The dissolution court observed at the conclusion of the evidence that both Father and Mother were really good parents and had cooperated in parenting their child throughout his life. The Court found that the dissolution court had not abused its discretion when it denied Mother's motion to relocate and granted Father's petition to modify custody. Among the evidence which the Court noted in support of the dissolution court's decision was: (1) Orange County, California is approximately 2,141 miles from Fort Wayne; (2) Mother did not have any biological relatives in Orange County; (3) the child had a close relationship with both sets of grandparents, the children of Father's fiancée, and cousins; (4) the child was currently residing in Goshen, Indiana, with maternal grandparents, and Father would make sure that the maternal grandparents continued to see the child if Father was awarded custody; (5) relocation would end Father's frequent contact with the child and exclude him from the child's activities; (6) there was an established pattern that Father was consistent in parenting time, including extended parenting time; (7) relocation would cause an extreme emotional and financial hardship for Father to exercise parenting time; (8) Father had been employed at the same company for at least nine years.

In Gold v. Weather, 14 N.E.3d 836 (Ind. Ct. App. 2014), the Court affirmed the trial court's order which granted Mother's request to relocate from Terre Haute to Atlanta, Georgia, and

denied Father's request to modify custody of the child. *Id.* at 847. The child was born out of wedlock, Father's paternity was established by affidavit when the child was eight months old, and Father subsequently petitioned the court to establish custody, parenting time, and child support. Mother and the child lived in Terre Haute where the child's maternal grandmother, fifteen-year-old maternal aunt, and ten-year-old maternal uncle also lived. Mother worked as a registered nurse. Father lived in Indianapolis with the child's stepmother and the child's eight-year-old halfsister and two-year-old halfbrother, attended school to become an occupational therapist in the mornings, worked full time in the evenings, and spent time with his children on the weekends. The parties met in Greencastle, Indiana to exchange the child, who resided with Mother. When the child was two years old, the trial court awarded primary custody of the child to Mother, parenting time in accordance with the Guidelines to Father, and ordered Father to pay child support. After an incident involving Father's parenting time on Christmas Day when the police were involved, Mother began denying Father parenting time. Mother sent an email to Father, stating that she and the child were relocating to Atlanta. Mother filed her official notice with the trial court, stating that she and the child were relocating to Georgia because of the relocation of her family. Father filed his objection to Mother's relocation. Mother moved with the child to Georgia at the beginning of July without waiting for the court's permission. After moving, Mother secured a higher paying nursing job than she had in Terre Haute. After Mother's relocation, Father did not have any parenting time or otherwise communicate with the child. Father filed a motion to modify the child's legal and physical custody. The trial court first conducted a hearing on Father's objection to relocation, and determined that Mother had satisfied her burden to prove that relocation was made in good faith and for a legitimate reason. Later, the trial court conducted a hearing on the child's best interests and on Father's request for modification of custody. In its final order, the court: (1) determined that Father had failed to establish that the relocation would be contrary to the child's best interests; (2) denied Father's objection to the relocation and his motion to modify physical custody; (3) modified the child's legal custody to be shared jointly; (4) ordered Mother to pay \$2,000 of Father's attorney fees as a contempt sanction for her obstruction of Father's parenting time.

The Court found that there was sufficient evidence to support the trial court's finding that Mother relocated in order to be close to her immediate and extended family, which is a legitimate purpose. *Id.* at 843. The Court noted the following evidence in support of the trial court's finding: (1) as a single parent, Mother relied upon the emotional and occasionally the financial support of her family, primarily maternal grandmother; (2) Mother testified that the child is very "attached" to the maternal grandmother and has a sibling-like relationship with her aunt and uncle, all of whom have been very involved in the child's life; (3) when the child gets sick or has a school function or extracurricular activity that interferes with Mother's work schedule, the maternal grandmother cares for the child or attends the event; (4) shortly after the maternal grandmother decided to relocate to Georgia for personal reasons and employment, Mother also decided to move because they "wanted to be together." *Id.* The Court could not say that the trial court's findings on the child's best interests and on Father's custody modification request were clearly erroneous because the trial court's findings indicated that it considered each statutory factor of IC 31-17-2-21 [custody modification statute] and IC 31-17-2.2-1 [relocation statute]. *Id.* at 846. The Court said that the trial court actually afforded Father more time than stipulated in the Guidelines for long distance cases. *Id.* at 845. The Court observed that the trial court found the following evidence had been presented on the child's best interests: (1) Mother

had been the primary caregiver for the child and the child had a close bond with the maternal grandmother, aunt and uncle, all of whom resided within the home and with whom the child was bonded, prior to the relocation; (2) Mother worked from home and generally spent her days with the child during the week, while Father attended school, was home for a few hours and then worked all evening during the week; (3) by the time of the hearing, the five-year-old child had lived in Georgia for two years, was registered to begin kindergarten at a school in Mother's neighborhood, attended church with Mother, and had participated in ballet, tap dance, karate, tennis, and a beauty pageant. Id. at 846.

In Myers v. Myers, 13 N.E.3d 478 (Ind. Ct. App. 2014), the Court affirmed the trial court's determination that Mother had not met the burden of proving good faith and legitimate reasons for relocating with the parties' fourteen-year-old daughter from Indiana to Texas. Id. at 486. Mother and Father had been divorced for seven years, Mother had custody of the daughter, and Father had Guideline parenting time with the daughter. The Court noted the following evidence in support of the trial court's conclusion: (1) although Mother testified that she wished to relocate for financial reasons, the job Mother had accepted in Texas paid the same as the job she had in Indiana; (2) Mother had not sought a part-time job or a different job in Indiana and had not petitioned the court to lower her child support amount; (3) Father, siblings, the daughter's school and the daughter's piano teacher were in Indiana; (4) daughter had no friends in Texas; and (5) Mother's relocation request followed closely on the heels of a recent court order modifying custody of the parties' son to Father. Id. at 485-86. The Court held that, because Mother did not meet her burden, Father's burden of proof that relocation was not in the daughter's best interests was never triggered. Id. at 486 n.8. The Court reversed the portion of the trial court's order that automatically granted Father primary custody of the daughter if Mother relocated to Texas because an automatic future custody modification order violates Indiana's custody modification statute. Id. at 486.

In Nelson v. Nelson, 10 N.E.3d 1283 (Ind. Ct. App. 2014), the Court affirmed the trial court's denial of Mother's motion to relocate from Indiana to South Carolina with the child. Id. at 1289. The Court concluded that the trial court erred in its determination that Mother's proposed relocation was not made in good faith and for a legitimate reason. Id. at 1287. The Court cited the following evidence, inter alia, in support of its conclusion that the trial court erred: (1) Mother had no family in Indiana, and could not obtain employment in Indiana (in part due to a non-compete clause in her previous job contract); (2) Mother had filed for bankruptcy after she lost her job in Indiana, was broke, and had to move in with her boyfriend; (3) Mother had obtained employment in her field of selling medical equipment in South Carolina; (4) Mother had a large extended family in South Carolina; (5) maternal grandparents were moving to South Carolina because grandfather could not secure a job in Indiana but had found a job in South Carolina; (6) maternal grandmother, a stroke victim who had experienced medical emergencies, would have a team of family members to help her in South Carolina. Id. at 1286-87. The Court found that the evidence supported the trial court's conclusion that relocation was not in the child's best interests. Id. at 1289. In considering the feasibility of preserving the relationship between Father and the child and Mother's thwarting behavior, the Court found that the following evidence supported the trial court's denial of Mother's relocation: (1) Mother relocated to South Carolina prior to obtaining the trial court's approval; (2) the ten hour drive one-way would "significantly diminish the Father-son bond"; (3) the child custody and visitation

evaluation report stated that Mother “presented herself with a sense of entitlement” and felt that she “should be able to do what she wants to do without reproach.” Id. at 1288-89.

In Gilbert v. Gilbert, 7 N.E.3d 316 (Ind. Ct. App. 2014), the Court affirmed the trial court’s decision granting Mother’s request to relocate from Albion, Indiana to Goshen, Indiana with the parties’ two children, who were ages nine years old and six years old at the time of the decision. Id. at 324. Mother and Father shared joint legal custody with Mother having primary physical custody of the children in the parties’ dissolution agreement. Father exercised his parenting time from Friday through Tuesday on alternating weekends as well as overnight on alternating Mondays. During the children’s scholastic breaks, Father and Mother alternated physical custody on a weekly basis. Mother filed a notice of relocation about eight months after the dissolution, and Father objected to the relocation. Father also filed a verified motion requesting that the court award him physical custody. After hearing evidence, the trial court found that Mother had met her burden of proof that her proposed relocation was made in good faith and for a legitimate reason and that Father had not met his succeeding burden that the proposed relocation was not in the children’s best interest. The Court concluded that the trial court properly exercised its discretion in finding that Mother demonstrated a good faith and legitimate reason for moving. Id. at 321. The Court noted the following evidence in support of its conclusion: (1) Mother and Fiancé had recently welcomed a baby; therefore they needed a larger home to accommodate the four children in their family; (2) both Mother and Fiancé primarily worked from home and needed a house with adequate office space; (3) in deciding to purchase a home in Goshen, Mother sought to alleviate Father’s inconvenience in that Goshen is thirty miles from Father’s home in Albion and Father works in Goshen; (4) Mother wanted to maintain the same parenting time schedule with Father; (5) Father agreed that, because he works so close to the children’s new school, he could still coach their sports teams, participate in school functions, and attend their extracurricular activities. Id. at 320-21. In concluding that Father failed to prove that relocation was not in the children’s best interest, the Court noted: (1) Father would have precisely the same amount of parenting time and the same schedule for parenting time; (2) the thirty mile distance from Albion to Goshen would not prohibit Father’s active involvement in the children’s lives; (3) the children would have the same opportunity during Father’s custodial weekends to interact with his side of the family; (4) while the children’s wishes were certainly a factor to be considered, the trial court was under no obligation to place a significant value on their preferences because they were under age fourteen. Id. at 322-23. The Court observed that it is not axiomatic that changes in the children’s school, community, and daily routines are contrary to their best interests, but it is the children’s ability to adjust to those changes that determine whether relocation is appropriate. Id. at 323.

In Jarrell v. Jarrell, 5 N.E.3d 1186 (Ind. Ct. App. 2014), the Court concluded that the trial court did not err in declining to consider the relocation factors in determining Father’s motion to modify custody because Father had acquiesced to Mother’s relocation. Id. at 1195. the Court also found that the trial court did not err in modifying the custody order because there was evidence to support the findings that there was a substantial change in circumstances and that modification was in the child’s best interests. Id. The parties had agreed to share joint legal and physical custody of the child on a weekly basis in their dissolution settlement agreement, which was approved and ordered by the trial court. Five months after the dissolution order, Mother relocated to Carterville, Illinois, about 180 miles from Vincennes, Indiana where Father lived. For nearly

two years following Mother's relocation, Father and Mother maintained their alternating custody arrangement, meeting half-way between Vincennes and Cartersville to exchange the child each week. About two years after Mother's relocation, Father petitioned to modify custody because the child was going to begin attending kindergarten, which made the weekly custody arrangement impossible. The trial court held an evidentiary hearing on Father's modification petition, including conducting an *in-camera* interview with the child. The trial court entered an order modifying custody which continued the parties' joint legal custody and granted Mother sole physical custody. Father was awarded parenting time from 8:00 p.m. Friday through 6:00 p.m. Sunday for the first three weekends of each month as well as nearly the entirety of the child's summer break. Although Father appealed, the Court noted the following findings which supported the trial court's judgment: (1) the child's age and impending need to enroll in school made the current custody arrangement infeasible; (2) the child had forged new relationships with Mother's fiancé and other children in Mother's neighborhood; (3) the child had been enrolled in and thrived at a preschool which he attended during the weeks Mother had physical custody; and (4) that the commencement of school on a full-time basis would inevitably change the amount of time the child spent with each parent. *Id.* at 1193-94. The Court opined that, while Mother argued that the trial court found that she had relocated 180 miles away and that this constituted a substantial change, "[a]n out of state relocation is *not, per se*, a substantial change that merits modifying custody." (Emphasis in opinion.) *Id.* at 1193.

In H.H. v. A.A., 3 N.E.3d 30 (Ind. Ct. App. 2014), the Court affirmed the trial court's denial of Mother's request to relocate with the child from Columbus, Indiana to Hawaii, where Stepfather was employed as a government contractor working on the Pacific Missile Range. *Id.* at 39. At the time of the relocation hearing, Father and Stepmother lived in Martinsville, Indiana, and Father was exercising overnight, holiday, and summer parenting time pursuant to the Indiana Parenting Time Guidelines. The Court concluded that Mother's stated reason for her request to relocate to Hawaii with the child, which was to live with Stepfather, was sufficient to prove that her request was made in good faith and for legitimate reason. *Id.* at 36. The Court also concluded that the trial court did not err in determining that the requested relocation was not in the child's best interests. *Id.* at 39. Among the evidence noted by the Court in support of the trial court's best interests determination was the following: (1) Father would not be able to afford to travel to Hawaii to visit; (2) although Mother was willing to bear the additional transportation costs, there were concerns about her ability to pay for them given the higher cost of living in Hawaii, Stepfather's income, and Mother's earning capability; (3) relocation would substantially decrease the regularity and amount of Father's parenting time; (4) there was uncertainty about maintaining a continuing close relationship between the child and Father if relocation occurred; (5) the child had a close bond with Stepmother, her step-siblings and half-siblings, and paternal grandparents, all of whom lived in Martinsville; (6) neither Mother nor Stepfather had any extended family living in Hawaii; (7) the child had adjusted well and was thriving at her current school and had many friends; (8) the two social workers who had met with the child gave conflicting opinions on whether relocation was in the child's best interests; (9) Mother had previously been found in contempt for a prior refusal to allow Father to exercise parenting time. *Id.* at 37-39.

In Kietzman v. Kietzman, 992 N.E.2d 946 (Ind. Ct. App. 2013), the Court affirmed the dissolution court's order granting Mother's motion to relocate to China with the parties' nine-

year-old child for three years. *Id.* at 951. The Court also affirmed the court's decision to modify custody and to award sole custody to Mother so that medical and other decisions could be made quickly while the child was in China. *Id.* at 947. Mother and Father shared joint legal and joint physical custody after the dissolution of their marriage. Mother married Stepfather, who was offered a three year position in China by his employer. While in China, Mother, Stepfather, the child, and the child's younger half-brother would live in a special compound populated by employees of large international businesses, and the child would attend a special international school. The family would be able to return to the United States twice per year for three or four weeks at a time. Father appealed the dissolution court's order, but the Court found no abuse of discretion in the order. *Id.* at 951. The Court's review of the dissolution court's order revealed that: (1) the dissolution court considered the statutory factors and recognized the distance involved, the duration of time the child would be gone, the need to preserve the child's relationship with Father, the reasons for the move, and the good faith of both parents; (2) the court found that the parental relationship between the child and Father could be preserved through the use of telecommunications and Father's exclusive parenting time during return visits to the United States; (3) the court found that the relocation would be in the child's best interests as an educational and cultural experience for her; (4) the evidence presented indicated that, despite the child's recent diagnosis of ADD, the child could easily adjust to the challenges associated with a move to China and would likely thrive there; (5) the court found that Mother was readily able to provide support to aid the child's transition to China because Mother planned to become an at-home parent for much of the duration of the stay in China. *Id.* at 950.

In *Dixon v. Dixon*, 982 N.E.2d 24 (Ind. Ct. App. 2013), the Court affirmed the trial court's decision which granted Mother's request to relocate and denied Father's motion to modify custody. *Id.* at 28. When the parents divorced, Mother was granted physical custody of the two children, and Father was granted parenting time. Three years after the dissolution decree was entered, Mother filed a notice of intent to relocate due to her plans to remarry and to move with her new husband to Illinois, a drive of approximately three hours and fifteen minutes from Father's home in Indiana. Father moved to modify custody, and hearings were held on the parents' filings. Mother lived in Kokomo, where she worked as a second grade teacher, and the children, who were in first grade and fourth grade, had lived with Mother the majority of the time since the dissolution. Mother's fiancé was a contractual lobbyist for the Illinois General Assembly. Mother testified that she: (1) would marry her fiancé whether or not the trial court approved the relocation, but would not move to Illinois if it meant losing custody; (2) was willing to continue alternating weekends with Father if her request to relocate was granted; (3) was also willing to continue her past practice of ensuring the children were in Indiana for holidays to spend time with Father and his family. Father was remarried and had a son with his new wife; Father's two stepsons from his wife's previous relationship also lived with Father and his wife. Evidence was presented that Father participated in many activities with the children and attended most of their events because of the flexibility of his work schedule. The trial court found that Mother's desire to relocate was made in good faith and for a legitimate reason and was not done in haste and that, because Mother had been the children's primary caretaker since the separation, it was in their best interests to remain in her physical custody. The Court observed that, in relocation cases, the trial court is confronted with two inquiries, namely: (1) the relocating parent must first establish that the relocation is being made in good faith and for a legitimate reason; (2) if the relocating parent satisfies that burden, the burden shifts to the non-

relocating parent to show that the proposed relocation is not in the best interests of the child. Id. at 26. Affirming the trial court, the Court noted the following: (1) the trial court lowered Father's child support due to the likelihood that he would incur other expenses in attempting to maintain contact with the children; (2) the trial court granted Father additional parenting time, including all holidays, all spring breaks, and summer parenting time; (3) Father's concerns about potential future schedule conflicts of his son with his second wife did not seem like a current relevant concern. Id. at 27-28.

