



## **Custody and Parenting Time**

7/20/21

In **In re Paternity of B.G.H.**, 174 N.E.3d 1106 (Ind. Ct. App. 2021), the Court held that the trial court did not abuse its discretion when it determined Indiana was a more convenient forum than Michigan, awarded joint legal custody, awarded parenting time in Indiana to Father, and ordered Father to pay \$85.00 per week in child support.

Shortly after Mother and Father met, Mother became pregnant and then moved home to Michigan while Father's employer sent him to Puerto Rico. Father eventually returned to his home in Indiana and mother relocated from Michigan to live in Father's home. The Child was born while the parties lived together in Indiana, and they shared parenting responsibilities around their work schedules. Mother was a part time substitute teacher with an accounting degree and Father was a construction worker. Father was involved in a criminal matter, which prompted Mother to move back to Michigan with the Child. Father filed, in Indiana, a petition to establish paternity, custody, and support. Shortly after, Mother filed a similar petition in Michigan. She then filed a motion to determine jurisdiction in the Michigan court and a motion to stay the proceedings and for a determination of inconvenient forum in the Indiana court pursuant to I.C. 31-21-5-8. The Indiana court held a hearing on the jurisdiction issue and determined that Indiana was the proper forum based on the statutory factors. The trial court then held a hearing on Father's petition and ordered that the parties share joint legal custody, Mother shall have physical custody and reserve parenting time for Father on alternating weekends, the parties shall meet in Indiana at the halfway mark to exchange the Child, and Father shall pay \$85.00 per week in child support based on his reported weekly income. Mother appealed.

**The trial court did not abuse its discretion when it determined that Indiana was a more appropriate forum than Michigan for the paternity proceedings. Id. at 1113.** To determine which state is more convenient to hear issues of custody, the Uniform Child Custody Jurisdiction Act (UCCJA) governs. Id. at 1111. The "inconvenient forum statute", codified at I.C. 31-21-5-8(b), includes a list of factors for the court to use when determining if Indiana or another state is the more appropriate forum. Id. at 1112. The factors include: "(1) Whether domestic violence has occurred and is likely to continue in the future and which state is best able to protect the parties and the child. (2) The length of time the child has resided outside Indiana. (3) The distance between the Indiana court and the court in the state that would assume jurisdiction (4) The relative financial circumstances of the parties. (5) An agreement of the parties as to which state should assume jurisdiction. (6) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony. (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence. [and] (8) The familiarity of the court of each state with the facts and issues in the pending litigation. I.C. 31-21-5-8(b)." Id. Here, the Court arrived at its conclusion considering the Child lived in Michigan for only five months, Mother had a degree in accounting that she was not using and likely voluntarily underemployed, most of the evidence existed in Indiana, there was no evidence of domestic violence, Father was unable to leave Indiana because of his pending criminal

charges, and the Michigan court declined jurisdiction of the case in June 2020. Id. at 1112-1113. Thus, the trial court did not abuse its discretion.

**The trial court did not abuse its discretion when it awarded the parties joint legal custody. Id. at 1112.** Mother’s counsel told the trial court that custody was not an issue because the parties had already agreed to joint legal custody. Id. Further, at no point during the hearing did Mother ask the trial court to award her sole legal custody. Id. Mother cannot now argue on appeal that the trial court erred in failing to award her sole legal custody when she affirmatively indicated at the hearing that she and Father had agreed to joint legal custody. **See Reynolds v. Reynolds**, 64 N.E. 3d 829, 834 (Ind. 2016) (explaining that a party “may not sit idly by an raise issues for the first time on appeal.”).

**The trial court did not abuse its discretion when it awarded Father parenting time in Indiana on alternating weekends. Id. at 1113.** Mother argued that Father’s parenting time should occur in Michigan one weekend a month, not in Indiana. Id. The commentary to the Guideline specifically addressing parenting time when distance is a major factor states that “for a child under three years of age, the noncustodial parent shall have the *option* to exercise parenting time, in the community of the custodial parent.” Id. Thus, a noncustodial parent is not required to exercise parenting time in the community of the custodial parent. Id. That option was not available to Father because of his restrictions on leaving Indiana because of his pending criminal charges. Id. at 1114.

**The trial court did not abuse its discretion when it ordered Father to pay \$85.00 per week in child support. Id. at 1115-1116.** Mother’s sole contention is that the trial court abused its discretion when it determined that Father’s weekly income was \$706.00. Id. at 1115. Mother’s failure to support her argument with citations to authority and record of evidence results in waiver of the issue on appeal. *See* Pierce w. State 29 N.E.3d 1258, 1267 (Ind. 2015) (explaining that a litigant who fails to support his arguments with appropriate citations to authority and record of evidence waives those arguments for appellate review). Waiver notwithstanding, the Court found no error because the evidence of Father’s specific income at the time of the hearing supports the trial court’s determination that Father earned \$706.00 per week. Id. at 1115.