

Children's Law Center of Indiana



Custody and Parenting Time

1/17/13

In **Dixon v. Dixon**, 982 N.E.2d 24 (Ind. Ct. App. 2013), the Court held that the trial court did not abuse its discretion, and affirmed the trial court's decision to grant Mother's notice of intent to relocate and deny Father's petition to modify custody.

Mother and Father were divorced in June of 2008. Mother was awarded physical custody of the two children, and Father received parenting time. In October of 2011, Mother filed a notice of intent to relocate due to her plans to marry and move in with her new husband in Illinois. Father filed a petition to modify custody, and hearings were held in April and May of 2012. The following evidence was presented at the hearing regarding Mother and her intent to relocate: (1) Mother would get married whether or not the trial court approved of the relocation, but Mother would not move to Illinois if that meant she would lose custody of the children; (2) The distance between Mother's new home and Father's home was three hours; (3) Mother was willing to continue alternating weekends with Father; (4) Mother was willing to continue her practice of allowing the children to be with Father and his family for almost all holidays; (5) Mother agreed to accommodate Father for special occasions or extra parenting time when it was appropriate. The following evidence was presented at the hearing regarding Father and his petition to modify custody: (1) Information on Father's employment, his remarriage, and his new child; (2) Father's extended family lived in Indiana and had frequent get-togethers; (3) Father participated in many activities with the children; and (4) Father attended most of the children's events because of his flexible work schedule. In granting Mother's request to relocate and denying Father's petition to modify custody, the trial court found Mother's desire to relocate was made in good faith and not done in haste, and because Mother had been the children's primary caretaker since Mother and Father's separation, it was in the children's best interests to remain in Mother's physical custody. Father appealed, arguing that when the trial court made its determination, it failed to consider the children's interactions and relationships with parents, extended family, and friends, the children's adjustment to their home, school, and community, and the hardship of the relocation upon Father's parenting time.

The Court held that the trial court did not abuse its discretion in determining that Mother's proposed relocation with the children should be permitted, since the relocation was being made in good faith and for a legitimate reason, and Father could not show that the proposed relocation was not in the best interests of the children. *Id.* at 26, 27. Under the Indiana Relocation Statute, there are two inquiries a trial court must answer in determining whether to allow a proposed relocation: first, whether the relocating person has established that

the relocation is being made in good faith and for a legitimate reason; and second, if the relocating person satisfies that burden, whether the non-relocating person is able to show that the proposed relocation is not in the best interests of the child. Id. at 26 (citing IC 31-17-2.2-5(c) and (d)). The trial court must consider evidence on the financial impact of the proposed relocation, the motivation for the proposed relocation, and the effect of the proposed relocation on the child, the parents, and others, such as siblings or other persons who may significantly affect the children's best interests. Dixon at 26 (citing Baxendale v. Raich, 878 N.E.2d 1252, 1256 (Ind. 2008)). The Court noted the evidence demonstrated Mother was the primary caregiver, she was flexible with any requests by Father to have extra parenting time, and she was willing to allow Father to have almost all holidays. Dixon at 26. The evidence also showed Mother was willing to continue to allow Father to have alternating weekends, despite the distance between their homes. Id. Father did not present any expert evidence showing that the proposed relocation would have a negative effect on the children, and the Court determined that although the distance would make it difficult for Father to regularly be at the children's events, the distance was not prohibitive. Id. Father also argued that since he had a new child, there may be future conflicts that would arise in schedules, forcing him to choose between the children and his new child. Id. at 27. The Court determined that conflicts of schedules are common in both traditional and mixed families, and that future conflicts in schedules are not a relevant concern in determining whether to allow a proposed relocation. Id. Lastly, the Court opined that the present case differed from Green v. Green, 843 N.E.2d 23 (Ind. Ct. App. 2006). In Green, the Court determined that the relocation would not be in the children's best interests, because the great distance would drastically reduce Father's parenting time. Dixon at 27 (citing Green, 843 N.E.2d at 24). The Dixon Court determined that Green did not apply in this case, because the distance would not dramatically affect Father's parenting time with the children. Dixon at 27.

The Court also held that the trial court did not abuse its discretion in denying Father's petition to modify custody in the context of the proposed relocation, and that the trial court had properly considered the factors in IC 31-17-2.2-1(b) in making its determination. Id. at 27. In determining whether to modify a custody order in the context of a proposed relocation case, the trial court must consider the factors provided in IC 31-17-2.2-1(b). Id. These factors include: (1) The distance involved in the proposed change of residence; (2) The hardship and expense involved for the non-relocating person to exercise parenting time; (3) The feasibility of preserving the relationship between the non-relocating person and the child through suitable parenting time arrangements, including consideration of the financial circumstances of the parties; (4) Whether there is a pattern of established conduct by the relocating person to either promote or thwart the non-relocating person's relationship with the child; (5) The reasons provided by the relocating person for seeking to move, and the reasons provided by the non-relocating person for opposing the relocation of the child; and (6) Other factors affecting the best interests of the child. Id. (citing IC 31-17-2.2-1(b)). The Court concluded that the trial court had properly considered the necessary factors in making its decision. Dixon at 27. The trial court examined the distance factor and determined that the relocation was manageable. Id. After examining the hardship and expense with regards to the non-relocating person's parenting time, the trial court lowered Father's child support obligation to offset new expenses related to the relocation. Id. In order to address the feasibility of Father maintaining his relationship with the children, the trial court provided for additional parenting time for Father which included all holidays, extra time in the summer, and all spring breaks. Id. at 28. The trial court pointed to

evidence showing that Mother often worked with Father to ensure that he had extra parenting time. Id. Lastly, the trial court determined that Mother's proposed relocation was made in good faith, and for a legitimate reason. Id. The Court pointed to all these items of evidence in concluding that the trial court did not abuse its discretion in denying Father's motion to modify custody in light of Mother's notice of intent to relocate. Id.