In D.C. v. J.A.C., 977 N.E.2d 951 (Ind. 2012), the Indiana Supreme Court reversed the Court of Appeals decision at 966 N.E.2d 158 (Ind. Ct. App. 2012) and affirmed the trial court's decision that Father would become the child's primary physical custodian and Mother would have parenting time during school breaks and on any other occasions that she visited central Indiana. Id. at 958. Mother, who had physical custody subject to Father's parenting time of three overnights per week and two weekends per month, moved to relocate to Hendersonville, Tennessee to accept significantly more lucrative employment with better work hours and to be with her boyfriend. Father filed a motion to modify custody and prevent the child's relocation. The Court concluded that the trial court made sufficient and supportable findings to sustain its decision to prevent relocation and modify custody to Father. Id. at 957. The Court said that, in this case, the trial court found that Mother met the initial burden of showing a legitimate reason and good faith in relocating. Id. The Court said that, in finding that relocation would not be in the child's best interests, the trial court cited the following: (1) the distance involved in the move was significant; (2) Father was very involved in the child's daily activities and education; (3) both maternal and paternal grandparents, along with other extended family, were involved in the child's daily life in Indiana; and (4) relocation would cause "significant deterioration" in the child's relationships with Father and the child's extended family. Id. at 955. In support of the trial court's judgment, the Court found that: (1) the trial court conducted the evidentiary hearing over two days and heard the testimony of ten witnesses, including the GAL, who believed that relocation was not in the child's best interests; (2) the child had attended preschool, kindergarten, first grade, and after-school care in Hendricks County; (3) the child was actively involved in many activities; including sports; (4) the child's best friend currently lived close to the child; (5) the child's close relationships with his godparents, older step-brother, and grandparents would deteriorate if the child were relocated; and (6) the child had progressed in his religious faith in his community. Id. at 957. The Court agreed with the Court of Appeals that there is no blanket rule that a relocation which deprives a parent of time with the child is always against the child's best interests. Id. The Court said that a trial court must take into account the child's relationship with parents, and that, here, the trial court considered Father's and the child's relationship, among a host of factors. Id. The Court accordingly could not conclude, consistent with the applicable clear-error standard of review, that there were no facts to support the trial court's judgment either directly or by inference. Id. The Court opined that trial courts are afforded a great deal of deference in family law matters, including relocation and custody disputes. Id.

In In Re Paternity of C.S., 964 N.E.2d 879 (Ind. Ct. App. 2012), the Court affirmed the trial court's order granting a petition for modification of custody filed by Father. Id. at 886. The issues addressed on appeal were whether the trial court abused its discretion in finding that a substantial change in circumstances warranted a change in custody; whether the trial court's order contravened IC 31-17-2-8; and whether the trial court erred in relying on an updated

custody evaluation. *Id.* at 880. The Court held that the trial court did not abuse its discretion in finding that the child's mental and academic growth constituted a substantial change in circumstances warranting a change in custody, that the trial court did not misinterpret IC 31-17-2-8, and that the trial court did not err in relying on the updated custody evaluation. *Id.* at 886. Mother and Father were both in military service when they began dating and they had a son in February 2006 when they were living in Bloomington. Mother and Father had entered into an agreed entry to share joint legal and equal physical custody of the child. When Mother received her college degree, she took a position at Fort Knox in Kentucky as an Army Reserve Career Counselor on active reserve duty. This was a non-deployable position. Mother filed a notice of intent to relocate and requested that the child be allowed to relocate with her, and that the current parenting time schedule continue until the child began school. Both Mother and Father had acknowledged that the child would begin school in 2011. Father filed a request for custody of the child, noting that there was a substantial change in circumstances, and that the joint custody arrangement could not continue given the distance of approximately two and one half hours between Mother's and Father's homes. After a hearing on Father's petition, the trial court granted Father's petition and ordered that Father would exercise primary physical custody so that the child could begin school at the beginning of the 2011-2012 school year. The trial court found that (1) the child had significant family and friend connections where Father lived and where the child spent most of his life; (2) Father had a stable, flexible, job; and (3) in an updated custody evaluation, the custody evaluator recommended that Father have primary physical custody. The Court held that there was a substantial change that warranted a change in physical custody; the child's academic needs had substantially changed, as the child had reached an age and developmental stage that warranted a change in custody, and the change was in the child's best interests. *Id.* at 884. The Court affirmed the trial court's conclusion that such a change was in the child's best interests. *Id.* The Court held that Mother's service in the military did not demonstrate the impermanency contemplated by IC 31-17-2-21.3 [Parent's active duty service not a factor; temporary modification of custody]. *Id.* at 885.

In *T.L. v. J.L.*, 950 N.E.2d 779 (Ind. Ct. App. 2011), the Court concluded that Mother had shown good faith and legitimate reasons for proposing relocation, but the trial did not clearly err in finding that relocation was not in the children's best interests. *Id.* at 791. The Court affirmed the trial court's judgment, which granted Father's motion to prevent relocation of the two children. Mother and Father had joint legal custody of the children, with Mother having primary physical custody and Father having parenting time as agreed or according to the Indiana Parenting Time Guidelines. Father was a lifelong resident of the county where Mother and the children resided, had been a police officer with the city police department for twenty-five years, and paternal grandparents, aunts, uncles, and cousins all lived in the same county. Father lived 1.5 miles from the Indiana residence of Mother and the children and 7.5 miles from the children's school. Father picked up the children from school every day and supervised them until Mother returned home from work. Father exercised parenting time, and was active in the children's sporting activities, including purchasing their sports equipment, coaching their teams, and transporting them to practices and games. Paternal grandparents, aunts, uncles, and cousins included the children in family gatherings for major holidays throughout the year and summer cookouts. Mother moved to relocated to Tennessee, the home of the children's maternal relatives, and planned to reside rent-free in a home owned by her family so that Mother could sell the Indiana house and pursue a career in nursing to have more job stability and financial security. Maternal grandparents had

offered to pay for Mother's nursing education in Tennessee, but could not afford to pay for Mother's schooling in Indiana because they were already assisting Mother with the mortgage on the Indiana house. The Court noted the following evidence which supported the trial court's conclusion that relocation was not in the children's best interests: (1) the children were doing well academically, were physically and mentally healthy, had activities and friends that they enjoyed, and were well adjusted to the local community; (2) paternal grandparents and Father's siblings testified that the children enjoyed a close and supportive relationship with paternal relatives that would suffer if the relocation was approved; (3) paternal grandmother testified that relocation would be "very devastating, very disruptive" to the children; (4) the older child preferred to live near both parents and did not want a change from the present arrangement. Id. at 790.

In Paternity of X.A.S. v. S.K., 928 N.E.2d 222 (Ind. Ct. App. 2010), the Court reversed and remanded the trial court's judgment which denied Father's petition to relocation to California with the twelve-year-old child, and granted Mother's petition to modify custody. Id. at 230. The Court instructed the trial court to enter an order granting Father's petition to relocate, denying Mother's request to modify custody, and setting forth new terms of visitation and support, if needed. Id. Father had been the custodial parent and primary caregiver of the child for the last nine of the child's twelve years. Mother had exercised Guideline visitation with the child and was a room mother in his classrooms, attended parent/teacher conferences, knew the child's teachers, and attended the child's athletic games. The child had paternal and maternal relatives in Indianapolis and at least one good friend. Father married Stepmother, who was a member of the United States Navy, and petitioned to relocate with the child to San Diego, California. The Domestic Relations Counseling Bureau performed a court ordered investigation and recommended that the child be permitted to relocate to California. The Domestic Relations Counseling Bureau report noted that the child's ultimate sense of home and security is with Father and that Father had concrete plans involving employment, housing, and education in California. The Court noted Father's willingness to pay for the child to fly to and from Indianapolis to visit with Mother during the summer, Christmas, and spring break. The Court observed that, whatever the outcome, the child would live across the country from one of his parents, but the Court believed that the parent-child relationship need not be irrevocably damaged in the process. Id. at 229. The Court acknowledged that this was a close case, but, because the child had spent nine of his twelve years residing with Father, the Court believed that it was in the child's best interests to continue to do so. Id. at 230.

In In Re Paternity of B.A.S., 911 N.E.2d 1252 (Ind. Ct. App. 2009), the Court held that Mother's due process rights were not violated by allowing the trial court to determine whether Mother's relocation out of state with the children was in their best interests. Id. at 1257. Mother first argued that the trial court erred in modifying custody to Father because the trial court relied on Baxendale v. Raich, 878 N.E.2d 1252 (Ind. 2008), where both parents resided in Valparaiso, and the mother wanted to move out of state. Mother contended her case was different because she lived in Valparaiso and wanted to move to Norfolk, Virginia due to her husband's naval deployment. Father already lived out of state in Illinois. The Court observed that "a nonrelocating parent is someone 'who has, or is seeking: (1) custody of the child; or (2) parenting time with the child; and does not intend to move the individual's principal residence.'" Id. at 1256. Since Father's principal residence was Illinois, and he did not intend to move, he

qualified as a nonrelocating parent. Id. Mother next argued that her due process rights had been violated. The BA.S. Court quoted Baxendale at 1259, in which the Supreme Court recognized that a “chilling effect on travel can violate the federal Constitution,” but also acknowledged that “other considerations may out-weigh an individual’s interest in travel.” BA.S. at 1256. The BA.S. Court further cited Baxendale at 1259, which states that a child’s interests are powerful countervailing considerations that do not become irrelevant simply because a parent wishes to relocate and the nonrelocating parent’s interest in the child also has a constitutional dimension. BA.S. at 1256. The BA.S. Court concluded that “Mother’s due process right to travel and parent her children may be impinged upon where relocation is not in the children’s best interests... decisions as to the custody of children always involve a balancing between competing, legitimate parental interests...” Id. at 1257. Mother’s final argument was that requiring the wife of a member of the armed services to make a choice between remaining with her husband or retaining custody of her children violated public policy. The Court acknowledged the dilemma, but stated “Mother appears to argue that such military service, here by a step-parent, trumps Indiana’s statutory and common law consideration of the best interests of the children. This is not the case.” Id.

In In Re Paternity of J.J., 911 N.E.2d 725 (Ind. Ct. App. 2009), the Court held that when the trial court does not consider each factor in the relocation statute, the trial court’s subsequent modification of custody constitutes an abuse of discretion. Id. at 726. Mother filed a notice of intent to relocate with the minor child to Florida. Although Mother had custody, Father testified that he was the primary caretaker, and that he did not pay child support. The trial court modified custody to Father. The Court initially noted that custody modifications are only permitted if the modification is in the best interests of the child, and there has been a substantial change in one or more of the factors identified in IC 31-17-2-8. Id. at 728. The Court also pointed out that modification due to relocation is covered in IC 31-17-2.2, which is summarized by Baxendale v. Raich, 878 N.E.2d 1252 (Ind. 2008). J.J. at 728. When the parent who is not relocating seeks custody of the child in response to the proposed relocation, instead of filing a motion to prevent relocation, the court must take the following factors into consideration when deciding whether to allow the proposed relocation: “(1) the distance involved in the proposed change of residence; (2) the hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation; (3) the feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties; (4) whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual’s contact with the child; (5) the reasons provided by the: (A) relocating individual for seeking relocation; and (B) nonrelocating parent for opposing the relocation of the child; (6) other factors affecting the best interest of the child.” Id. at 729, citing IC 31-17-2.2-1. The Court stated that while the relationship between the child and the nonrelocating Father was properly considered as a factor, Father was the primary caregiver because Father was not employed and not paying child support as ordered. Id. at 729. Mother was working two and sometimes three jobs in order to support herself and the child, and was complying with the Indiana Parenting Time Guidelines (IPTG) by offering Father the chance to provide daycare. Id. It was not permissible to punish Mother for following the IPTG. Id. Mother also argued that the trial court committed reversible error when it failed to consider all the factors in the relocation statute. The Court looked to precedent, which

stated that “the parent seeking to modify a custody order due to the other parent’s relocation must present evidence on each of the statutory factors.” *Id.* at 731, citing *Wolljung v. Sidell*, 891 N.E.2d 1109, 1113 (Ind. Ct. App. 2008). The trial court’s order did not address all the statutory factors, such as the hardship and expense for Father to exercise parenting time, the ability to preserve the relationship between the child and Father through parenting time, the financial situation of both parties, and whether Mother has engaged in a pattern of promoting or thwarting the relationship between Father and child. *Id.* at 731. The Court consequently remanded the case to the trial court to fully consider all the statutory factors. *Id.*

In *Baxendale v. Raich*, 878 N.E.2d 1252 (Ind. 2008) (Sullivan, J., dissenting), the Indiana Supreme Court vacated the Court of Appeals decision in *Baxendale v. Raich*, 866 N.E.2d 333 (Ind. Ct. App. 2007). *Id.* at 1253. The Supreme Court affirmed the trial court’s order giving custody to Father who previously was the noncustodial parent. *Id.* at 1260. The Court found that it was not clearly erroneous for the trial court to balance relevant considerations when it is requested to modify custody because of the custodial parent’s relocation. *Id.* at 1253. On July 1, 2006, an entirely new chapter 2.2 governing relocation in child custody cases was added to the “Custody and Visitation Rights” article of the Family Law title in the Indiana Code (IC 31-17-2.2). *Id.* at 1255. Regarding the issue of first impression presented by the interplay of the application of the previous statutory relocation provision and the newly enacted statute, the Supreme Court held that under the new chapter 2.2 the trial court may, but is not required to, order a change in custody upon relocation. *Id.* at 1253, 1254. The Court agreed with the Court of Appeals that relocation does not require modification of a custody order, but disagreed with the Court of Appeals’ finding that IC 31-17-2-21, the general provision governing custody modification, requires a change in one of the Section 8 (IC 31-17-2-8) factors for originally determining custody before a change may be ordered after a relocation. *Id.* at 1256-57. The Court noted that, because IC 31-17-2.2-2(b) of the relocation chapter expressly permits the court to consider a proposed relocation of a child “as a factor in determining whether to modify a custody order,” and IC 31-17-2.2-1(b) contains a list of relocation-oriented factors for the court to consider in making its custody determination, IC 31-17-2.2-2(b) seems to authorize a court to entertain a custody modification in the event of a significant proposed relocation without regard to any change in the Section 8 factors. *Id.* at 1257. Thus, the Court stated, “We therefore adhere to the view under the current statute that relocation may or may not warrant a change of custody.” *Id.* The Court also gave substantial consideration to Mother’s argument that the trial court’s order violated her federal constitutional right to travel by forcing her to choose between relocating to another state and retaining custody of her child. The Court found the formulation in *Clark v. Atkins*, 489 N.E.2d 90 (Ind. Ct. App. 1986), *trans denied*, did not give appropriate recognition to the rights of the relocating parent, and discussed the approach other States have taken to the interaction between a parent’s right to travel and a child custody order. *Baxendale* at 1259. The Court noted that Indiana’s custody statutes reflect these balancing concerns by considering whether the relocation is bona fide, and explicitly acknowledging the child’s interest and the effect on nonrelocating persons, including a nonrelocating parent. *Id.* at 1260. The Court held that, in this case, where Mother retained significant involvement with the child, and the child’s interests in continuity of education and contact with other family members, and Father’s interest in parenting the child were significant, the trial court’s custody order was justified. *Id.*

In Rogers v. Rogers, 876 N.E.2d 1121 (Ind. Ct. App. 2007), the Court held that the trial court correctly determined that Mother complied with the provisions of the Relocation Statute (IC 31-17-2.2) and that Father failed to establish that the relocation was not in the children's best interests. Id. at 1130, 1132. The younger child had been diagnosed with immune deficiency and struggled with constant sickness in her younger years. The older child suffered from Tourette's Syndrome, was treated by a psychiatrist, and saw counselors regularly. Mother and Father had joint legal custody, with Mother having physical custody and Father having visitation pursuant to the Indiana Parenting Time Guidelines. Father regularly exercised parenting time with the children and continued to be active in their lives, including soccer and baseball coaching. Evidence established that Father viewed the children's health and education primarily as Mother's responsibility. Mother told Father that she was considering moving to Texas, so that she could rely on her extended family members for help with the children and could help take care of her father who had lung surgery. Mother had been working twenty hours per week at Ivy Tech Community College in Lafayette. Mother filed a pro se notice of intent to relocate to Texas. Father objected to the relocation, and moved for temporary and permanent custody of the children, and a custody evaluation. Mother purchased a home in Texas and moved the children to Texas. Mother obtained full-time employment in Texas and became certified to teach in Texas. The Court concluded that Mother had satisfied her burden of proof that the proposed relocation was made in good faith and for a legitimate reason under the relocation statute. Id. at 1130. The Court also found the trial court reasonably concluded that Father failed to establish that the relocation was not in the children's best interests. Id. at 1132. The Court noted the following evidence, *inter alia*, that supported the trial court's conclusion: (1) Mother had moved to a location where she had strong family ties, had purchased a home, and had employment plans to teach in the Texas school system; (2) the children could participate in activities in Texas which were similar to those in which they participated in Indiana; (3) both parents were financially able to afford the expense of visitation, even in light of the distance factor; (4) the children's therapist testified that the move to Texas would not impede the children's ability to receive counseling or medical treatment; (5) the younger child's teacher observed that the child was excited about moving; (6) the school counselor believed the children would be fine with the move and that the older child did not seem stressed about the move. Id. at 1131. The Court described Father's emphasis on the custody evaluator's recommendation that the children should continue living in Indiana as a request for the Court to reweigh the evidence and judge the credibility of witnesses. Id. at 1131-32.

