

Children's Law Center of Indiana



Guardianship/Third Party Custody

04/10/2007

In **Blasius v. Wilhoff**, 863 N.E.2d 1223 (Ind. Ct. App. 2007), the Court affirmed the trial court's award of custody of the child to third party custodians (custodians) rather than Father. Prior to the child's birth January 16, 2002, Father who was nineteen years old, registered with Indiana's putative father registry. The day after the child's birth, Mother, who was eighteen years old, filed a voluntary consent to the termination of her parent-child relationship with and the adoption of the child, in which she transferred physical custody of the child to Catholic Charities Diocese of Fort Wayne-South Bend (Catholic Charities). Mother also completed an affidavit in which she stated the child was conceived as the result of her rape by a person other than Father. On that same day the custodians assumed custody of the child as prospective adoptive parents. On January 28, 2002, Catholic Charities filed a verified petition for the voluntary termination of Mother's parent-child relationship with the child. On February 21, 2002, the custodians filed a petition to adopt the child. On April 10, 2002, Father filed a petition to establish paternity of the child and a motion to contest the child's adoption by the custodians. On April 25, 2002, Catholic Charities filed a motion to dismiss the termination petition and the trial court dismissed the termination petition. On June 12, 2002, based on a 99.325% probability of paternity, Father was determined to be the child's father. On December 2, 2002, Catholic Charities filed a "Final Report to the Court" containing very positive information regarding the custodians. Father completed the Allen Superior Court Criminal Division PRI Drug and Alcohol Education Course on March 24, 2004, and completed the Alcohol Coutermeasures Program on November 21, 2004. On January 21, 2005, the trial court denied the adoption petition but awarded custody of the child to the custodians. On February 22, 2005, Father filed a motion to correct errors asserting among other things that the trial court erred by not setting a subsequent hearing on the issue of custody and by requiring the parties to file a separate action for determination of custody. On June 13, 2004, the trial court granted in part Father's motion, scheduled a custody hearing under the adoption to determine the child's best interests, and provisionally ordered that the child be continued in the care and custody of the custodians. On February 17, 2006, following a hearing regarding custody of the child, the trial court issued special findings of fact and conclusions of law granting custody of the child to the custodians.

The Court held that inasmuch as (1) the evidence supports the trial court's findings, and the trial court's findings provide support for its judgment to grant custody of the child to the third party custodians; (2) the trial court applied the standard of review set out in In Re Guardianship of B.H., 770 N.E.2d 283, 287 (Ind. 2002); and (3) the trial court was clearly convinced that placement with the third party custodians represented a substantial and significant advantage to the child, "according the trial court the

appropriate deference, as we must, we cannot conclude its findings are clearly erroneous or that its judgment is against the logic and effect of the evidence.” Blasius at 1231.

Regarding Father’s contention that the trial court’s conclusion that “the circumstances that impact the best interests of the child are not substantially different than that which were evident when the court first determined custody” is clearly erroneous, the Court held that, although there was evidence that the child refers to Father as papa and dad, that Father has rehabilitated himself and acquired parenting skills, and that he is seeking more lucrative employment, there is evidence to support the trial court’s findings, and therefore, the findings are not clearly erroneous. Id. at 1229-30. The Court noted that the trial court found that (1) a significant emotional bond existed between the child and the custodians; (2) the best man at Father’s wedding resided in a home that Father owned, that Father regularly visited the home despite his claim that the man was merely a tenant and an acquaintance, and police found marijuana, cocaine, and a stolen motorcycle at the home; and (3) Father’s finances were unstable. The Court found that there was evidence supporting these findings: (1) the child refers to the custodians, with whom she has lived her entire life, as mom and dad; (2) the best man’s girlfriend testified that Father went to the home in which the best man resided many times, Father spent time in a room in which marijuana was stored, Father borrowed from the best man a scale used to weigh marijuana, and Father maintained a key to the attic in which the stolen motorcycle was found; and (3) Father and his wife had a combined monthly income of approximately \$1,625, and monthly expenses of approximately \$3,500. Id.

Father argued that the trial court’s conclusion that the custodians “stand in the unique position of offering and insuring the child a continuation of her positive relationships and regular contact with her mother and her extended family, her father and his extended family and with the extended family who has raised her since birth” is clearly erroneous. In finding to the contrary, the Court noted that the trial court found that (1) a bond exists between the child and the custodians and the child and Father; (2) the custodians did not deter a relationship between the child and Father; (3) the custodians cooperated with Father’s visitations; and (4) a change of custody would be unlikely to encourage the level of harmony that existed for the child. Also, (1) the custodians and Father maintain a relatively cooperative relationship that facilitates a harmonious relationship between the child and Father and the child and Mother; (2) Mother testified that she and Father have spoken on only several occasions since the child’s birth; and (3) Mother stated that she believed it is in the child’s best interest for the custodians to have custody of her.

As to Father’s contention that the trial court erred because it did not conclude that he was unfit, that he abandoned the child or acquiesced in the custodians’ custody of her, or that the child will suffer long-term trauma as a result of removing her from the custodians’ custody, the Court reiterated that evidence establishing the biological parent’s unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would be important, but the trial court is not limited to these criteria. Truelove v. Truelove, 855 N.E.2d 311 (Ind. Ct. App. 2006). Blasius at 1230. The Court also held that the trial court’s failure to make a specific finding that separation from the custodians will cause the child long-term trauma was not dispositive of the issue, but that in any event the child’s therapist testified that separation for the custodians would be “very traumatizing to” the child. Id. at 1230-31.