



## Custody and Parenting Time

3/26/21

In **In re Paternity of B.R.H.**, 166 N.E.3d 915 (Ind. Ct. App. 2021), the Court affirmed the trial court's order denying Mother's petition to relocate to New Mexico as relocation was not in the best interest of the four-year-old Child.

Mother and Father began dating in 2015 and Mother became pregnant at the end of the year. Mother and Father were briefly engaged before ending the relationship. Mother's due date was early September 2016, but she had the baby in August 2016 and failed to tell Father the baby had been born. In September 2016, Father filed a petition to establish paternity, custody, child support, and parenting time wherein he alleged that his child should have been born but he did not know the date of the Child's birth. Father contacted Mother asking for health updates and the Child's name, but Mother refused to give him any information about the Child. In 2017 the trial court ordered physical custody to Mother and joint legal custody. Father was awarded parenting time and agreed to pay weekly child support. In April 2018 the Child began speech therapy for a language disorder. In May 2018, Mother filed a petition to relocate with the Child to Texas, where she had been offered a job contingent upon her passing a licensing exam. Mother further explained that she had applied for positions locally, but the Texas position was the only one offered to her. While waiting for the relocation hearing, Mother began looking on Match.com for people to date in Texas. In September 2018, Mother began online dating Stepfather, who was in the air force stationed in Clovis, New Mexico. In October 2018, the trial court granted the petition to relocate to Texas. Ultimately, mother did not move to Texas because she failed the required licensing exam twice. Mother and Stepfather met in person in January 2019. Stepfather made monthly visits to Indiana, and Mother became pregnant in May 2019. Mother and Stepfather then married. In June 2019, Mother filed a new petition to relocate to New Mexico. Father responded asking the court to restrain Mother from moving and to reappoint the GAL who previously served on the case. The GAL expressed concern that Mother had never even visited New Mexico or met any of Stepfather's immediate family or his son. The testimony at the relocation hearing revealed that the Child had developed a very close relationship with Father and Stepfather since the last hearing. The Child's pediatrician testified that removing the Child from his consistent medical care would be detrimental. When asked if she would be willing to allow more parenting time for Father if she were allowed to move to New Mexico, Mother refused and suggested that Father move too. After weighing the evidence presented over the six-day proceedings, the trial court denied Mother's relocation petition. Mother appealed and the Court of Appeals affirmed.

**Mother's request to relocate on its face was for a legitimate reason because she desired to be with her husband; however, when applying the statutory and best interest factors, the trial court clearly did not err when it concluded that a relocation to New Mexico was not in the Child's best interest.** *Id.* at 925. A parent intending to move residences must file a notice of that intention. IC § 31-17-2.2-1. The relocating parent has the burden to establish that the proposed relocation is made in good faith and for a legitimate reason. IC§ 31-17-2.2-5(e). If that

burden is met, the burden then shifts to the nonrelocating parent to show that the proposed relocation is not in the best interests of the child. IC § 31-17-2.2-5(f). The Court found the distance was a major factor in this case. Id. at 925. Clovis, New Mexico is 100 miles from Dubois, Indiana resulting in a sixteen-hour drive. Id. Father's limited PTO, air travel prices, and driving distance would create a significant hardship on Father exercising parenting time. Id. The court reasoned it would also be difficult for Father and the Child to maintain a close relationship because communication would be through FaceTime or other computer app. Id. The Court also pointed to Mother's history of thwarting Father's contact with the Child, beginning when she failed to tell Father the Child had been born. Id. The Child would be separated from his extended family and his speech therapist with whom he saw for treatment twice a week. Id. Considering all of the evidence, the trial court concluded relocation would not be in the Child's best interest. Id. at 926.