B. Changes in Physical or Mental Health:

In Smith v. McPheron, 120 N.E.3d 226, 231-32 (Ind. Ct. App. 2019), the Court affirmed the trial court's modification of custody. Mother's arguments regarding a lack of substantial change in circumstances were not supported by the evidence in the record and were not supported by any cogent reasoning. In order for a trial court to modify custody, it must find that the modification is in the best interests of the child and that there is a substantial change in one or more of the factors found at IC 31-17-2-8. IC 31-17-2-8(6) specifically provides that a trial court must consider the mental and physical health of all individuals involved in the case. Mother's argument that the trial court erred because it denied Father's request for emergency custody modification but continued to hear and ultimately grant his petition on a nonemergency basis was not supported by cogent reasoning and declined to consider the argument under Ind. Appellate

Rule 46(A)(8)(a). The Court declined to entertain Mother's argument that there was no substantial change in circumstances the time between the trial court's refusal to grant Father's emergency petition, and the granting of Father's nonemergency motion for the same reasons. Mother's argument that the child did not suffer any harm in her care was not supported by the evidence in the record and as such, was contrary to the appellate standard of review. Evidence included Mother's drug usage, the impact of her drug use on the child, the lack of supervision of the child, and the child's escape from the house during Mother's lack of supervision.

In Wills v. Gregory, 92 N.E.3d 1133 (Ind. Ct. App. 2018), the Court affirmed the trial court's order which modified physical custody of the child from Mother to Father. Id. at 1142. When paternity was established, Parents agreed that Mother would have primary physical custody of the child, with Father exercising parenting time every other weekend and on Wednesdays from after school until 7:00 p.m. When the child was in preschool, Mother suffered a stroke, which resulted in some disabilities, including aphasia and apraxia. Aphasia affected Mother's ability to express herself, and apraxia impacted her motor programming. Father filed a petition to modify physical custody of the child about two and one-half years later. At the hearing, Father testified about his concerns regarding the child's academic progress and personal hygiene, including that the child had gum in her hair when he picked her up from school and typically arrived for parenting time wearing stained clothing. Mother conceded that her stroke was a "substantial change in circumstances", but contended the change had not adversely affected her ability to be the child's primary custodian and that custody modification was not in the child's best interests. The Court recognized Mother's valid concerns, which included the child living in the home of Father where she had never lived, the change in school systems, and the physical discipline used by Father, but the Court found their potential effect on the child was overstated. Id. at 1141. The Court opined the trial court did not err when it concluded that there had been a substantial change in circumstances which adversely affected Mother's ability to be the child's primary custodian and that modification of the child's physical custody from Mother to Father was in the child's best interests. Id. at 1142.

In In Re V.C., 867 N.E.2d 167 (Ind. Ct. App. 2007), consolidated CHINS and paternity cases, the Court affirmed the trial court's order adjudicating the child to be a CHINS and modifying custody of the child from Mother to Father, concluding that there was sufficient evidence to support the order. Id. at 170. The Court found no error in the trial court's findings of fact that Mother had engaged in a pattern of behavior that was harmful to the child's emotional and mental health, and that the same behavior had a detrimental effect on the child's relationship with Father, Mother, and other family members. Id. at 182. The Court noted as evidence supporting the trial court's findings that Mother: (1) spent several years coaching her daughter to fabricate allegations of molestation against Father; (2) took her daughter, from the age of two to the age of five, to three different counselors; and (3) regularly performed examinations of her daughter's genitals after the daughter's visits with Father. Id. at 180-82.

In Heagy v. Kean, 864 N.E.2d 383 (Ind. Ct. App. 2007), *trans. denied*, a paternity case, the Court affirmed the trial court's denial of Father's petition to modify custody. Id. at 385. The Court opined that the evidence did not require the trial court to find there was a substantial change in the child's health. Id. at 391. Father had alleged that the child's exposure to second hand smoke was a substantial change in circumstance justifying a modification of custody. Id. at 385. As the

person filing the motion, Father had the burden to demonstrate a change in circumstances. *Id.* at 388. The Court pointed out that the family doctor had pronounced the child healthy and noted the trial court's findings that the Mother had made the house smoke-free, witnesses testified that there was no smoke in the house any longer, and Father's experts only presented generalized studies regarding second-hand smoke without taking into account the individual child. *Id.* at 389-90.

In *Leisure v. Wheeler*, 828 N.E.2d 409 (Ind. Ct. App. 2005), the Court affirmed the trial court's denial of Mother's petition for modification of custody. *Id.* at 411. Mother alleged that there had been changes in the child's physical health due to some bumps and bruises, and his complaints of headaches, dizziness, and blurred vision and because Father had failed to take the child to one doctor's appointment. The Court could not say that the trial court erred by determining that evidence of an isolated complaint of symptoms and a single instance of missing a doctor's appointment did not demonstrate a substantial change in the child's health. *Id.* at 416.

In *Carrasco v. Grubb*, 824 N.E.2d 705 (Ind. Ct. App. 2005), *trans. denied*, the Court affirmed the trial court's custody order granting a permanent change of custody of one of the parties' two children to Father. *Id.* at 707. The child whose custody was modified had become abusive toward Mother, who was fearful for her own safety and the safety of her other child. The child had verbally and physically attacked Mother. *Id.* at 713. There had been a substantial deterioration in the child's relationship with his sibling, and Mother had developed an inability to control the child's behavior that threatened the children's physical and emotional safety. *Id.* After a temporary change in custody to Father, the child's psychiatrist recommended that the child no longer needed to take psychotropic medication or undergo counseling. *Id.* Therefore, the Court found that it was reasonable for the trial court to have concluded that it was in the children's best interests to split the children's custody and to grant custody of one of the two children to Father. *Id.* at 713.

In *Higginbotham v. Higginbotham*, 822 N.E.2d 609 (Ind. Ct. App. 2004), the Court affirmed the trial court's decision modifying custody of the child from joint legal custody and awarding full legal and physical custody to Mother. *Id.* at 612. The Court found that there was ample evidence before the trial court that joint legal custody was no longer in the child's best interests. *Id.* The Court noted the following evidence in support of the trial court's order: (1) the child was not getting her medication during visitation with Father; (2) because she was not getting help with her homework or medication during her midweek visitation with Father, the child was emotionally distressed and upset when she returned to Mother's house after visitation; (3) Mother and Father could not agree on the child's medication for her anxiety and ADHD. *Id.*

In *Arms v. Arms*, 803 N.E.2d 1201 (Ind. Ct. App. 2004), the Court concluded Father had presented sufficient evidence to support the trial court's finding that it was in the child's best interests to modify physical custody of the child from Mother to Father and to eliminate overnight visitation between the child and Mother. *Id.* at 1212. The Court noted the following evidence in support of the trial court's order: (1) Mother spoke ill of Father and his girlfriend, calling them names in the child's presence; (2) a psychologist determined that the child's awareness of conflict had emerged and the child was being emotionally harmed by the Mother's behavior and influence; (3) Mother was playing mind games with the child and coaching him on

what to say to professionals, which taught the child how to lie; (4) the child was frightened of Mother. Id.

In Nienaber v. Marriage of Nienaber, 787 N.E.2d 450 (Ind. Ct. App. 2003), the Court affirmed the trial court's decision to modify the custody order and transfer primary physical custody from Mother to Father. Id. at 456. The Court found that the record supported the trial court's determination that there was a substantial change in at least one of the statutory factors listed at IC 31-17-2-8. The evidence included that: (1) because Mother suffered from multiple sclerosis ("MS"), she had begun to experience difficulty driving; (2) Mother acknowledged that she sometimes had to use her hands to move her foot from the brake to the accelerator and vice versa; (3) Mother had been involved in several minor accidents; (4) nevertheless, Mother continued to drive with the children in the vehicle. Id. at 453.

In Apter v. Ross, 781 N.E.2d 744 (Ind. Ct. App. 2003), *trans. denied*, the Court found that the trial court did not abuse its discretion in modifying custody of the children from joint custody to sole legal custody of the children with Mother. Id. at 749. The Court said the record revealed that both parents were uncooperative with each other and unable to communicate reasonably for the best interests of the children to the point that joint custody had become damaging to the children. Id. at 760. Because the evidence revealed that the joint custody arrangement was placing the children's welfare at stake and the children adamantly expressed their desire to remain in the custody of Mother in Saint Louis, the Court found that the trial court did not abuse its discretion. Id.

In Wiggins v. Davis, 737 N.E.2d 437 (Ind. App. 2000), the Court affirmed the trial court's decision to grant Father's modification petition and award him physical custody of both children. Id. at 442. The parties had agreed at the time of the dissolution that Mother would have primary physical custody of one child of the marriage and Father would have physical custody of the other child. To demonstrate that a modification of custody was in the child's best interests, Father presented evidence showing that the child's condition and general well-being had improved, that the child's cleanliness and manners significantly improved and that he appeared happier while living with Father due to the court's emergency custody order. Id. The Court concluded that this evidence was admissible to prove that a change in custody was in the child's best interests. Id.

In Albright v. Bogue, 736 N.E.2d 782 (Ind. Ct. App. 2000), the Court affirmed the trial court's order modifying custody from Mother to Father. Id. at 791. The Court said it was clear that the trial court's decision to modify custody was based upon ample evidence to support the conclusion that Mother was causing harm to the child by placing pressure on him to say that he was being molested by his paternal grandmother during visits with Father. Id. at 789. The Court noted the testimony of a psychologist who had evaluated the child and opined that the child was exhibiting anxiety, depression, and aggressive behavior, and the child had verbalized a wish to be dead. Id. at 786. The Court also noted the testimony of another psychologist who had treated the child and who (1) believed that Mother was coaching the child and attempting to get the child to suggest that a molestation had occurred when in fact it had not; and (2) opined that, if the child were left in Mother's care, he would have severe psychological problems as a result of Mother's inappropriate suggestions. Id. at 790.

In Palm v. Palm, 690 N.E.2d 364 (Ind. Ct. App. 1998), *trans. denied*, the Court opined that the trial court did not abuse its discretion in modifying physical custody of the child from Mother to Father. Id. at 369. The child had moved to Florida with Mother, who remarried. The Court noted that three doctors evaluated the child and all of them were concerned with the impact that the child's stepfather had on the child's psychological and emotional problems. Id. at 366. The first evaluator concluded that the child was at risk for numerous emotional difficulties and had continued to deteriorate. Id. The Court found that there was more than sufficient evidence that remaining in Florida affected the child's mental health and well-being. Id. at 369. The Court also observed that no less important was Mother's refusal to acknowledge the child's problems and to initiate the court-ordered individual therapy for the child. Id.

In Gorman v. Zeigeler, 690 N.E.2d 729 (Ind. Ct. App. 1998), the trial court found that the child's newly diagnosed brain tumor in itself had created an extreme emergency and granted Mother temporary custody of the child for the duration of the radiation treatment. The Court affirmed the decision, stating that the child's serious illness and the parents' disagreement regarding treatment of the child's illness was an extreme emergency, and the trial court did not err when it exercised jurisdiction over the modification petition. Id. at 732-33. The Court said that the record showed that Mother was actively participating in the child's treatment in California, and she worked only a few hours each month so she spent most of her days with the child. Id. at 734. The Court observed that, in contrast, (1) Father worked five days a week from 7:00 a.m. to 5:30 p.m., and until 3:30 p.m. on Friday; (2) Father's girlfriend would have to care for the child during most of the day if the child moved back to Indiana with him; and (3) Mother had hired a tutor which allowed the child to study during her radiation treatment. Id. Based on the evidence, the Court agreed with the trial court's conclusion that the child's physical and emotional needs were being better met by Mother. Id.

In Hanson v. Spolnik, 685 N.E.2d 71 (Ind. Ct. App. 1997), *trans. denied*, the Court concluded that the trial court did not err in modifying the child's custody from joint legal and joint physical custody to granting sole legal and physical custody to Father. Id. at 79. The Court found that, based on the evidence, the trial court could have reasonably concluded that the child's mental and physical welfare was in jeopardy and that custody modification was necessary. Id. at 78-79. Among the evidence noted by the Court in support of the trial court's conclusion was: (1) Mother made repeated allegations of sexual abuse against Father, none of which were substantiated; (2) the Guardian ad Litem had noted that the child had been placed "in the middle of a very intense battle zone"; and (3) Mother made disparaging comments about and allegations against Father in front of the child and others. Id. at 77-79.

In Dwyer v. Wynkoop, 684 N.E.2d 245 (Ind. Ct. App. 1997), *trans. denied*, Mother had physical custody of the child after the parent's divorce. Father remarried shortly thereafter. Mother called the stepmother to pick up the child, and the stepmother learned that Mother had tried to commit suicide over a dispute in a relationship. Id. at 246. After several hearings, the trial court modified custody, granting sole legal and physical custody to Father. Mother also suffered from a mixed personality disorder, psychopathology, poor work history, instability, poor planning, and relationship difficulties. Id. at 250. The Court affirmed the trial court's modification of custody to Father, concluding that this evidence was material to the statutory factor of "mental and

physical health of all individuals involved.” Id. The Court also found that, because information about Mother’s mental health was not previously considered by the trial court, that such new information constituted a change in a statutory factor. Id.

In Joe v. Lebow, 670 N.E.2d 9 (Ind. Ct. App. 1996), the Court affirmed the trial court’s decision modifying custody from Mother to Father. Id. at 26. The child was born with a number of health problems, including spinal neurological degeneration, scoliosis, which necessitated surgery, and a learning disability. Mother moved the child from Indianapolis to Maryland. The Court noted the following evidence on the child’s physical health, which supported the trial court’s modification decision: (1) the child, who was already obese at age eleven, gained forty pounds in the year preceding Father’s petition; (2) this weight gain appeared to contribute to the child’s developing high blood pressure, exacerbated her neuromuscular problems, and contributed to difficulty with mobility; (3) while Mother was aware that the child’s obesity was a problem, she generally allowed the child to select and prepare her own meals and was unaware of the child’s recent weight gain. Id. at 24. The Court also noted the following evidence on the child’s mental health which supported the trial court’s decision: (1) the child had become depressed and articulated thoughts of suicide or self-harm; (2) the child also felt alone and isolated while living with Mother, who was not aware of the level of her daughter’s extreme depression; (3) a psychologist testified that a parent who is really focused on and concerned about a child would pick up on some of the apparent degrees of the child’s sadness and or depression and pursue that. Id. at 24-25.

