

Children's Law Center of Indiana



Custody and Parenting Time

7/26/17

In G.G.B.W. v. S.W., 80 N.E.3d 264 (Ind. Ct. App. 2017), the Court reversed and remanded the trial court's orders which: (1) denied Father's petition to modify joint legal custody for the limited purpose of making medical decisions regarding vaccinations; (2) failed to find Mother in contempt; and (3) ordered Father to contribute \$10,000 towards Mother's attorney fees. *Id.* at 273. Since neither party challenged the trial court's denial of Father's request for an order of estoppel, the Court left that portion of the trial court's order undisturbed. *Id.* Father and Mother had a brief relationship while married to other spouses and the child was born in 2007. Mother remained married, and Father subsequently remarried. In 2011, Father and Mother entered into an Agreed Decree of Paternity (paternity decree) for the child, which was approved by the trial court and incorporated into an order. The decree contained the following legal custody provisions: (1) the parties would share joint legal custody; (2) Mother must seek Father's input prior to Mother making any major medical, religious, or educational decisions for the child; and (3) "if the child attends a school that requires vaccinations for enrollment, and the child will be denied enrollment unless she receives the vaccinations, then the child will be given the required vaccinations for enrollment." The child was not vaccinated following her birth. At the time of the paternity decree, she attended a Montessori School which did not require vaccinations. Upon Father's request, the child was to attend kindergarten at a public school the following year. The public school required that its students be vaccinated but, pursuant to IC 20-34-3-2, the school allowed an unvaccinated student to attend if a parent executed a form claiming a religious objection to immunization. Mother sought Father's consent to sign the form, but he did not consent. Mother signed the form, and the unvaccinated child began attending the school. In subsequent years, Mother submitted the form without consulting Father, and the child continued to attend the public school. The child was not vaccinated.

In early 2015, when Father learned that the child would be traveling on an extended European Disney Cruise, Father expressed concern to Mother about the child remaining unvaccinated. On May 18, 2015, Father petitioned to modify legal custody as to medical decisions only, alleging there was a substantial change in circumstances because the child had not received any vaccinations. On July 29, 2015, Father filed a contempt petition alleging that Mother was violating the paternity decree because she did not have the child vaccinated and because she falsely advised the school of a religious objection to avoid having the child vaccinated. During the pendency of Father's motion to modify custody and contempt petition, Father and his wife became the parents of twins, a son and a daughter. The daughter was born healthy and could receive vaccinations on schedule, but the son could not be vaccinated due to a serious heart condition. A doctor advised Father that it was unsafe for the twins to be around anyone who was not vaccinated, including the child in this case. Acting on that advice, Father stopped exercising

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overnight parenting time with the child and would not permit her to meet the twins. On March 3, 2016, Father filed a motion for rule to show cause, in which he asserted the same grounds for contempt contained in his petition; namely, that the child's health was at risk because she had not been vaccinated, and that he was unable to exercise overnight parenting time due to the risk posed to the twins. The trial court held a hearing in May and June of 2016. Father's witnesses were the doctor for his twin son, who testified in favor of vaccinations, and an Episcopalian priest, who testified that Mother's Episcopalian faith had no tenet against vaccinations. Mother's expert witnesses testified about the risks and ineffectiveness of vaccines. On October 6, 2016, the trial court denied Father's petition to modify custody. The court denied Father's contempt petition and related motion for rule to show cause, reasoning that Mother complied with the paternity decree when she claimed a religious objection to vaccinating the child. The court also ordered Father to contribute \$10,000 toward Mother's attorney fees. Father appealed.

