



Custody and Parenting Time
9/17/21

In **Ellenburg v. Kropp**, 175 N.E.3d 1208 (Ind. Ct. App. 2021) *trans. denied*, the Court held that the trial court did not err in awarding Father custody and sole legal custody; additionally, the issue of modification of legal custody was sufficiently placed at issue before the trial court by the pleadings and requests.

The trial court did not err in modifying custody of the children. Id. at 1210. Mother argued that the trial court erred in determining that there was a substantial change in circumstances because none of the changes in evidence had any effect upon the children. Id. Additionally, Mother argued that a modification in custody was not in the children's best interests because of the relationship between the children and Father and his wife. Id. However, the Court noted the great deference it gives to trial courts in making custody determinations. Id. at 1211. The Court further noted the seriousness of the other evidence, including Mother's four criminal cases, the CASA's opinion of Mother's behavior, her plans for living arrangements with a convicted felon upon his release, her decisions with respect to who she allowed the children to stay with, her defiance of court orders, and more. Id. at 1210-11.

The trial court did not err in awarding Father sole legal custody, and the issue of legal custody was properly before the trial court. Id. at 1212. Father requested that the trial court make a modification of custody, and also asked for orders with respect to parenting time, custody, and other all appropriate relief. Id. at 1211. Mother argued this was too vague and thus, the issue of legal custody was not before the trial court. Id. The Court distinguished this case from prior case law on the issue of trial by consent and legal custody. Id. The Court opined that since a major factor in determining whether an award of joint legal custody is appropriate is whether or not the parties agree, Father's requests for the trial court's assistance in resolving issues of custody and parenting time sufficiently placed the issue in dispute. Id. at 1212.