C. Educational Needs:

In Steele-Giri v. Steele, 51 N.E.3d 119 (Ind. 2016), the Court affirmed the trial court’s order denying Mother’s motion for custody modification. Id. at 119. By a prior custody agreement between the parties which was approved by the trial court, Mother and Father shared joint legal custody of their child, and Father had physical custody of the child. Mother lived in Oregon with the child’s Stepfather and half-brother and had liberal parenting time every four to six weeks as well as spring break and summer. Father lived in Indiana with Girlfriend, her two children. And the child of his marriage to Mother. Among the issues Mother raised in support of her request to modify custody were the child’s negative relationship with Girlfriend’s daughter and the child’s difficulties with her performance in school. The Court observed that there was conflicting evidence about the child’s relationship with Girlfriend’s daughter. Id. at 125. The Court held the trial court’s finding that there was no physical violence between the child and Girlfriend’s daughter was not clearly erroneous. Id. at 126. The Court found there was evidence of recent improvement in the child’s school performance and that the child was well adjusted to school, so the trial court’s finding on this issue was not erroneous. Id. at 127. The Court opined that there was ample evidence that the custody modification was not in the child’s best interests, noting: (1) a change in physical custody would decrease Father’s time with the child; (2) the child was “especially close” to her paternal grandparents, who lived in Indiana; (3) Mother had the ability to travel and would be able to enjoy regular parenting time with the child. Id. at 128. The Court observed that while the evidence *might* have supported Mother’s motion for custody modification, such modification was not *required* (emphasis in opinion). Id. at 129.

In Jarrell v. Jarrell, 5 N.E.3d 1186 (Ind. Ct. App. 2014), the Court found that the trial court did not err in modifying custody from joint physical custody, with parents having physical custody of the child alternating weeks, to awarding sole physical custody to Mother because there was a substantial change in circumstances and modification was in the five-year-old child's best interests. Id. at 1195. The trial court found that the need to modify the custody arrangement arose as the result of the child's age, because his enrollment in kindergarten would make the original alternate week physical custody arrangement impossible to maintain due to the 180 mile distance between the parents' homes. Among the evidence noted by the Court were numerous findings regarding the child's education, including (1) over the preceding two years, Mother had enrolled the child in pre-school at a learning center during her custodial weeks; (2) over the preceding two years, Father had not enrolled the child in any educational program or pre-school during his custodial weeks, but brought the child to his motor sports shop during his custodial weeks; (3) the child had thrived in the pre-school educational setting and earned high standardized testing scores upon his "graduation" from pre-school; (4) during her custodial weeks, Mother engaged the child in learning colors, shapes, numbers, and letters, or reading books; (5) during his custodial weeks, Father did not engage the child in learning colors, shapes, numbers, and letters, or reading books; (6) Father's after school plan was to continue to take the child to his shop; (7) Mother's after school plan was to continue the child's education and socialization at the learning center he had been attending; (8) Father had not taken any steps or action to enroll the child in a local school system and was unsure where the child would be enrolled; (9) Mother had already pre-enrolled the child in school. Id. at 1194-95. Although Father challenged the weight the trial court accorded to Mother's attentiveness to the child's education, the Court declined to reweigh the evidence and observed that, while the valuation of the evidence is left solely to the trial court's discretion, the trial court has a statutory duty to weigh all of the best interests factors in arriving at its decision. Id. at 1195.

In Walker v. Nelson, 911 N.E.2d 124 (Ind. Ct. App. 2009), the Court affirmed the trial court's decision to modify custody from Mother to Father, finding that there was sufficient evidence to establish that modification was in the child's best interests, and that a substantial change in the relevant custody factors had taken place. Id. at 130. Evidence showed that: (1) the child's grades declined in Mother's custody; (2) the child was receiving failing grades; (3) the child was absent for the first ISTEP testing day, and failed the ISTEP in seventh grade; (4) Mother lied about the child's absence from the first ISTEP testing day; (5) the child was suspended from school for insubordination six times, and was absent eighteen times. The Court found that this evidence, *inter alia*, was sufficient to support the trial court decision to modify custody. Id. at 128-29. Mother's contention that Father had proven none of these things was a mere request to reweigh the evidence and re-judge the credibility of the witnesses, which the Court declined to do. Id. at 129.

In Webb v. Webb, 868 N.E.2d 589 (Ind. Ct. App. 2007), the Court affirmed the trial court's decision to modify custody "based on a substantial change in the children's academic performance, resulting in a determination that it would be in their best interest to award sole custody to Father." Id. at 593-94. The Court noted that Mother resisted when Father sought testing through the school to address the children's behavior problems, poor grades, and failure of the ISTEP and when Father attempted to address the younger child's behavior problems

through mental health testing. Id. at 593. The Court, “like the trial court” found “it in the children’s best interest to modify custody to Father who is sensitive to their educational needs and who will actively aid them to reach their full academic potential.” Id. at 594.

In Higginbotham v. Higginbotham, 822 N.E.2d 609 (Ind. Ct. App. 2004), the Court affirmed the trial court’s decision to reject Mother and Father’s agreement to continue joint legal custody and to modify legal and physical custody to Mother. Id. at 610. The Court found that there was ample evidence that joint legal custody was no longer in the child’s best interests, namely: (1) the child was not getting the help she needed with her homework and medication during her visitations with Father; and (2) the child’s grades were below average, and she did not pass the ISTEP relating to English and Language Arts. Id. at 612.

In Nienaber v. Marriage of Nienaber, 787 N.E.2d 450 (Ind. Ct. App. 2003), the Court affirmed the trial court’s decision to modify the custody order and transfer custody from Mother to Father. Id. at 451-52. Evidence presented at trial showed that a general deterioration in the children’s situation had occurred in Mother’s home. Id. at 452. The older child performed poorly in school, failed the sixth grade, and also experienced frequent disciplinary problems. Id.

In Haley v. Haley, 771 N.E.2d 743 (Ind. App. 2002), the Court affirmed the trial court’s modification of custody from Mother to Father. Id. at 750. Among the evidence noted by the Court was: (1) Mother lacked a commitment to fostering the child’s educational needs; and (2) the improvement in the child’s test scores after having stayed with Father in comparison to those when she stayed with Mother. Id. at 748. The Court noted that this constituted a “substantial change in D.H.’s educational development.” Id. at 749.

D. Neglect and Abuse:

In Smith v. McPheron, 120 N.E.3d 226, 231-32 (Ind. Ct. App. 2019), the Court affirmed the trial court’s modification of custody. Mother’s arguments regarding a lack of substantial change in circumstances were not supported by the evidence in the record and were not supported by any cogent reasoning. In order for a trial court to modify custody, it must find that the modification is in the best interests of the child and that there is a substantial change in one or more of the factors found at IC 31-17-2-8. IC 31-17-2-8(6) specifically provides that a trial court must consider the mental and physical health of all individuals involved in the case. Mother’s argument that the trial court erred because it denied Father’s request for emergency custody modification but continued to hear and ultimately grant his petition on a nonemergency basis was not supported by cogent reasoning and declined to consider the argument under Ind. Appellate Rule 46(A)(8)(a). The Court declined to entertain Mother’s argument that there was no substantial change in circumstances the time between the trial court’s refusal to grant Father’s emergency petition, and the granting of Father’s nonemergency motion for the same reasons. Mother’s argument that the child did not suffer any harm in her care was not supported by the evidence in the record and as such, was contrary to the appellate standard of review. Evidence included Mother’s drug usage, the impact of her drug use on the child, the lack of supervision of the child, and the child’s escape from the house during Mother’s lack of supervision.

In Robertson v. Robertson, 60 N.E.3d 1085 (Ind. Ct. App. 2016), the Court found that the trial court did not abuse its discretion by modifying custody from Mother to Father. Id. at 1091-92. The Court opined that the evidence showed a change in the children's relationships since Mother married Stepfather, which constituted a substantial change in circumstances sufficient to warrant a modification of custody. Id. at 1091. The Court noted evidence showing that the children were previously carefree and talkative but had changed to become withdrawn and lethargic, that the children were no longer permitted to spend as much time with their family members and friends, that Mother was no longer as attentive to the children since she married Stepfather, and that Stepfather had exhibited signs of abusing prescription drugs. Id. The Court also noted that Stepfather slapped the younger child for laughing at the dinner table and was arrested for driving with a suspended license when the older child was in the car. The Court also observed that the evidence showed that modification of custody to Father was in the children's best interests. Id.

In In Re Paternity of J.G., 19 N.E.2d 278 (Ind. Ct. App. 2014), the Court affirmed the trial court's order granting Father's request to modify the child's custody. Id. at 238. The child was born in 2005, and she and Mother had moved around the country multiple times. The Crawford County, Indiana Prosecutor's Office opened a paternity case under the Uniform Interstate Family Support Act when Mother applied for food stamps in Kansas. Father's paternity was established and the parents reached an agreement, which was approved and ordered by the paternity court, that Mother would have custody of the child and Father would have parenting time. Three years later, Mother agreed to relocate to Indiana, and Father enrolled the child in school in Crawford County. The child attended school in Crawford County for the first semester; then, Mother moved the child to Nevada without informing Father. Father sought and was granted sole legal and physical custody by the trial court. The Court found that the evidence supported the trial court's conclusions that modification of custody was in the child's best interests and there had been a substantial change in one or more of the statutory factors. Id. at 283. Among the evidence noted by the Court which supported the trial court's decision to modify custody was: (1) Mother and the child have had countless residences, in multiple states, with many different roommates, and were homeless for a period of time; and (2) when Mother brought the child to Father's care, the child had ringworm in multiple places and bedbug bites over her whole body. Id. at 282-83.

In In Re Paternity of P.R., 940 N.E.2d 346 (Ind. Ct. App. 2010), the Court affirmed the trial court's decision to modify custody of the children from Mother to Father. Id. at 352. The Court noted Father's testimony about the children's dirty hands and clothes when he picked them up for parenting time, Mother's neglect of the children's medical care and failure to get the younger child's glasses repaired, and Mother's failure to supervise the older child, who suffered a burn to her foot requiring a trip to the emergency room. Id. at 348. Other evidence included: (1) Mother had been convicted of reckless driving and public intoxication; (2) Mother and children had resided with a convicted felon who had been incarcerated for child battery; and (3) Mother had applied for a Protective Order and alleged that she had been threatened by and been the victim of domestic violence by another man she had been dating. Id. at 347-48. In support of its opinion, the Court noted the trial court's conclusion that Mother had substantial issues relating to her ability to care for the children, including concerns about Mother's ability to take care of the children's cleanliness and medical needs, as well as the children's exposure to domestic violence while in Mother's care. Id. at 351.

In J.B. v. E.B., 935 N.E.2d 296 (Ind. Ct. App. 2010), the Court reversed and remanded the trial court's decision which declined to modify custody from Mother to Father. Id. at 301. Mother had physical custody of the parties' two children, a son and a daughter. The son touched the daughter inappropriately and was adjudicated a delinquent for sexual battery. The son received counseling, but the counselor frequently noted that the son remained at high risk to reoffend. Father sought physical custody of the daughter as a result of the incident. At the custody modification hearing, Father offered the son's counseling records into evidence. The trial court excluded the records, finding them inadmissible due to the counselor/client privilege. The trial court found that the records and the recorded deposition of the son's counselor were privileged and that no exception to the counselor/client privilege applied. The Court found that IC 31-32-11-1, which abrogates the counselor/client privilege for any juvenile court proceeding resulting from a report of child abuse or neglect or relating to the subject matter of report, applied to the instant case. Id. at 300. The Court said that the trial court erred in excluding the son's counseling records on the basis of privilege and that the error was not harmless, given the content of the son's counseling records and the limited grounds on which the trial court based its ruling. Id. at 300-01.

In Walker v. Nelson, 911 N.E.2d 124 (Ind. Ct. App. 2009), the Court affirmed the custody modification judgment, finding that the evidence was sufficient to establish that a modification of custody from Mother to Father was in the best interests of the child. Id. at 130. The Court noted evidence that Mother and her boyfriend frequently argued and had engaged in domestic violence, that the child and his older brother provided care for younger siblings while Mother worked until 6:00 or 7:00 p.m., and that the water at Mother's home had been disconnected for approximately four days. Id. at 128-29. The Court said that it reviewed custody modification for an abuse of discretion and was guided by "a preference for granting latitude and deference to our trial judges in family law matters." Id. at 127. The Court characterized Mother's challenges as requests to reweigh the evidence and re-judge the credibility of the witnesses, and the Court declined to do so. Id. at 129.

In In Re Paternity of M.P.M.W., 908 N.E.2d 1205 (Ind. Ct. App. 2009), the Court held that the trial court's modification of custody from Mother to Father was based on proper considerations, and the trial court did not err in modifying custody. Id. at 1209. Mother argued on appeal that the trial court had changed custody only to punish her for absconding with the child. The Court stated that "the trial court did include language regarding punishing Mother for violating the trial court's previous order and absconding the state with [the child]," but found that the trial court had noted other factors "that led to its decision that a substantial change in circumstances had occurred and that it was in the best interests of [the child] that Father be awarded custody." Id. at 1208. The Court noted these other factors: Mother fled to Michigan with the child and deprived Father of a relationship with the child; Mother dyed the child's hair while in Michigan to avoid being found; Mother withdrew the child from daycare and did not re-enroll the child while in Michigan; Mother skipped a dentist appointment by going to Michigan; the child's teeth required oral surgery, and Mother's neglect contributed to this; Mother falsely and repeatedly reported Father to Child Protective Services; and the child's immunizations were not kept up to date by Mother. Id. at 1208-09.

In Leisure v. Wheeler, 828 N.E.2d 409 (Ind. Ct. App. 2005), 828 N.E.2d 409 (Ind. Ct. App. 2005), the Court affirmed the trial court's denial of Mother's petition to modify custody of the parties' surviving child from Father to Mother. Id. at 411. Mother alleged that there was a pattern of domestic violence in Father's home because the child was being abused by Father and the paternal grandmother. The Court noted the following evidence: (1) a note allegedly written by the parties' deceased child that Father abused him and spanked him; (2) Mother had lodged several complaints with Child Protection Services, usually coinciding with Father's attempts to collect child support from Mother, and none of these complaints were substantiated; (3) Father admitted that he had used a belt to discipline his children on rare occasions; (4) Mother had observed a red mark on the surviving child's forehead and an egg-like swelling on his scalp but provided no competent evidence that the paternal grandmother had caused the injuries. Id. at 417. The Court could not say that the trial court erred by determining that there was no substantial change in circumstances. Id.

In Nienaber v. Marriage of Nienaber, 787 N.E.2d 450 (Ind. Ct. App. 2003), the Court affirmed the trial court's decision to modify the custody order and transfer custody to Father. Id. at 452. Evidence noted by the Court included that: (1) Mother persisted in attempting to discipline the children primarily through yelling; (2) Mother's parenting was "clearly verbally abusive" and "ineffective"; (3) a psychologist who conducted a custody evaluation stated that Mother's interactions with her children were "psychologically abusive"; (4) Mother also refused to send the older child's medicine with him when he went to stay at Father's house; (5) Father was unable to obtain any medication that the child could take while at Father's house because only one prescription with no refills could be issued at a time. Id. at 452-53.

In Wiggins v. Davis, 737 N.E.2d 437 (Ind. Ct. App. 2000), the Court affirmed the trial court's decision to grant Father's modification petition and award him sole legal custody of both children. Id. at 442. The trial court's preliminary order granted primary custody of one of the children to Father and primary custody of the other child to Mother. Id. at 439. Father then filed an emergency petition to modify custody, and it was granted, giving him primary custody of both children with only supervised visitation for Mother. Id. The Court found that evidence of molestation of the child by his half-brother constituted a "substantial change in the child's 'interaction and interrelationship' with his siblings." Id. at 442. The Court also found that evidence showing ongoing neglect by Mother of the child in her custody supported the trial court's decision. Id.

In Hanson v. Spolnik, 685 N.E.2d 71 (Ind. Ct. App. 1997), *trans. denied*, the Court held that the trial court did not err in modifying custody from joint legal and joint physical custody of the child to sole legal and physical custody with Father. Id. at 82. The facts indicated that, prior to the parents' divorce, the child's older sister had displayed inappropriate sexual behavior toward the child. Id. at 76. The Court opined that the trial court had not improperly base its modification decision on events which occurred before the divorce, but rather based its decision on (1) Mother's failure, since the divorce, to protect the child from further incidents by failing to provide appropriate counseling and discipline for the child's older sister; and (2) Mother's failure to acknowledge that the incident between the two children actually occurred. Id. at 77.

