



Custody and Parenting Time

12/31/2020

In **M.G. v. S.K.**, 161 N.E.3d 544 (Ind. Ct. App. 2020), the Court held that the trial court's order was insufficient; the trial court had not made proper findings as required by Indiana Trial Rule 52(A), and the trial court had not addressed why the modification in custody was required.

Mother and Father divorced and agreed to share custody of the child. Father started with supervised parenting time but progressed to unsupervised parenting time. Four years after the initial divorce, Father requested joint physical custody, and Mother then sought sole legal and physical custody. A GAL was appointed, and Mother requested special findings under Indiana Trial Rule 52(A). Father and his supportive witnesses characterized Mother as inflexible and unwilling to give him additional parenting time; Mother and her witnesses indicated that Mother always provided Father the parenting time to which he was entitled but had declined to give him additional time in order to maintain stability in the child's schedule. The GAL indicated no concerns with the child's homes, indicated that the child was bonded to both parents, and had no concerns about the child's health, schooling, relationships, or other aspects of the child life. The GAL indicated there did not seem to be any change in circumstances. The GAL report referenced psychological evaluations, but the trial court excluded them because they were stale. The trial court initially indicated that it would likely deny the petition to modify custody, but eventually, the trial court issued an order modifying custody. Mother appealed.

The Court held that the trial court did not enter an order that was sufficient under Indiana Trial 52(A) regarding findings; the Court also held that the trial court's order lacked any reference to evidence showing a reference any substantial change in any of the best interests factors. Id. at 549. The Court initially observed that some of the trial court's findings lacked evidentiary support; for example, the trial court found that Mother had allowed the child to become overweight, but the evidence showed the child was in the 99th percentile for both height and weight, the GAL indicated the child did not appear overweight, and Father eventually admitted he had not been advised to have the child lose weight. Id. at 548. A custody modification must be based on the best interests of the child and a substantial change in one or more of the best interests factors. IC 31-17-2-21. Trial courts do not need to enter findings on each factor they consider, and findings are only required if properly requested. Id. at 548. Mother made a proper request for findings and conclusions pursuant to Indiana Trial Rule 52(A). Id. In its order, the trial court made factual findings praising Father and criticizing Mother; however, the purpose of findings under Ind. Trial R. 52(A) is to provide the parties and the reviewing court the theory upon which the trial court decided the case, so that the ability of an appellate court to review the case for error is preserved. Id. The Court noted that the findings the trial court made did not provide a theory upon which the modification decision rested and did not reference any substantial change in any best interests factor. Id.