

Children's Law Center of Indiana



Custody and Parenting Time

2/9/15

In Clary-Gosh v. Gosh, 26 N.E.3d 986 (Ind. Ct. App. 2015), the Court affirmed the trial court's order reducing Mother's parenting time. Id. at 989. Mother's and Father's marriage was dissolved, and, in 2010, Father was awarded legal and physical custody of the child, who was then two years old. Mother was awarded parenting time: (1) every Wednesday at 6:00 p.m. until Thursday at 10:00 a.m. and (2) alternating weekends, beginning at 6:00 p.m. on Friday and continuing until Monday at 10:00 a.m. Mother's and Father's relationship was acrimonious and resulted in the filing of numerous petitions and motions, including Father's motion to modify Mother's parenting time and Mother's request for the appointment of a parenting time coordinator. After several hearings, the trial court found that the parenting time order was no longer in the child's best interest, and modified Mother's parenting time to one three hour midweek visitation and alternating weekends from 5:00 p.m. Friday until 6:00 p.m. Sunday in accordance with the Indiana Parenting Time Guidelines. The trial court also denied Mother's request for a parenting time coordinator.

Mother appealed these and other orders concerning contempt and child support. Stating that the trial court apparently entered *sua sponte* findings, the Court observed that, in such situations, the specific factual findings control only the issues they cover, and a general judgment standard applies to issues upon which there are no findings. Id. at 990. Citing Stone v. Stone, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013), *aff'd on reh'g*, the Court said that a general judgment with *sua sponte* findings may be affirmed on any legal theory supported by the evidence. Clary-Gosh at 990. Quoting MacLafferty v. MacLafferty, 829 N.E.2d 938, 940 (Ind. 2005), the Court noted it "give[s] considerable deference to the findings of the trial court in family law matters," Clary-Gosh at 990.

The Court said that, because the modifications to Mother's parenting time were consistent with the Parenting Time Guidelines, an endangerment or impairment finding pursuant to IC 31-17-4-2 was not necessary. Id. at 991. The Court noted that Mother had previously been awarded parenting time in excess of the provisions in the Parenting Time Guidelines, but, in an attempt to minimize conflict between the parties, the trial court eliminated overnight visitation on school nights. Id. The Court said that the commentary to the Guidelines explains that they "represent the minimum time a non-custodial parent should spend with a child..." Parenting Time G. Preamble cmt. 2. Clary-Gosh at 991. The Court noted evidence that Mother's overnight parenting time on school nights was a source of disagreement; thus, the elimination of those overnights were intended to reduce conflict, which was in the child's best interests. Id. The Court

opined that the trial court was permitted to modify Mother's parenting time if it served the child's best interests. Id. The Court found that Mother had not established that the trial court abused its discretion in modifying her parenting time. Id.

The Court found it was well within the trial court's discretion to directly address the issues raised by the parties in an effort to reduce future litigation instead of appointing a parenting time coordinator. Id. at 995. The Court said that, although there was evidence that Mother and Father did not get along, this fact alone was insufficient to establish that the trial court abused its discretion in denying Mother's request for the appointment of a parenting time coordinator. Id.