In Doubiago v. McClarney, 659 N.E.2d 1086 (Ind. Ct. App. 1996), *trans. denied*, the trial court granted Father's petition to modify custody, giving him sole legal custody subject to Mother's visitation. The Court found that the evidence overwhelmingly supported the trial court's modification of custody. *Id.* at 1088. The Court noted evidence that: (1) Mother regularly engaged in violent angry outbursts, often associated with her consumption of alcohol, and although she always had a bad temper, it had escalated since the divorce; (2) on one occasion, Mother struck her current husband in the head; (3) Mother had also been arrested for disorderly conduct; (4) several of Mother's tantrums involved the child or occurred in his presence; (5) a clinical psychologist conducted a custody evaluation of Mother, and was concerned with Mother's emotional stability, her suspicious nature, her difficulties she was having in her relationships, her tendency to blame others for problems, her self-centeredness, and her propensity to respond and over-react aggressively and with anger. *Id.*

E. Stability:

In Madden v. Phelps, 152 N.E.3d 602, 613 (Ind. Ct. App. 2020), the Court held that trial court did not err in finding that there had been a substantial and continuing change in circumstances, and that modifying custody to Father was in the child's best interests; trial court are not limited to the statutory best interests factors. IC 31-14-13-6 provides that after a custody order has been issued in a paternity case, a trial court cannot modify the custody order unless there is a substantial change in one or more of the best interests factors, and the modification is in the child's best interests. The best interests factors are enumerated at IC 31-14-13-2. The trial court concluded that it was in the child's best interests to modify custody to Father because of a substantial and continuing change of circumstances in several of the factors, including Father's wishes, Mother's refusal to act in the child's best interests, Mother's credibility at the hearing, Mother's refusal to adhere to binding recommendations or the advice of the child's counselor, and Mother's unstable housing. The Court found the evidence in the record to be ample evidence supporting the trial court's order. Mother argued that there was no substantial change in the factor addressing Father's wishes, because Father had always wanted custody of the child, and this was the only factor which the trial court explicitly named from the list of factors at IC 31-14-13-2. The Court noted that a trial court is directed to consider all factors in the child's best interests, and the factors enumerated in the statute are not exhaustive or exclusive. The Court opined that the trial court found a change in one statutorily-enumerated factor, Father's wishes, and several non-statutory factors. The Court further noted that custody was established in 2012, and Father filed a motion to modify custody in 2018, indicating that Father had indeed changed his wishes.

In In re Paternity of A.J., 146 N.E.3d 1075, 1082 (Ind. Ct. App. 2020) *trans. denied*, the Court held the evidence supported the trial court's determination that Mother having custody was in the child's best interests. Father argued on appeal that since he was the only biological parent of the child, Mother's evidence could not overcome the presumption that he should have custody. However, Father did not argue that the trial court applied the wrong standard; instead, Father only argued that the trial court should have weighed the evidence differently, and the Court declined the request to reweigh the evidence. A child's best interests is the controlling factor in custody cases, and the evidence most favorable to the trial court supported the judgment. The Court noted the following evidence supported the trial court's judgment: (1) Father failed to

prioritize the child; (2) Father abdicated his parental role and left caregiving to Mother; (3) Father interfered with Mother's role in the child's life as the child's only mother figure; (4) Father encouraged or permitted coaching of the child against Mother; (5) Mother and the child are well bonded; (6) Mother is very involved in the child's life and development; and (7) awarding custody to Mother allowed the child to maintain important relationships, including with Paternal Grandparents.

In Hazelett v. Hazelett, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019), the Court held that (1) the trial court failed to enter adequate findings to support its order awarding Mother sole legal and physical custody; and (2) father's absence due to his military service could not be considered as a factor in awarding Mother sole legal and physical custody. The trial court impermissibly considered Father's active duty military service and his resulting absence from the child's life as a factor in awarding Mother sole legal and physical custody; such consideration is prohibited by IC 31-17-2-21.3. IC 31-17-2-21.3 provides in part that "parent's absence or relocation due to active duty service as a factor in determining custody or permanently modifying a child custody order." The trial court specifically found that the Mother should be given sole legal and physical custody in part due to Father's limited contact with and presence in the child's life, which was due to his military service. The Court opined that this was impermissible and reversed and remanded the matter. The trial court also failed to make adequate findings regarding its award of sole legal and physical custody to Mother, and as such, the matter was reversed and remanded. The Court opined that most of trial court's findings were a recitation of testimony and contentions, rather than actual determinations. The two proper findings provided that the Mother and Father had an acrimonious relationship, that Father was in the military and often stationed overseas which reduced his contact with the child, and that the parties were unable to effectively cooperate and communicate. Because the findings were inadequate, the Court was unable to properly assess whether the evidence supported the findings, and whether the findings supported the determination.

In Purnell v. Purnell, 131 N.E.3d 622, 628 (Ind. Ct. App. 2019), the Court reversed the trial court's finding that Father's active duty status supported granting sole legal custody and primary physical custody of the Child to Mother, but otherwise affirmed the trial court's order. The application of the statute is not limited to an active duty combatant who has been deployed to another country for a limited period of time; the statute applied to Father even though his deployments were within the United States. Father's reassignments are uncertain and not voluntary. Since he is serving full time in the armed forces of the United States, he falls within the province of IC 31-17-2-21.3, despite Mother's arguments to the contrary. There is no language in the statute limiting the type of active service which qualifies for the statute, and the Court declined to read any further interpretation into the statute. Even though the trial court improperly considered Father's active duty status in awarding custody to Mother, the trial court's order was supported by sufficient other evidence. The Court noted that custody determinations and a custody order should be entered "in accordance with the best interest of the child." The Court explained that the trial court made its determination of custody based on the factors found in IC 31-17-2-8 and in its order found ninety-five findings of fact and concluded forty-seven conclusions of law. Father does not contest that the trial court's findings are supported by the evidence, rather he solely takes issues with the trial court's consideration of his active duty status in the United States Air Force.

In In Re Paternity of J.G., 19 N.E.3d 278 (Ind. Ct. App. 2014), the Court found that the evidence supported the trial court's conclusions that modification of legal and physical custody from Mother to Father was in the child's best interests and that there was a substantial change in one or more of the statutory factors. Id. at 283. Among the evidence noted by the Court which supported the trial court's decision was: (1) Mother and the child had countless residences, in multiple states, with many different roommates, and were homeless for a period of time; (2) Mother had an unstable employment history, and, at the time of the hearings, was unemployed and had been unemployed for some time; (3) Father had stable employment as a truck driver, was at home during the evenings, and had a good support system in place, including his wife and the paternal grandmother, to help care for the child; (4) the Guardian ad Litem testified that the child was very happy at school, achieved good grades, had no trouble at school, and was "really close" to Father and his wife; (5) the Guardian ad Litem also testified that the child had her own bedroom with appropriate clothing and maintained good hygiene while in Father's care; (6) the Guardian ad Litem concluded that the stability offered by Father was preferable to the instability the child had experienced with Mother. Id.

In Bettencourt v. Ford, 822 N.E.2d 989 (Ind. Ct. App. 2005), the Court affirmed the trial court's order modifying physical custody of the child from Mother to Father. Id. at 1000. The Court noted the trial court's conclusions that: (1) Mother moved to Florida without a proper job or residence for her child; (2) Mother had six different residences, and had been employed at no fewer than nine different places of employment since she moved to Florida; (3) Mother's and the child's lives had been unstable and impermanent since Mother moved to Florida with the child; (4) Father had a much more stable life in Indiana, where he was re-married, had two other children, and lived in a comfortable home with his family. Id. at 995.

In Rea v. Shroyer, 797 N.E.2d 1178 (Ind. Ct. App. 2003), the Court affirmed the trial court's decision to modify custody by granting sole physical custody of the child to Father while ordering both Mother and Father to maintain joint legal custody. Id. at 1184. The Court noted evidence that, within a span of one year, Mother and her two daughters lived: in a three-bedroom home with Mother's brother and his girlfriend (during that time Mother's brother was on home detention but Mother had no knowledge of the type of crime her brother had committed and did not think it was important); in a two-bedroom apartment with a friend (who also had two daughters staying with her); and in a new apartment with help from a friend (whose arrest record Mother testified she had no knowledge of because she did not care if he had been arrested). Id. at 1183. The Court found that this evidence supported the trial court's finding that Mother's living arrangements had been "a little concerning." Id. The Court also noted that the child had lived with Father over seventy percent of the time in the fourteen months prior to the trial court's grant of temporary custody to Father even though Mother technically had physical custody of the child. Id. at 1184. Therefore, the Court found that continuity and stability weighed in favor of keeping the child with Father and found that there was evidence in the record to support the trial court's decision. Id.

In Cunningham v. Cunningham, 787 N.E.2d 930 (Ind. Ct. App. 2003), the Court affirmed the trial court's decision denying Father's petition to modify custody of the two children from Mother to Father. Id. at 937. The Court found that, although Mother had moved twice in a one-

year period, the evidence supported the trial court's finding that Mother's home was stable. *Id.* at 395. The Court also noted that the evidence revealed that both children experienced problems adjusting to their new home and blended family. *Id.* at 936. The Court said that, although Father placed great emphasis on the reports of the psychologist custody evaluator and the Guardian ad Litem, which recommended that Father receive custody, the Court was troubled by the fact that: (1) both experts spent only about three hours interviewing and observing the children, parents, and other relevant individuals; (2) the Guardian ad Litem never spoke to the children's teachers or school counselors; and (3) neither the Guardian ad Litem nor the custody evaluator addressed the fact that Father's fiancée and her son now resided with Father. *Id.*

In *In Re Paternity of M.J.M.*, 766 N.E.2d 1203 (Ind. Ct. App. 2002), the Court affirmed the trial court's modification of custody, granting Father sole physical custody. *Id.* at 1210. The Court found there was sufficient evidence to support the decision, noting: (1) Mother had moved four to six times within the last two years; (2) Mother was more concerned with her own personal and emotional needs than the needs of her child; (3) Mother had recently become the care provider for a total of three foster children, which generated income for Mother and substantially changed the child's environment; (4) the custody evaluator recommended modification of custody to Father; (5) Father had worked at the same job for twelve years, was married and had a stable home for the child, and Father's wife would be able to care for the child fulltime. *Id.* at 1209-10.

In *Spencer v. Spencer*, 684 N.E.2d 500 (Ind. Ct. App. 1997), the Court affirmed the trial court's order transferring physical custody to Father, with joint legal custody and substantial visitation for Mother. *Id.* at 503. The Court noted the following evidence: (1) since the divorce, Mother had lived in at least nine residences and had stayed with at least four different men; (2) one of the men had abused the child by striking him on at least three occasions; (3) after Mother accepted a night factory job, the greater part of the child's days were spent in the care of a sitter, a grandparent, or unsupervised at home while Mother was sleeping; (4) Father had remarried, purchased a home in the country, and obtained a job which enabled him to be with his family four days per week; (5) because Father worked evenings and his wife worked during the day, the child would seldom have to stay with a sitter. *Id.* The Court recognized that "the child's interest in a stable home environment was an appropriate basis for a custody modification." *Id.*

In *Wallin v. Wallin*, 668 N.E.2d 259 (Ind. Ct. App. 1996), *trans. denied*, the Court affirmed the trial court's decision modifying custody of the parents' two children from Mother to Father. *Id.* at 262. The Court noted that the evidence showed: (1) Mother had moved six times within the year preceding the modification hearing; (2) during this time, Mother also shared homes with two different men and one of the homes was in very poor condition, including a leaking roof and leaking hot water heater, and electrical problems; (3) Mother had left both children with Father while she sought a suitable place for them; (4) Father had remarried, and was living in a four bedroom home that he shared with his wife, his father-in-law and two other children; (5) Father appeared able to provide the stability that was lacking in the children's lives. *Id.* at 261.

F. Child's Wishes:

In Milcherska v. Hoerstman, 56 N.E.3d 634 (Ind. Ct. App. 2016), the Court found that the probate court did not err by denying Mother's request to relocate from Mishawaka, Indiana to Texas with the parties' eleven-year-old child. Id. at 640. The Court also found that the probate court did not err by modifying the physical custody arrangement for the child from joint custody to sole legal custody to Father. Id. at 640. On appeal, Mother alleged that the court gave too much weight to the child's wishes when determining what was in the child's best interests. The Court referenced a similar situation where a mother wanted to relocate in Sabo v. Sabo, 858 N.E.2d 1064, 1070 (Ind. Ct. App. 2006), in which the Court held that it was not error for the trial court to use the eleven-year-old child's wishes as a determining factor since both parents were equally well-equipped to care for the child and all other statutory factors weighed equally in favor of both parents. Milcherska at 639. The Court also explained that, although IC 31-17-2-8 states that a child's wishes should be given greater consideration if the child is older than fourteen, a court can also "give a child's wishes more or less consideration based on additional factors, such as the child's maturity level, intelligence, emotional health, and the reasons for the child's wishes." Id. at 639-40. The Court observed that the probate court had conducted an *in-camera* interview with the child, agreed with the child's guardian ad litem that the child was intelligent and mature for her age, and therefore gave the child's wishes greater weight. Id. at 639. The Court further noted that the court's decision was not based solely on the child's wishes, but that other factors also favored the decision to place the child with Father, including the child's strong emotional connection with Father, the child's anxiety about the move to Texas, her connections in Indiana, and the great distance of the relocation. Id. at 639-40.

In In Re Marriage of Sutton, 16 N.E.3d 481 (Ind. Ct. App. 2014), the Court affirmed the trial court's order modifying primary physical and legal custody of the parties' fifteen-year-old son from Mother to Father. Id. at 483. At the time of the dissolution of the parents' marriage, Mother was awarded sole legal and physical custody of the child, and Father had parenting time in excess of the Guidelines until eleven years later, when Mother began denying his requests for additional parenting time. Father petitioned for change of custody and moved for an *in camera* interview with the child. The trial court conducted a hearing on Father's petition, conducted the *in camera* interview, and entered its order awarding sole legal and physical custody of the child to Father. On appeal the Court concluded that the trial court's decision to modify custody from Mother to Father was not clearly erroneous. Id. at 487. The Court noted that the most substantial change in circumstances was the child's wish to live with Father; and, because the child was fifteen years old at the time of the hearing, Indiana law mandated that his preference be given "more consideration" by the trial court. Id. at 486. Although Mother argued that the trial court violated the long-standing principle that a change in the child's wishes cannot serve as a basis to modify custody, the Court opined that this argument was incorrect on its face, because the statute clearly established the "wishes of the child" as a factor on which a custody modification may be based. Id. The Court said that, in this case, the child's wishes were reinforced by additional evidence, including: (1) the child had grown closer to Father in recent years, opening up to Father with details about his personal life and contacting Father to talk during the week; (2) the child had developed serious interests in computers and in golf, which are shared by Father; (3) the child enjoyed spending time in Father's household, got along with his half-siblings, and expressed the desire to be closer to his younger half-siblings and to act as a role model for them; (4) the child's relationship with Mother had become "complicated and strained"; and (5) Mother

was overbearing and had forced the child to participate in extracurricular activities in which he had little to no interest. Id.

In L.C. v. T.M., 996 N.E.2d 403 (Ind. Ct. App. 2013), the Court reversed the trial court's denial of Mother's petition to modify custody of the two children, whose ages were eleven and thirteen, from shared physical custody with Father and Mother to sole physical custody with Mother. Id. at 412. The Court concluded that the trial court's refusal to modify the shared custody arrangement was prima facie error. Id. The Court said that the trial court's determination that the parties should remain bound to their shared physical custody arrangement, despite the intervening changes that affected the children's welfare and best interests, could not stand. Id. at 411. The Court opined that extensive evidence was presented that showed the children's best interests compelled the modification. Id. at 412. Among the evidence in support of the Court's opinion was evidence from the Guardian ad Litem about the children's wishes and their relationship with Father. Id. at 410-411. The Guardian Ad Litem testified that: (1) the children had become distressed in light of the negative, disparate treatment they were receiving at Father's home, when compared to the better treatment their step-siblings were receiving; (2) the children were "adamant" that the parenting and custody schedule should change and felt that the environment at Father's home was "hostile"; (3) if the children were forced to continue in the current Monday, Tuesday at Father's, Wednesday, Thursday at Mother's, and alternating Friday, Saturday, and Sunday at the home of one parent, it would drive a huge wedge between Father and his children and irreparably harm Father's relationship with them for a long time. Id.

In Werner v. Werner, 946 N.E.2d 1233 (Ind. Ct. App. 2011), *trans. denied*, the Court affirmed the trial court's decision to modify physical custody of the children from Mother, who lived in a subdivision home in Crown Point, to Father, who lived in a rural house located near the paternal grandparents' large corn and soybean farm. Id. at 1235. The trial court's findings included the psychologist's testimony that the older of the two children was adamant that he wanted to live with Father, to be on the farm, and wanted to be a farmer with Father and grandparents. Id. at 1241.

