



Custody and Parenting Time

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In **Day-Ping v. Ramey**, 175 N.E.3d 844 (Ind. Ct. App. 2021) the Court held that the trial court abused its discretion when it granted Father primary physical and sole legal custody of the Child.

Mother and Father had a child a few months after they were married. They divorced after two years and agreed that Mother would have sole legal and physical custody of Child with parenting time to Father. Thereafter, Mother made several DCS reports over a one-month period claiming Father had abused her and the Child in the past and that she suspected Father had molested their Child based on alleged injuries she discovered in his genital area. DCS then received a report that Mother was abusing Child based on a blister Father's girlfriend found in Child's genital area. Following this report DCS removed the Child from Mother's care and placed him with Father. A CHINS petition was filed and ultimately denied with an order to return the Child back to Mother. Mother filed a petition to modify Father's parenting time to require supervised visitation. However, Mother never followed through with completing the necessary intake for Father's supervised visitation, despite the court's order to do so. Father then filed a motion for contempt which was granted. Mother was ordered to allow Father his designated parenting time or serve 30 days in jail for her contempt. The court then held a hearing on Father's modification motion and transferred sole legal and primary physical custody of Child from Mother to Father and appointed Father's girlfriend as Child's temporary custodian in the event of Father's death.

The trial court's order heavily favors Father's evidence and relies on Father's expert custody evaluation without acknowledging or weighing the substantial criticisms lodged by Mother's expert. *Id.* at 854. To modify a custody order, the court must find modification is in the best interest of the child and there is "a substantial change in one or more of the factors that the court may consider under section 8 and if applicable, section 8.5" of I.C. 31-17-2-21. *Id.* at 850. After the dismissal of the CHINS matter, Mother filed federal civil rights claim against the two DCS employees who investigated Girlfriend's report. *Id.* at 852. The parties settled for \$988,000.00. *Id.* Mother also filed a malicious prosecution and intentional infliction of emotional distress complaint in Johnson Superior Court against Father and Girlfriend under I.C. 31-33-22-3(b). After a five-day trial, the jury awarded Mother \$90,750.00 each from Father and Girlfriend in compensatory damages and \$10,000 each in punitive damages. *Id.* While it is not out of the ordinary for a trial court to believe one expert over another, when viewed in light of Father and Girlfriend's fraudulent behaviors in these related matters, the Court found the trial court should reexamine the evidence in this case. *Id.* at 853. Mother's expert noted multiple instances of "evidence of potential bias" in Father's expert report. *Id.* Specifically, Father's expert did not interview Mother and Father in a joint interview, but instead accepted Father's version of events before considering Mother's. *Id.* There was also incongruency in Father's expert report that seem to have been overlooked by the trial court. *Id.* As such, the court reversed and remanded for reconsideration of the evidence based on the entirety of the circumstances. *Id.* at 854.