



Custody and Parenting Time

5/25/21

In **In re K.C.**, 171 N.E.3d 659 (Ind. Ct. App. 2021), the Court held that the trial court did not err in denying Mother's second petition to relocate and it did not abuse its discretion in modifying custody of the child in favor of Father.

Mother and Father never married but lived together at Father's home in Logansport with their Child and Mother's child from a prior marriage. After ending their relationship, Father filed to establish paternity of the Child and the parties agreed to shared legal custody with physical custody to Mother and parenting time to Father. Mother married Stepfather, who also lived in Logansport but enlisted in the military and was stationed in Virginia. Mother filed a notice with the court that she intended to relocate to Virginia. Father objected and the court held a hearing wherein Mother told the court that if it did not grant her petition to relocate, she would remain in Logansport with her children while Stepfather moved to Virginia. The court considered the thirteen-hour driving distance, young age of the Child, and location of all extended family in Logansport in deciding that relocation was not in the Child's best interests. Mother filed a motion to correct error and relocated to Virginia without the Child while the motion was pending. The motion was ultimately denied. Father filed a motion to modify custody, parenting time, and child support noting that after the court issued its order denying Mother's relocation petition, Mother moved to Virginia and surrendered the Child to Father. Mother then filed for a change of judge and filed a second petition to relocate. This time she claimed that she was unable to maintain two separate households and had been "forced: to move to Virginia. While Mother and Father's motions were pending, Maternal Grandmother took the Child to visit Mother in Virginia for the winter holidays. The parties agreed they would exchange the Child in West Virginia, midway between Logansport and Norfolk on January 6th. However, on the evening of January 5th, Mother texted Father and told him she was unable to exchange the Child because she was sick. Father offered to wait a day or two until she felt better, but Mother refused and said that she would be in Indiana on January 14th. Father filed a contempt citation. Mother returned the Child on January 14th. In April, Mother told Father she wanted the Child to visit Virginia again. Father proposed exchanging the Child in West Virginia on May 16th and returning him to Indiana on June 21st. Instead, the following day, Mother tested Father that she was in Indiana to pick up the Child from Paternal Grandparents' home. Fifteen minutes later, she boarded a flight with the Child and refused to return him for eighty-four days. The court held a hearing on the various motions and contempt's and ultimately awarded physical custody to Father with Mother having parenting time to occur in Indiana. In addition, the court ordered Mother to pay child support. Mother appealed.

The trial court did not err in denying Mother's second relocation petition because she failed to show a substantial change in one or more of the statutory factors found in the relocation statute. Id. at 675. A trial court may modify an existing relocation order where there has been a substantial change in one or more of the statutory factors that are outlined in IC 31-17-2.2 1(c) and where the modification is in the best interests of the child. Id. at 674. The single change in circumstances Mother alleges is that she was "forced" to relocate to Virginia because

she and Stepfather could not afford to maintain two households. Id. at 675. However, Mother, herself, told the court at the first relocation hearing that she would stay in Indiana with her children while Stepfather lived in Virginia. Id. Stepfather also testified that Mother made this statement “in the heat of the moment” and never even discussed with him the feasibility of maintaining two households. Id. Mother testified that she “simply said whatever she could to keep her kids together.” Id. The Court reasoned that given this testimony and the fact that Mother relocated to Virginia right after her relocation hearing without the Child, Mother never planned to stay in Indiana regardless of the court’s ruling. Id. Thus, Mother failed to meet her burden to demonstrate that her relocation to Virginia was a substantial change. Id.

The trial court did not abuse its discretion in modifying custody in favor of Father, ordering Mother to pay Father’s attorney fees, and ordering Mother to pay child support.

Id. at 676. The evidence revealed Mother relocated 800 miles away and left the Child five-year-old Child with Father. Id. The modification in favor of Father was in the Child’s best interest because he has close relationships with Father, Maternal Grandparents, Paternal Grandparents, and extended family all in the Logansport area; and was thriving in preschool according to testimony from his teacher. Id. As to the attorney fees issue, the Court agreed that Mother had no intention of staying in Indiana when she testified to that fact at the first relocation hearing, and thus presented a groundless claim to the court to which she should be responsible for paying attorney’s fees under IC 31-17-7-1. Id. at 677. As to Mother’s child support obligation, the trial court merely used the earnings figure provided by Mother in calculating her support obligation using the Child Support Obligation Worksheet. Id. Thus, the court did not abuse its discretion on any of these findings.