In Tamasy v. Kovacs, 929 N.E.2d 820 (Ind. Ct. App. 2010), the Court affirmed the trial court's order which modified physical custody of the children from Mother to Father. Id. at 824. Pursuant to the parties' divorce decree, parents had joint legal custody, and Mother had primary physical custody of the children. Mother and the children moved from Indiana to Massachusetts shortly after the divorce was finalized. Father exercised parenting time with the children, including a six-week visit in Indianapolis every summer. The Court concluded that the evidence was sufficient to establish that modification was in the best interests of the children and that a substantial change had taken place warranting modification. Id. at 837. The Court noted that it considered all the factors as a whole. Id. Among the evidence noted by the Court: (1) the trial court cited to the clear indication and desire of both children to spend more time and live with Father; (2) the children preferred that Mother not be around; (3) the custody evaluator observed that there was a risk that the children would become more oppositional and defiant towards Mother if the status quo prevailed; and (4) the custody evaluator recommended that the children's overall best interests would be served by relocating to Indianapolis and changing primary physical custody to Father. Id. at 836.

In Julie C. v. Andrew C., 924 N.E.2d 1249 (Ind. Ct. App. 2010), the parents of two children agreed at the time of the dissolution decree that they would share joint legal custody with Mother having primary physical custody and Father having evening parenting time three evenings per week in addition to every other weekend. Father filed a Verified Petition for Modification of Custody or in the Alternative for Modification of Parenting Time two years after the dissolution decree was entered. The trial court heard evidence, which included a Domestic Relations Counseling Bureau report that included the older child's wishes to spend more time with his father, and an in camera interview with the child. The trial court awarded additional overnight parenting time to Father which amounted to fifty percent of the parenting time. The Court opined that an increase to fifty percent of all parenting time amounts to a modification of physical custody. Id. at 1256. The Court found that, considering Father's wish to spend more time with the children, the older child's wish to spend more time with Father, and the children's interaction and interrelationship with Father's fiancée and her children, there was sufficient evidence supporting the trial court's conclusion that there has been a substantial change in circumstances and that modification of physical custody was in the children's best interests. Id. at 1258-59.

In Sabo v. Sabo, 858 N.E.2d 1064 (Ind. Ct. App. 2006), the Court affirmed the trial court's order awarding physical custody of the child to Mother during the school year. Id. at 1071. The Court held, among other things, that the child's desire to live with Mother during the school year was entitled to some consideration even though the child was only eleven years old. Id. at 1070. The custody evaluator indicated that the child's wishes to live with her mother were normal for a girl approaching adolescence. Id. at 1067. The child explicitly expressed to the custody evaluator that it was easier to talk to her mother about "puberty issues." Id. at 1070. The Court noted that, (1) while IC 31-14-13-2(3) states that the wishes of a child at least fourteen years of age are to be given more consideration, the statute does not direct courts to discount entirely the wishes of younger children; and (2) how much consideration to give to the child's wishes was the question. Id. The Court observed that all factors other than the child's impending adolescence and her wish to live with her Mother were in equipoise that is they did not tip the balance one way or the other with respect to which parent should be awarded school-year custody. Id. at 1071.

In Nienaber v. Marriage of Nienaber, 787 N.E.2d 450 (Ind. Ct. App. 2003), the Court affirmed the trial court's decision to modify the custody order and transfer custody to Father. Id. at 456. The evidence indicated that: (1) after visiting at Father's home, the couple's older child would constantly threaten to run away if Father forced him to return to Mother's home; (2) both children had expressed a strong preference to live with Father; (3) Father testified that the older child had been "begging [him] for the last two years to file [the] motion for change of custody." Id. at 452.

In Joe v. Lebow, 670 N.E.2d 9 (Ind. Ct. App. 1996), the child firmly wished to reside with Father. These feelings were expressed to all of the experts and to Mother. The Court found that the trial court's findings with respect to other substantial changes were supported by the evidence, and the child's strongly expressed desire to live with Father could have been appropriately viewed as a "substantial change." Id. at 25.

G. Criminal History/Character:

In In Re Paternity of P.R., 940 N.E.2d 346 (Ind. Ct. App. 2010), the Court affirmed the trial court's decision to modify custody of the children from Mother to Father. Id. at 347. Mother argued on appeal that the trial court erred in considering the substance of the protective order Mother obtained against a man whom she had dated. Mother alleged in her application for a protective order that the man had smashed a phone against her face and threatened her and her boyfriend. The Court concluded the trial court properly took judicial notice of the protective order file pursuant to amended Evidence Rule 201. Id. at 350. The Court pointed out that the better course of action would have been for the trial court to have given the parties notice and an opportunity to be heard before taking judicial notice and issuing its order. Id.

In Leisure v. Wheeler, 828 N.E.2d 409 (Ind. Ct. App. 2005), the Court opined that the trial court did not err by admitting evidence of Mother's husband's criminal history. Id. at 419. The Court also affirmed the trial court's denial of Mother's petition for custody modification. Id. at 411. Father presented testimony from an investigator who had researched Mother's current husband's criminal history. The report revealed that the husband had felony convictions for burglary, theft, and had been charged with possession of marijuana. Mother's husband's criminal history was admitted to show the husband's fitness to care for her child because, if Mother were awarded custody, her husband would live in the same household and help raise the child. Id. at 419. The Court opined that if a person's character is an issue in the case, character evidence has independent relevance, and is not offered for the purpose of showing conforming conduct which is prohibited by Indiana evidence Rule 404(b). Id. at 418-19. Quoting In Re J.L.V., Jr., 667 N.E.2d 186, 190 (Ind. Ct. App. 1996), the Court observed, "[a] person's character may be a material fact in deciding who should have custody of children as fitness to provide care is of paramount importance." Id.

H. Same-Sex Partners:

In Downey v. Muffley, 767 N.E.2d 1014 (Ind. Ct. App. 2002), the Court reversed the trial court's finding that prohibited Mother from cohabitating with her same-sex partner while living with her children. Id. at 1021. The trial court conducted an emergency hearing for modification of custody on the issues of Mother's relocation to Indianapolis and whether the children should remain with Father during the proceedings. The trial court granted Mother's request to move to Indianapolis with the children. Id. at 1016. The trial court informed Mother of its intent to "impose the standard restriction prohibiting unrelated adults from spending the night while the children were present with Mother, even though the court acknowledged that the restriction as then written only applied to adults of the opposite sex." Id. There was no evidence showing that Mother's homosexuality was detrimentally affecting her children's lives. Id. at 1020. As such, the Court found that the trial court "erred by a priori imposing the restriction upon Mother without the requisite findings of harm." Id. at 1021.

I. Jurisdiction and Procedural Issues:

In Madden v. Phelps, 152 N.E.3d 602, 612 (Ind. Ct. App. 2020), the Court held that the trial court abused its discretion when it modified legal custody without a request to do so from either party, but the trial court's order modifying physical custody was not in error. Mother argued that trial court erred in awarding Father legal custody of the child; the parties had not agreed that legal custody was an issue that would be tried before the court, and neither party had filed any kind of motion requesting that the standing order of joint legal custody be modified. Father asserted that legal custody was placed at issue through the open-ended requests to modify custody. The Court noted that in the present case, unlike in Higginbotham, the parties never mentioned legal custody, and all their motions pertained only to physical custody. At the final hearing, neither party nor the trial court identified legal custody as a matter which needed to be addressed. The Court further found that the issue of legal custody was not tried by consent. Indiana case law permits issues to be tried by the consent of the parties, even when these issues were not raised in pleadings. The Court noted that during the hearing, Father indicated that he wanted to change legal custody, but agreed to the assertion that Mother would still have joint legal custody even if Father received primary physical custody. The Court opined that this indicated that Mother did not believe legal custody was an issue in play, and that Father did not believe he was currently seeking sole legal custody.

In Powers v. Blunck, 109 N.E.3d 1053, 1055 (Ind. Ct. App. 2018), the Court held that the trial court erred in denying Mother's continuance, finding Mother in default, and granting Father sole legal and physical custody based on the default finding. The Court determined that Mother provided good cause for requesting a continuance, and that default as the basis for a custody order is generally disfavored in custody disputes. Indiana Trial Rule 53.5 provides in part that a motion to continue "shall be allowed upon a showing of good cause established by affidavit or other evidence." A trial court's decision regarding a continuance is reviewed under an abuse of discretion standard; an abuse of discretion can be shown if the person seeking the continuance can show there was good cause for granting the motion. Good cause is a fact-sensitive inquiry which requires the Court to review the circumstances surrounding the motion and the reasons given to the trial court for seeking the motion for continuance. In finding that there was good cause for granting the continuance, the Court noted: (1) Mother lived in Florida; (2) Mother was served with the motion and notice of the hearing less than five days before the hearing was set to take place; (3) she immediately requested a continuance; (4) her stated reasons were valid; (5) she included a note from her doctor to supplement her claims of medical hardship; and (6) Mother had just traveled between Florida and Indiana to retrieve the child because Father was using methamphetamines. Thus, the trial court abused its discretion in denying Mother's motion for a continuance. Default judgments are not favored in custody matters in Indiana, and trial courts should be wary of issuing a custody order based on a default judgment. Indiana does not favor default judgments in custody proceedings "because of the grave importance of the matters decided therein." "[W]e do not see how the best interests of the children could be ascertained without a hearing that affords both parents the opportunity to present evidence and cross-examine witnesses..." The Court opined that trial courts should proceed with extreme caution when finding a parent to be in default in the context of a child custody matter; a trial court will be able to issue a more informed order if it hears from both parents on matters of custody, parenting time, health, education, and welfare of the children involved.

In Matter of the Paternity of J.G.L., 107 N.E.3d 1086 (Ind. Ct. App. 2018), the Court vacated the trial court's order retaining jurisdiction under the Uniform Child Custody Jurisdiction Act ("UCCJA"), and remanding back to the trial court with instructions. The Court held that the trial court abused its discretion by failing to consider all the relevant factors before making a determination as to jurisdiction. The Court noted that "the plain language of Indiana Code section 31-21-5-8(b) requires a trial court to consider the enumerated factors as well as any additional relevant factors for which the parties submit information. This is not to say, however, that a trial court need explicitly address each enumerated factor; as the statute's use of 'relevant' suggests, the trial court need not consider factors not implicated by the evidence. Ind. Code § 31-21-5-8(b)." Id. at 1091-92. The Court opined that the trial court judge made his decision orally prior to weighing each of the required factors listed above. Id. at 1092. "Indiana Code section 31-21-5-8(b) requires a trial court consider all relevant factors before making such determination. Therefore, we conclude the trial court abused its discretion." Id. Thus, the matter was remanded to the trial court, with instructions to expressly consider all the relevant factors prior to rendering a decision about retaining jurisdiction. Id.

In Wilkinson v. Assante, 107 N.E.3d 1074 (Ind. Ct. App. 2018), the Court held that that the trial court did not abuse its discretion when it declined to exercise jurisdiction over Father's petition to modify custody; a court is not limited to "considering the parties' circumstances only as they existed at the time the petition was filed, but rather can evaluate the case on a continuing basis to ensure the Children's best interests are protected", and in this case, Indiana was no longer the most convenient forum. Id. at 1080, citing Stewart, 888 N.E.2d at 761, 768 (Ind. 2008). Once a court properly exercises jurisdiction over a custody issue, that court retains jurisdiction so long as there is a significant connection between the case and the state. Id. at 1079. Indiana was the home state in this case; however, the UCCJA provides that a court that has jurisdiction may decline to exercise that jurisdiction if it finds that it is an inconvenient forum and that a court of another state is a more appropriate forum. Id., citing Stewart v. Vulliet, 888 N.E.2d 761, 766 (Ind. 2008). The Court listed the many factors which a trial court may consider in making this determination. In concluding that it was no longer the most convenient forum, the trial court considered the number of years that the family had resided in New Jersey, the history of the family with the Sussex County courts, the school and family support in New Jersey, and brief amount of time spent by the family in Indiana by comparison. Wilkinson at 1079-80. The Court did not find error, as "the UCCJA provides that 'a court with subject matter jurisdiction over a child custody dispute may nonetheless 'decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum . . . under the circumstances . . . and that a court of another state is a more appropriate forum.'" Id. at 1079, citing Stewart at 766.

In Coulibaly v. Stevance, 85 N.E.3d 911 (Ind. Ct. App. 2017), Parents were divorced in the African country of Mali, and Father was awarded custody of the two children. Following the Malian divorce hearing, but before the issuance of the custody order, Mother took the children, moved to France, and then moved to Indiana. Mother sought modification of the custody order in Indiana. The Indiana trial court (trial court) concluded that it lacked jurisdiction to modify custody and that the Malian court's custody order was entitled to enforcement. The trial court's decision was based on the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), IC 31-21-1-3. The Indiana Court of Appeals (Court) affirmed the trial court's decision, finding, as a matter of first impression, that Mother did not establish violation of fundamental human

rights by the Malian court to warrant modifying the Malian custody order. Id. at 919. The Court opined that the marital and custody laws of Mali were not shocking to the conscience or so egregious as to rise to the level of a violation of fundamental principles of human rights. Id. at 921. The Court also opined that the best interests of the child standard was inapplicable to its jurisdictional analysis under the UCCJEA. Id. at 921 n.8.

In In Re Paternity of J.G., 19 N.E.3d 278 (Ind. Ct. App. 2014), the Court affirmed the order of the Crawford Circuit Court (trial court) granting Father's request to modify the child's custody. Id. at 283. The child was born in Kentucky, and Mother and the child moved around the country to multiple states, periodically returning to Indiana. Father resided in Crawford County, Indiana. The Crawford County prosecutor's office opened a paternity case pursuant to a UIFSA request from Kansas when Mother requested food stamps in Kansas. The trial court entered an order establishing Father's paternity, and ordering him to pay child support. The trial court also ordered, pursuant to an agreement between Mother and Father, that Mother would have custody of the child and Father would have parenting time and telephone contact according to an agreed-upon schedule. Father exercised parenting time for three years, and the child spent all of the summer of the third year with Father. Mother agreed to relocate to Indiana, and Father enrolled the child in school in Crawford County. The child attended this school for the first semester of the school year. Mother moved the child to Las Vegas, Nevada during winter break without informing Father. Father filed a pro se request for a change of custody in the trial court. The trial court awarded temporary custody of the child to Father. After an evidentiary hearing, the trial court granted Father sole legal and physical custody of the child. The Court found that the trial court had subject matter jurisdiction over the child's custody and parenting time. Id. at 282. The Court found that the parties implicitly stipulated to the trial court's subject matter jurisdiction on visitation and custody under the UIFSA by entering into an agreement on these issues, placing it on the record in the paternity proceeding, and having the trial court incorporate the agreement into an order. Id.

In In Re Paternity of D.T., 6 N.E.3d 471 (Ind. Ct. App. 2014), the Court found that the trial court's order awarding custody of the child to Father was void due to lack of jurisdiction, and reversed and remanded the order. Id. at 476. The child was born out of wedlock in Anderson, Indiana. Father was listed as the child's father on the birth certificate, but paternity had never been adjudicated. The relationship between Father and Mother deteriorated, and Father was convicted of strangulation, criminal confinement, and domestic battery against Mother in the child's presence. The court in the criminal case issued a no-contact order, and Mother and the child relocated to Mississippi. Mother filed an action in the Mississippi court seeking Medicaid benefits and child support from Father. Because paternity had never been established, the Mississippi Department of Human Services transmitted a request for a paternity determination and child support enforcement under the Uniform Interstate Family Support Act (UIFSA) to Indiana. The Madison County prosecutor filed a UIFSA action in Madison Circuit Court (trial court), and Father admitted paternity in the trial court. Father requested the child's presence for a memorial service for the paternal grandmother, to which Mother consented. Two months later, when the child had not been returned to Mother, she traveled to Indiana to retrieve the child, and was informed that Father had been granted custody of the child by the trial court. Father had filed a pro se motion for custody, but Mother had not received service of process on Father's motion because Father listed the paternal aunt's address as Mother's address for service. Mother filed an

emergency motion to vacate Father's custody order pursuant to Trial Rule 60(B)(8), which the trial court denied. The Court held that the order granting custody to Father was void due to lack of subject matter jurisdiction; therefore, the trial court clearly erred in denying Mother's motion to vacate the custody order. Id. at 476. The Court noted that IC 31-18-7-2, which governs subject matter jurisdiction in UIFSA proceedings, states, "Nothing in this chapter shall be construed to confer jurisdiction on the court to determine issues of custody, parenting time, or the surname of a child. However, the parties may stipulate to the jurisdiction of the court with regard to custody, parenting time, or the surname of the child." Id. at 475. The Court observed that the trial court adjudicated Father's custody request as part of the UIFSA cause of action, and UIFSA specifies that the court lacks jurisdiction to make such a determination absent a stipulation by the parties. Id. at 476. The Court found the record was devoid of documentation indicating that the parties had stipulated to the court's jurisdiction on the custody issue, and Mother had never received notice of the custody hearing. Id.

