

Children's Law Center of Indiana



Custody and Parenting Time

11/13/12

In **D.C. v. J.A.C.**, 977 N.E.2d 951 (Ind. 2012), the Indiana Supreme Court reversed the Court of Appeals decision at 966 N.E.2d 158 (Ind. Ct. App. 2012) regarding custody modification and affirmed the trial court's decision that Father would become Child's primary physical custodian and Mother would have parenting time during school breaks and on any other occasions that she visited central Indiana. The Court summarily affirmed the decision of the Court of Appeals that Father was not entitled to appellate attorney's fees.

Mother and Father were married in 1997 and Child was born in 2003. In 2008, when Mother and Father divorced, they agreed to share legal custody of Child. The agreement provided Mother with "physical residential custody," subject to Father's parenting time, which consisted of three overnight visits per week and two weekends per month.

In June 2010, Mother filed notice of intent to relocate. In July 2010, Mother filed a motion for temporary order permitting relocation, and, while that motion was pending, she moved with Child to a location near Nashville, Tennessee. But shortly after, in August 2010, the trial court denied Mother's motion for a temporary order permitting relocation, and Mother complied with a court order for Child's return to Indiana.

Around this same time, Father filed a motion to modify custody and prevent Child's relocation. The trial court appointed a guardian ad litem (GAL) for Child, and the GAL filed a report with the court in December 2010. Several months later, the trial court held an evidentiary hearing on the issues of relocation and modification of custody. The GAL testified, consistent with his report, that he did not believe that the relocation was in the best interests of Child. The trial court also heard testimony from Mother, Father, Child's maternal and paternal grandmothers, and Child's godfather, among others.

The trial court granted Father's motion to modify custody and prevent Child's relocation and awarded Father primary physical custody with parenting time for Mother. Mother appealed and the Court of Appeals reversed the trial court's decision.

The Court concluded that the trial court made sufficient and supportable findings to sustain its decision to prevent relocation and modify custody to Father. *Id.* at 957. The Court first stated its standard of review, namely that the Court "shall not set aside the [trial court's]

findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* at 953, quoting *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011). The Court then looked to the relocation statutes and noted the following: (1) when a nonrelocating parent objects to a parent’s notice of intent to relocate, “[t]he relocating individual has the burden of proof that the proposed relocation is made in good faith and for a legitimate reason” (IC 31-17-2.2-5(c)); and (2) if the relocating parent shows that the proposed relocation is made in good faith and for a legitimate reason, “the burden shifts to the nonrelocating parent to show that the proposed relocation is not in the best interest of the child” (IC 31-17-2.2-5(d)). *Id.* at 954. The Court said that the trial court must weigh the following factors in considering proposed relocation, as set forth in IC 31-17-2.2-1(b)):

- (1) The distance involved in the proposed change of residence.
- (2) The hardship and expense involved for the nonrelocating individual to exercise parenting time or grandparent visitation.
- (3) The feasibility of preserving the relationship between the nonrelocating individual and the child through suitable parenting time and grandparent visitation arrangements, including consideration of the financial circumstances of the parties.
- (4) Whether there is an established pattern of conduct by the relocating individual, including actions by the relocating individual to either promote or thwart a nonrelocating individual’s contact with the child.
- (5) The reasons provided by the:
 - (A) relocating individual for seeking relocation; and
 - (B) nonrelocating parent for opposing the relocation of the child.
- (6) Other factors affecting the best interest of the child.

Id. The Court, citing IC 31-17-2-8, noted that the “other factors affecting the best interest of the child” include, among other things, the child’s age and sex; the parent’s wishes; the child’s wishes with the wishes of children fourteen years or older being given more weight; the child’s relationship with parents, siblings, and any other person affecting the child’s best interests; and the child’s adjustment to home, school, and community. *Id.* The Court said that, in this case, the trial court found that Mother met the initial burden of showing a legitimate reason and good faith in relocating. *Id.* The Court said that, in finding that relocation would not be in Child’s best interests, the trial court cited the following: the distance involved in the move was significant; Father was very involved in Child’s daily activities and education; both maternal and paternal grandparents, along with other extended family, were involved in Child’s daily life in Indiana; and relocation would cause “significant deterioration” in Child’s relationships with Father and Child’s extended family. *Id.* at 955.

In support of the trial court's judgment, the Court found that: (1) the trial court conducted the evidentiary hearing over two days and heard the testimony of ten witnesses, including the GAL, who believed that relocation was not in Child's best interests; (2) Child had attended preschool, kindergarten, first grade, and after-school care in Hendricks County; (3) Child was actively involved in many activities; including sports; (4) Child's best friend currently lived close to Child; (5) Child's close relationships with his godparents, older step-brother, and grandparents would deteriorate if Child were relocated; and (6) Child had progressed in his religious faith in his community. Id. at 957. The Court agreed with the Court of Appeals that there is no blanket rule that a relocation that deprives a parent of time with the child is always against the child's best interests. Id. The Court said that a trial court must take into account the child's relationship with parents, and that, here, the trial court considered Father and Child's relationship, among a host of factors. Id. The Court accordingly could not conclude, consistent with the applicable clear-error standard of review, that there were no facts to support the trial court's judgment either directly or by inference. Id. The Court opined that trial courts are afforded a great deal of deference in family law matters, including relocation and custody disputes. Id.