In Tamasy v. Kovaks, 929 N.E.2d 820 (Ind. Ct. App. 2010), the Court concluded that the Indiana trial court did not abuse its discretion when it determined that it had jurisdiction over the dissolution modification proceedings. Id. at 837. The parents of three children were divorced in Indiana, with parents sharing joint legal custody and Mother having primary physical custody of the children. Mother and the children moved to Massachusetts shortly after the divorce was finalized. Father exercised parenting time with the children including six weeks summer visit in Indianapolis every summer. Eight years later, Father petitioned the trial court for modification of custody. Six days later, Mother filed custody proceedings in Massachusetts, and asked the Indiana trial court to decline jurisdiction over Father's custody petition, claiming that Massachusetts would be a more convenient forum. The trial court denied Mother's request and found that Indiana was the most convenient forum to hear the custody dispute. The Court noted that Father had continued to live in Indiana at all times since the initial custody determination and concluded that a "significant connection" remained between the instant custody matter and the trial court. Id. at 827. The Court listed the following trial court findings that supported the trial court's determination: (1) substantial travel and attendant expenses would be incurred by one of the parties regardless of which court exercised jurisdiction over the dispute; (2) Mother's income was approximately three times that of Father; (3) to limit costs and expenses, the court stated it would allow witnesses to testify in court or through deposition; (4) the trial court noted that Father's potential witnesses and the parties' parenting coordinator resided in Indiana; (5) unlike the Massachusetts court, the trial court was able to exercise jurisdiction over the related support issues, including Mother's request to claim all three children on her tax returns; (6) the trial court was intimately familiar with the facts and issues surrounding the parties and their children and was prepared to decide the case expeditiously. Id. at 828.

In In Re K.C., 922 N.E.2d 738 (Ind. Ct. App. 2010), the Court reversed and remanded the trial court's determination that it lacked jurisdiction to determine the custody of the child and the trial court's refusal to issue a writ of habeas corpus. Id. at 740. The child was born out of wedlock in Perry County, Indiana. Mother was the custodial parent pursuant to IC 31-14-3-1. Absent any adjudication of custody, Father removed the child from Indiana to Alabama and later to Mississippi. Mother located Father several years later, and filed a petition for writ of habeas corpus in Perry Circuit Court. Father moved to dismiss, claiming that Mississippi had become the child's home state and that Mississippi was the proper state to adjudicate custody under the

Uniform Child Custody Jurisdiction Act (UCCJA). At the hearing on Mother's petition, she testified that Father abducted the child from Indiana after she refused to resume living with him. The parties agreed that no court order changed custody of the child from Mother to Father, and it was uncontroverted that Mother had not had access to the child for three and one-half years. Father claimed that he had, by his unilateral action, caused Mississippi to become the child's home state under UCCJA, and thus Mississippi was the proper forum for determining custody. The Court observed that Mother had not asked the Parry Circuit Court to adjudicate custody, but had sought to enforce her rights as the legal custodial parent, and asked the court to order Father to return the child to her. *Id.* The Court opined that the petition for a writ did not implicate the provisions of UCCJA. *Id.* The Court observed that, although the child had been in Mississippi for some time, Father could not, in defiance of legal custody, change the child's "home state" so as to gain a jurisdictional advantage. *Id.* The Court said that Father's unilateral actions did not deprive the Perry Circuit Court of jurisdiction to enforce the custody rights vested in one of its citizens. *Id.*

In *Novatny v. Novatny*, 872 N.E.2d 673 (Ind. Ct. App. 2007), the Court vacated the trial court's custody order, finding that the trial court erred by assuming jurisdiction. *Id.* at 675. The Court opined, pursuant to the Uniform Child Custody Jurisdiction Act (UCCJA), that Virginia would have had jurisdiction as the children's home state when Father filed his petition for modification of custody. *Id.* at 681. The Indiana trial court dissolved the parties' marriage and, among other things, awarded physical custody of the children to Mother. Father then moved to Illinois. Five years after the dissolution, with the court's permission, Mother moved with the children to Virginia where they continued to live. Two years later, Father, who still lived in Illinois, filed to modify custody in the Indiana trial court. *Id.* at 676. Despite Mother's objection to the trial court's assertion of jurisdiction, the trial court modified custody to Father. *Id.* Mother appealed and argued that the trial court lacked jurisdiction under the UCCJA. *Id.* at 677-78. The Court concluded that none of the requirements of IC 31-17-3-3 (Indiana's UCCJA) necessary for assertion of jurisdiction by the trial court, had been met. *Id.* at 680.

In *Cox v. Cantrell*, 866 N.E.2d 798 (Ind. Ct. App. 2007), *trans. denied*, the Court affirmed the Indiana trial court's decision to transfer jurisdiction of a child custody proceeding to a court in Michigan. *Id.* at 801. The Michigan court had asserted emergency jurisdiction pursuant to a petition filed by the Michigan Department of Human Services alleging abuse or neglect and had placed the children in residential placement prior to the parents jointly filing a Stipulation of Change of Custody and Support with the Indiana trial court. The Indiana trial court initially approved the parties' custody stipulation, but subsequently, after being contacted by the Michigan court, the trial court transferred jurisdiction of the custody matter to the Michigan court. Father appealed, asserting that Indiana's Uniform Child Custody Jurisdiction Law (UCCJL), specifically IC 31-17-3-7(a), precluded the trial court from transferring jurisdiction after it had issued its decree approving the parties' stipulation. After extensive discussion and analysis, the Court found that the trial court's order approving the parties' custody stipulation was void as violating the full faith and credit clause (*see* IC 34-39-4-3); therefore, the trial court was not precluded from issuing its order transferring jurisdiction to the Michigan court. *Id.* at 807-08. The Court found that (1) the Michigan court had correctly asserted jurisdiction under the federal Parental Kidnapping Prevention Act (PKPA) which provides that a state court has jurisdiction if "it is necessary in an emergency to protect the child because the child...has been

subjected to or threatened with mistreatment or abuse.” 28 U.S.C. § 1738A(c)(2)(C)(ii)(2000); and (2) the trial court was required “to enforce, and not modify, custody orders entered by courts in other States if the court’s decision ‘was made consistently with the provisions of this Section.’” 28 U.S.C. § 1738A(a). *Id.* at 807-08. The Court also held that the trial court’s order transferring jurisdiction to the Michigan court did not fit the UCCJL’s definition of “decree.” *Id.* at 809.

In Westenberger v. Westenberger, 813 N.E.2d 343 (Ind. Ct. App. 2004), the Court affirmed the trial court’s decision that Arkansas was a more appropriate forum. *Id.* at 349. Mother and the child had been living in Arkansas for fifteen months prior to Father petitioning to modify custody. Father still resided in Indiana; therefore, under the Uniform Child Custody Jurisdiction Act (“UCCJA”), the Indiana trial court had jurisdiction over the modification process. *Id.* at 345. However, Section 7 of the UCCJA provides that a court having jurisdiction under the UCCJA nevertheless “may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.” *Id.* Substantial evidence concerning the children’s present or future care, protection, training, and personal relationships was more readily available in Arkansas than in Indiana. *Id.* There was no blatant attempt at forum shopping and no evidence had been gathered, aside from taking the parties’ depositions, nor had the trial court conducted any evidentiary hearings. *Id.* at 348.

In Sudvary v. Mussard, 804 N.E.2d 854 (Ind. Ct. App. 2004), *trans. denied*, the question was whether a trial court which had jurisdiction under UCCJL at the time a petition to modify was filed can subsequently lose jurisdiction while that petition was pending because of a change in the parties’ circumstances. The trial court granted Father’s petition and ordered that he have physical custody of the child, and reaffirmed its prior ruling regarding jurisdiction. The Court opined that “jurisdiction under the UCCJL is determined on the date that a petition to modify is filed and that a court cannot lose jurisdiction while a petition is pending.” *Id.* at 857. The Court found that Father’s move to Illinois from Indiana while the modification proceedings were pending did not divest the Indiana trial court of jurisdiction. *Id.* at 859.

J. Child Rearing as a “Battleground”:

In Madden v. Phelps, 152 N.E.3d 602, 613 (Ind. Ct. App. 2020), the Court held that trial court did not err in finding that there had been a substantial and continuing change in circumstances, and that modifying custody to Father was in the child’s best interests; trial court are not limited to the statutory best interests factors. IC 31-14-13-6 provides that after a custody order has been issued in a paternity case, a trial court cannot modify the custody order unless there is a substantial change in one or more of the best interests factors, and the modification is in the child’s best interests. The best interests factors are enumerated at IC 31-14-13-2. The trial court concluded that it was in the child’s best interests to modify custody to Father because of a substantial and continuing change of circumstances in several of the factors, including Father’s wishes, Mother’s refusal to act in the child’s best interests, Mother’s credibility at the hearing, Mother’s refusal to adhere to binding recommendations or the advice of the child’s counselor, and Mother’s unstable housing. The Court found the evidence in the record to be ample evidence

supporting the trial court's order. Mother argued that there was no substantial change in the factor addressing Father's wishes, because Father had always wanted custody of the child, and this was the only factor which the trial court explicitly named from the list of factors at IC 31-14-13-2. The Court noted that a trial court is directed to consider all factors in the child's best interests, and the factors enumerated in the statute are not exhaustive or exclusive. The Court opined that the trial court found a change in one statutorily-enumerated factor, Father's wishes, and several non-statutory factors. The Court further noted that custody was established in 2012, and Father filed a motion to modify custody in 2018, indicating that Father had indeed changed his wishes.

In Rasheed v. Rasheed, 142 N.E.3d 1017, 1022 (Ind. Ct. App. 2020), the Court held that the award of joint legal custody between Mother and Father was improper; where the parties have made child rearing into a battleground, joint legal custody is not appropriate. Persons awarded joint legal custody must share in authority and responsibility for major decisions involved in raising a child, which includes, but is not limited to, a child's education, health care, and religious instruction. IC 31-9-2-67. A court's primary consideration in making an award regarding legal custody is the welfare of the children, and not the wishes of the parents. *Id.* at 1021-22. IC 31-17-2-13 provides that "[t]he 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." IC 31-17-2-15 pertains to an award of joint legal custody and provides standards and factors to consider. The Court noted that "whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare" was particularly important and where parties have made childrearing a battleground, joint custody is not appropriate. The Court noted all the facts in the record pointed heavily towards joint custody being a battleground between the parents and concluded that based "on the record before us, and in light of the parties' history of non-cooperation, we conclude the court erred in ordering the parties to share joint legal custody." The Court noted the testimony of the GAL and the GAL's recommendations as further evidence that the parties were utterly unable to cooperate.

In In re Paternity of A.J., 146 N.E.3d 1075, 1082 (Ind. Ct. App. 2020) *trans. denied*, the Court held the evidence supported the trial court's determination that Mother having custody was in the child's best interests. Father argued on appeal that since he was the only biological parent of the child, Mother's evidence could not overcome the presumption that he should have custody. However, Father did not argue that the trial court applied the wrong standard; instead, Father only argued that the trial court should have weighed the evidence differently, and the Court declined the request to reweigh the evidence. A child's best interests is the controlling factor in custody cases, and the evidence most favorable to the trial court supported the judgment. The Court noted the following evidence supported the trial court's judgment: (1) Father failed to prioritize the child; (2) Father abdicated his parental role and left caregiving to Mother; (3) Father interfered with Mother's role in the child's life as the child's only mother figure; (4) Father encouraged or permitted coaching of the child against Mother; (5) Mother and the child are well bonded; (6) Mother is very involved in the child's life and development; and (7) awarding custody to Mother allowed the child to maintain important relationships, including with Paternal Grandparents.

In Hazelett v. Hazelett, 119 N.E.3d 153, 161 (Ind. Ct. App. 2019), the Court held that (1) the trial court failed to enter adequate findings to support its order awarding Mother sole legal and physical custody; and (2) father's absence due to his military service could not be considered as a factor in awarding Mother sole legal and physical custody. The trial court impermissibly considered Father's active duty military service and his resulting absence from the child's life as a factor in awarding Mother sole legal and physical custody; such consideration is prohibited by IC 31-17-2-21.3. The trial court also failed to make adequate findings regarding its award of sole legal and physical custody to Mother, and as such, the matter was reversed and remanded. The Court opined that most of trial court's findings were a recitation of testimony and contentions, rather than actual determinations. The two proper findings provided that the Mother and Father had an acrimonious relationship, that Father was in the military and often stationed overseas which reduced his contact with the child, and that the parties were unable to effectively cooperate and communicate. Because the findings were inadequate, the Court was unable to properly assess whether the evidence supported the findings, and whether the findings supported the determination.

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. 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)." 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.

In G.G.B.W. v. S.W., 80 N.E.3d 264 (Ind. Ct. App. 2017), the Court reversed and remanded the trial court's order which denied Father's petition to modify joint legal custody for the limited purpose of making medical decisions regarding the child's vaccinations. Id. at 273. The child was not vaccinated after her birth. Parents entered into an Agreed Decree of Paternity which provided that they would share joint legal custody, Mother must seek Father's input before making any major medical, religious, or educational decisions, and if the child attended a school that required vaccinations for enrollment, and the child would be denied enrollment unless she received the vaccinations, then the child would be given the required vaccinations for enrollment. When the child was enrolled in a public school kindergarten which required that she be vaccinated unless there was a religious objections to vaccinations according to state law, Mother sought Father's consent to sign the religious objection form, but Father did not consent.

The child continued to attend school without being vaccinated. When Father and Stepmother became the parents of twins, one of whom could not be vaccinated due to a heart condition, Father petitioned to modify joint legal custody for the purpose of making medical decisions. Father alleged there was a substantial change in circumstances because the child had not received any vaccinations. Father also filed a contempt petition alleging that Mother had violated the paternity decree because she falsely advised the child's school of her religious objection to vaccination. The Court held the trial court abused its discretion by not finding Mother in contempt and by denying Father's petition to modify legal custody. *Id.* at 271-72. The Court looked to IC 31-14-13-2.3(c), the joint custody statute for paternity cases, and noted the factor which provides the court should consider "whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare." *Id.* at 271. The Court opined that, based on Mother's actions, there was a substantial change in her ability to communicate and cooperate with Father in advancing the child's welfare. *Id.* at 272. The Court held that, for the same reasons, modification of legal custody was in the child's best interests. *Id.*

In *J.W. and M.W.*, 77 N.E.3d 1274 (Ind. Ct. App. 2017), the Court affirmed the trial court's order which modified Parents' agreement to share joint legal custody of their children and awarded sole legal custody to Mother. *Id.* at 1280. The Court reversed the trial court's order which required Father to obtain Mother's consent to the children's extracurricular activities when they are with Father. *Id.* After Parents agreed to share joint legal custody, communication between them deteriorated, and they were unable to agree about the children's extracurricular activities. The children were heavily involved in dance classes and competitions, but Father wanted to take them to tennis and golf lessons at his country club. Additionally, Father did not provide Mother with contact information when the children were attending sleepovers and were not at Father's home during parenting time. Mother filed multiple motions for contempt and a motion to determine the children's extracurricular activities. Father filed a motion to modify parenting time, and Mother counter-petitioned to modify parenting time and custody. The trial court issued orders which found that it was in the children's best interests that Mother be awarded sole legal custody. The Court determined that there had been a substantial change in one or more of the factors listed at IC 31-17-2-15 (the joint custody statute), and noted the trial court's finding that Parents were no longer able to work together or communicate effectively. *Id.* at 1279. The Court opined the evidence supported the trial court's conclusions that there was a substantial change in the statutory factor regarding Parents' cooperation and communication, and that custody modification was in the children's best interests. *Id.* The Court noted the following evidence supported the trial court's finding: (1) Father had failed to provide Mother with the right of first refusal when he was unable to care for the children during his parenting time; (2) Father had refused to provide Mother with the host name and telephone number of the location where the children were staying if they were not with Father during his parenting time; (3) Father and Mother were unable to agree about the children's extracurricular activities. *Id.*

In *Montgomery v. Montgomery*, 59 N.E.3d 343 (Ind. Ct. App. 2016), the Court reversed the trial court's order which modified custody of the parties' six-year-old daughter from Father to Mother. *Id.* at 355. The Court looked to IC 31-17-2-21, which states that a trial court may not modify a child custody order unless a noncustodial parent shows both that modification is in the child's best interest, and that there has been a substantial change in one or more of the custody factors listed at IC 31-17-2-8. *Id.* at 350. The Court could not find evidence of a substantial

change in circumstances that would support a modification of custody. *Id.* at 352. The Court found that the primary reasons identified by the trial court for modifying custody in favor of Mother were: (1) Father's denial of some of Mother's parenting time in previous years; and (2) Father's allegations that Mother's boyfriend had physically assaulted the child, which the trial court found to be fabricated. *Id.* at 351. The Court observed the trial court made no finding as to what circumstances substantially changed that warranted a modification of custody. *Id.* The Court said: (1) it is true that in some cases a custodial parent's interference with a noncustodial parent's visitation rights may be of such a degree that it represents a substantial changes in the parties' relationship; (2) on the other hand, it is well-settled that in order to support a modification of custody, such interference must be continuing and substantial. *Id.* The Court noted Father's actions deprived Mother of five out of the fifteen weeks of parenting time to which she was entitled, which was not a complete cessation of parenting time between Mother and the child. *Id.* at 352. The Court observed that regular parenting time between Mother and the child had resumed, and there was no evidence that Father's interference with Mother's parenting time had any detrimental effect on the child's mental or physical health. *Id.* The Court also found no evidence that the child's relationship with Mother was substantially affected. *Id.* In light of the evidence of the child's positive living situation with Father, the complete dearth of evidence on what the child's living situation with Mother would be like, and the lack of evidence that Father's interference with Mother's parenting time substantially impacted Mother's relationship with the child or affected the child's mental or physical health, the Court opined there was insufficient evidence that modifying custody was in the child's best interests. *Id.* at 353.

In *Milcherska v. Hoerstman*, 56 N.E.3d 634 (Ind. Ct. App. 2016), the Court affirmed the probate court's orders which: (1) denied Mother's motion to relocate from Mishawaka to Texas with the parties' eleven-year-old child, and (2) modified custody of the child from joint custody to sole legal and primary physical custody with Father. *Id.* at 642. The Court discussed the joint custody factors at IC 31-17-2-15, and cited *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1260 (Ind. Ct. App. 2010), noting that whether the parents are willing and able to cooperate in advancing the child's welfare is of particular importance in making legal custody determinations. *Milcherska* at 641. The Court quoted *Periquet-Febres v. Febres*, 659 N.E.2d 602, 605 (Ind. Ct. App. 1995), which states that where "the parties have made child-rearing a battleground, then joint custody is not appropriate". *Milcherska* at 642. The Court observed that: (1) the probate court and the child's therapist repeatedly acknowledged the contentious nature of the litigation and the uncooperative behavior of both parents; and (2) the therapist specifically testified that the parents had a history of conflict and significant "co-parenting difficulties" which caused the child to feel "trapped in the middle" and "manifest[ed] in anxiety for [the child]." *Id.* The Court said, "it appears that joint legal custody would not be appropriate in light of the parents' ongoing disagreements." *Id.*

In *Maddux v. Maddux*, 40 N.E.3d 971 (Ind. Ct. App. 2015), the Court reversed the trial court's denial of Father's petition for custody modification and remanded for entry of judgment in his favor on this issue and a new calculation of the parties' child support obligations. *Id.* at 981. The Court opined that the trial court clearly erred in concluding that the children's best interests did not warrant a change in custody. *Id.* at 981. Citing *Hanson v. Spolnik*, 685 N.E.2d 71, 78 (Ind. Ct. App. 1997), *trans. denied*, the Court said that a custodial parent's general lack of cooperation or isolated acts of misconduct cannot serve as a basis for custody modification. *Maddux* at 979. Quoting *Albright v. Bogue*, 736 N.E.2d 782, 790 (Ind. Ct. App. 2000), the Court noted that "[i]f

one parent can demonstrate that the other has committed conduct so egregious that it places a child's mental and physical welfare at stake, the trial court may modify the custody order." Maddux at 979. The Court said it had been asked in the instant case to reverse a judgment denying a custody modification petition where the evidence and findings indicated a pervasive pattern of egregious behavior by the custodial parent adversely affecting the children's wellbeing. Id. at 980. Although the Court was hesitant to tread upon the trial court's unique position as finder of both fact and law, the Court noted that its decision was based on the conclusions of law, which are reviewed *de novo*. Id. The Court noted that in one conclusion the trial court characterized Mother's conduct as causing irreparable harm to the children's relationship with father and to "their emotional wellbeing." Id. The Court also noted that, with respect to the children's best interests, the trial court concluded "the [c]hildren are developing well according to their ages and maturity." Id. The Court found that these conclusions were inconsistent, and the findings did not support the trial court's conclusion regarding best interests. Id. The trial court made extensive findings of fact that Mother had jeopardized her children's emotional health, but, in assessing the children's best interests, the trial court concluded that this did not warrant a change in custody. Id. The Court observed that the trial court's conclusion of Mother's irreparable harm to the children did not support the trial court's determination concerning the children's best interests. Id. at 981.

In Bailey v. Bailey, 7 N.E.3d 340 (Ind. Ct. App. 2014), the Court reversed the trial court's order, which modified custody from Mother having primary physical custody to Mother and Father sharing joint legal custody and alternating weeks of physical custody between Mother and Father. Id. at 346. Mother and Father had numerous disagreements, primarily about their children, mediation had been previously attempted but was unsuccessful, Mother had been denying parenting time and had filed a petition to restrict Father's parenting time, and Father had filed a contempt petition against Mother. After the trial court heard evidence on contempt petitions and Mother's petition to restrict visitation, the judge asked the parents' attorneys whether the court was able to enter a Parallel Parenting Time Order based on the pleadings that were before the court. Mother's attorney agreed that the court had that power. In addition to modifying custody to alternate weeks of physical custody, the court entered various provisions outlined in the Parallel Parenting Time section of the Guidelines. The Court opined that the trial court's custody modification order suffered from the fundamental defect that neither parent had ever requested a change of custody. Id. at 344. The Court said that longstanding Indiana law has prohibited trial courts from *sua sponte* ordering a change of custody. Id. The Court observed that parents never discussed or argued whether there had been a change of circumstances related to any of the statutory factors warranting custody modification or whether there was a change in the children's best interests. Id. at 345. The Court noted that Mother had no warning that she had to present evidence on custody modification issues. Id. The Court concluded that the trial court abused its discretion in *sua sponte* modifying physical custody and remanded for the trial court to make all necessary corrections to its order. Id. at 345-46.

In In Re Paternity of B.B., 1 N.E.3d 151 (Ind. Ct. App. 2013), the Court affirmed the trial court's modification order awarding legal and physical custody of the four-year-old child to Mother with Guideline parenting time for Father. Id. at 164. The Court said that the trial court's findings and conclusions were not clearly erroneous, and concluded that the trial court did not abuse its discretion in granting Mother's petition. Id. The Court noted the crux of the trial court's

conclusions that the parents' shared custody arrangement was no longer viable because: (1) parents had demonstrated an inability to communicate with one another which had impacted the child's behaviors and development; (2) the child was approaching the age at which he would be attending school five days per week, which necessitated a primary residence; (3) the parents lived in different cities; and (4) between the two parents, Mother was more likely not to interfere or diminish the non-custodial parent's role with the child. Id. at 163.

In Wilson v. Meyers, 997 N.E.2d 338 (Ind. 2013), the Court remanded the trial court's custody modification order, which was entered without an evidentiary hearing where witnesses were sworn and testimony heard. Id. at 342. The Court found that the issuance of the order was an abuse of discretion. Id. at 340. The Court opined that summary proceedings, when properly agreed to, can be beneficial in deciding matters of custody and parenting time to minimize the negative impact on the children, but summary proceedings may be less appropriate where the parties are vigorously contesting every facet of the process and appear incapable of approaching these decisions in a civil or cooperative manner. Id. at 342. In such cases, the Court encouraged trial courts to use the formal procedures embodied in the Indiana Trial Rules to maintain a level of control and decorum that keeps the litigation process from turning into a "mud-slinging argument" and preserves the rights of all involved. Id. The Court remanded the case for a proper evidentiary hearing and inquiry into in-camera interviews to address Mother's motion for modification of custody. Since the children were living with Mother and attending school in Michigan, the Court ordered the status quo to continue until further order of the court. Id.

In In Re Paternity of J.T., 988 N.E.2d 398 (Ind. Ct. App. 2013), the Court affirmed the trial court's decision which modified custody, granting sole legal and physical custody of the parties' three children to adjudicated Father. Id. at 401. The Court held that a substantial change in circumstances in the interrelationship of the parties was established by evidence that Mother routinely denied Father parenting time, and this substantial change permitted a modification of custody. Id. The Court opined that the findings made by the trial court were sufficient to support its judgment, and to show that the trial court had not abused its discretion. Id. at 400. The findings were: (1) since April 2010, Mother had engaged in a continuing pattern of denying parenting time to Father; (2) Father filed three separate contempt petitions regarding the denial of his parenting time; (3) from December 2011 to July 2012, Mother only permitted Father to have a six minute telephone conversation with the children, an eight minute in person conversation with the children outside Mother's house, and another six minute in person conversation outside Mother's house; (4) Father was denied parenting time on thirty-one separate occasions; and (5) Mother had "acted in complete defiance of the existing parenting time orders over an extended period of time" and her pattern of denying Father parenting time was not likely to change, given her demeanor, testimony, and past failure to honor her assurances. Id. at 400-01.

In In Re Paternity of A.S., 948 N.E.2d 380 (Ind. Ct. App. 2011), the Court affirmed the trial court's decision, which modified the child's custody from equally divided parenting time to primary physical custody with Mother. Id. at 389. The trial court awarded parenting time to Father every other weekend. The Court noted that there was overwhelming evidence that the parents were not able to effectively co-parent. Id. at 388. The Court could not say that the trial court abused its discretion in modifying custody to Mother. Id. The Court listed the following findings in support of the trial court's order: (1) Father demonstrated less willingness to

cooperate than Mother; (2) Father refused to exchange the child with Mother's relatives regardless of the circumstances; (3) Father refused to respond to many of Mother's letters despite the fact that the co-parenting counselor had recommended that they communicate in writing to reduce hostility; (4) Father continued to try to communicate by telephone and recorded the conversations in direct contravention of the trial court's order; (5) Father's telephone rants shed additional light on his hostile and inflexible attitude; (6) granting primary custody to Mother would allow the child to enjoy educational and gymnastic programs without interruption and Father does not dispute that the child enjoys and benefits from these programs. Id.

In Tompa v. Tompa, 867 N.E.2d 158 (Ind. Ct. App. 2007), the Court affirmed the trial court's decision to modify custody by giving Father sole legal custody and modifying Mother's primary physical custody to equal parenting time for both parents. Id. at 161. The Court cited examples of failures to communicate and cooperate, as well as Mother's contentious conduct and failure to inform Father of matters such as planned medical procedures for the children. Id. at 163-64. The Court held that the evidence showed the trial court properly used its discretion in modifying the joint legal custody arrangement to sole legal custody in favor of Father. Id. at 164.

In Van Wieren v. Van Wieren, 858 N.E.2d 216 (Ind. Ct. App. 2006), the Court held the trial court did not abuse its discretion in refusing to modify the parties' split physical custody arrangement. Id. at 222. Regarding joint legal custody, the Court said: "When divorced parents are charged with making major decisions as a unit, it is apparent that a relationship filled with hostility and resentment presents a significant obstacle. It follows, therefore, that when child-rearing becomes a 'battleground,' ... modification of joint legal custody is a sensible step to take for the best interests of the children." Id. However, the Court found modification to sole physical custody not to be effective in situations involving contentious parents: "If the trial court had awarded sole physical custody to either party, the 'winner' would have been well rewarded for obstreperous, disrespectful, and distasteful behavior." Id.

Legal Custody

In Hecht v. Hecht, 142 N.E.3d 1022, 1030 (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. 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. 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. The Court noted the contents of each section of the code, as well as prior case law, Julie C. v. Andrew C., 924 N.E.2d 1249, 1259-60 (Ind. Ct. App. 2010) (holding the trial court must consider three statutes when modifying legal custody: Section 8, Section 15, and Section 21). 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. Additionally, the trial court considered all of the factors in Section 15, which overlaps significantly with Section 8. Id. The trial court was not required to make specific findings regarding each of the factors unless a party requested such findings, and neither party requested such findings. 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. 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.

In Madden v. Phelps, 152 N.E.3d 602, 612 (Ind. Ct. App. 2020), the Court held that the trial court abused its discretion when it modified legal custody without a request to do so from either party, but the trial court's order modifying physical custody was not in error. Mother argued that trial court erred in awarding Father legal custody of the child; the parties had not agreed that legal custody was an issue that would be tried before the court, and neither party had filed any kind of motion requesting that the standing order of joint legal custody be modified. Father asserted that legal custody was placed at issue through the open-ended requests to modify custody. The Court noted that in the present case, unlike in Higginbotham, the parties never mentioned legal custody, and all their motions pertained only to physical custody. At the final hearing, neither party nor the trial court identified legal custody as a matter which needed to be addressed. The Court further found that the issue of legal custody was not tried by consent. Indiana case law permits issues to be tried by the consent of the parties, even when these issues were not raised in pleadings. The Court noted that during the hearing, Father indicated that he wanted to change legal custody, but agreed to the assertion that Mother would still have joint legal custody even if Father received primary physical custody. The Court opined that this indicated that Mother did not believe legal custody was an issue in play, and that Father did not believe he was currently seeking sole legal custody.

In Rasheed v. Rasheed, 142 N.E.3d 1017, 1022 (Ind. Ct. App. 2020), the Court held that the award of joint legal custody between Mother and Father was improper; where the parties have made child rearing into a battleground, joint legal custody is not appropriate. Persons awarded joint legal custody must share in authority and responsibility for major decisions involved in raising a child, which includes, but is not limited to, a child's education, health care, and religious instruction. IC 31-9-2-67. A court's primary consideration in making an award regarding legal custody is the welfare of the children, and not the wishes of the parents. *Id.* at 1021-22. IC 31-17-2-13 provides that "[t]he 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." IC 31-17-2-15 pertains to an award of joint legal custody and provides standards and factors to consider. The Court noted that "whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare" was particularly important and where parties have made childrearing a battleground, joint custody is not appropriate. The Court noted all the facts in the record pointed heavily towards joint custody being a battleground between the parents and concluded that based "on the record before us, and in light of the parties' history of non-cooperation, we conclude the court erred in ordering the parties to share joint legal custody." The Court noted the testimony of the GAL and the GAL's recommendations as further evidence that the parties were utterly unable to cooperate.

In In re Paternity of W.R.H., 120 N.E.3d 1039, 1043 (Ind. Ct. App. 2019), the Court held that because Father did not put Mother on notice that he was seeking a change in legal custody, the modification with regards to legal custody was improper. IC 31-17-2.2-1 does not automatically place legal custody at issue any time there is a hearing on a proposed relocation, and the issue of legal custody was not tried by the consent of the parties; therefore, the trial court erred by entering an order modifying legal custody. Indiana case law prohibits a trial court from making a sua sponte change in custody, as a party or parties have not been properly put on notice that issue will be addressed. Father argued that legal custody was automatically at issue pursuant to the relocation statutes, and Mother should have been on notice. IC 31-17-2.2-1(b) provides that “Upon the motion of a party, the court shall the matter for a hearing to review and modify, if appropriate, a custody order, parenting time order, grandparent visitation order, or child support order.” Father argued this means that both physical and legal custody are at issue any time a parent requests a hearing regarding the other parent’s notice of intent to relocate. The Court opined that this was an inaccurate misreading of the statute, noting that prior case law already determined that the motion to which the statute refers is a motion to modify an existing custody (or other) order. If a parent files a motion to modify physical custody, then the trial court must address the motion so requesting a modification of physical custody; if a motion is filed regarding legal custody, then the court would address that issue. The requests of the parties frame the issues to be considered at the hearing. The Court acknowledged that legal and physical custody matters often overlap, but while physical distance affects physical custody, it may not affect legal custody at all, as distances may not prevent parents from effectively communicating about decision relating to the child’s health, education, religious training, and other important matters. If Father had explicitly put legal custody at issue with his motion, it is very possible Mother would have presented evidence relevant to address that specific issue. Instead, Father’s motion asked the trial court to modify child support, deny Mother’s proposed relocation with the child, and award Father physical custody if Mother decided to move. Father put Mother on notice regarding the possibility of a modification in physical custody; if he wanted a change in legal custody, he should have so indicated.