The Court concluded the trial court's failure to find Mother in contempt for submitting the religious exemption form to avoid having the child vaccinated and to circumvent the paternity decree was contrary to law. *Id.* at 271. Father argued the trial court misinterpreted the paternity decree when it failed to hold Mother in contempt. The Court outlined the following relevant general principles: (1) it is soundly within the trial court's discretion to determine whether a party is in contempt; (2) the court reviews the trial court's judgment under an abuse of discretion standard; (3) because the trial court denied Father's petition and motion, he was appealing from a negative judgment; (4) in such circumstances, the Court will reverse the judgment only if it is contrary to law—where the evidence leads to but one conclusion and the trial court reached the opposite conclusion; (5) in conducting its review, the Court will consider the evidence in the light most favorable to the appellant (multiple citations omitted). *Id.* at 268-69. Father contended the vaccination provision in the paternity decree provided no exceptions. Mother responded the child was not denied school enrollment because Mother submitted the religious objection form, so the child's vaccination was not required. Noting that in this case the trial court was interpreting an agreement of the parties, rather than an order of its own creation, the Court looked to case law which discusses the interpretation of settlement agreements. *Id.* at 269. The Court noted that IC 31-14-10-3 allows courts in paternity cases to approve settlement agreements that are in the best interests of the child. *Id.* The Court explained that the dissolution statute, IC 31-15-2-17(a), also allows parties to agree in writing to provisions for the custody and support of their children. *Id.* The Court reasoned that dissolution case law on the interpretation of settlement agreements could therefore be considered in addressing the issues presented by this case. *Id.* The Court observed that: (1) settlement agreements are contractual, and, once incorporated into a trial court's final order, become binding on the parties; (2) the court that adopted the agreement retains jurisdiction to interpret the terms of the agreement and to enforce them; (3) to interpret a contract, the court first considers the parties' intent as expressed in the language of the agreement; (4) the court must then read all the provisions as a whole to find an interpretation that harmonizes the contract's words and phrases and gives effect to the parties' intentions when they entered into the agreement; (5) if the language is unambiguous, the intent of the parties must be determined from the four corners of the agreement; (6) the terms of an agreement are ambiguous "only when reasonably intelligent persons would honestly differ as to the meanings of those terms" (quoting *Schmidt v. Schmidt*, 812 N.E.2d 1074, 1080 (Ind. Ct.

App. 2004)); (7) reviewing the terms of a written contract is a pure question of law and the standard of review is *de novo*. G.G.B.W. at 269-70.

The Court found the paternity decree gave Mother latitude to make a range of decisions without Father's input, but the vaccination provision was a specific exception to this general rule. Id. at 270. Quoting GPI at Danville Crossing, L.P. v. W. Cent. Conservancy Dist., 867 N.E.2d 645, 651 (Ind. Ct. App. 2007), *trans. denied*, the Court noted, "[i]t is well settled that when interpreting a contract, specific terms control over general terms." G.G.B.W. at 270. The Court opined that where the vaccination provision applied, the vaccination provision controlled. Id. Noting that the religious objection exemption to the vaccination requirement to attend public school had been in effect since 2005, the Court said the parties were presumed to have been aware of it when they entered into their agreement in 2011. Id. Because Mother's wide latitude for decision-making was limited by the specific vaccination provision, the Court held the paternity decree accordingly required that the child be vaccinated based on her school's requirements. Id. The Court observed that Mother was not entitled to invoke the religious exception to vaccination because she was subject to a court ordered agreement that she willingly entered into which required the child to be vaccinated. Id. at 271.

The Court held the trial court abused its discretion in denying Father's petition to modify legal custody of the child for the limited purpose of making medical decisions concerning vaccinations. Id. at 272. Father contended the trial court abused its discretion in denying his petition to modify legal custody of the child based on the child not receiving any vaccinations. The Court looked to IC 31-14-13-6, which provides that a trial court may modify a child-custody order only upon a showing that modification is in the child's best interests and that there has been a substantial change in one of more of the custody factors under IC 31-14-13-2. Id. at 271. Citing Julie C. v. Andrew C., 924 N.E.2d 1249, 1259-60 (Ind. Ct. App. 2010), the Court noted that, in modifying legal custody, a trial court should specifically consider whether there has been a change in one of the statutory factors at IC 31-14-14-2.3(c) which govern awards of joint legal custody. Id. The Court looked to IC 31-14-13-2.3(c)(2), the factor which provides "whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare". Id. Noting its conclusions that Mother was in contempt for submitting the religious objection form in order to circumvent the parties' agreement, the Court opined that based on Mother's actions, there was a substantial change in Mother's ability to communicate and cooperate with Father in advancing the child's welfare. Id. at 272. The Court held that, for the same reasons, modification of legal custody was in the child's best interests. Id.

In light of Mother's misconduct, the Court concluded the trial court abused its discretion in ordering Father to contribute \$10,000 toward her attorney fees. Id. at 273. The Court looked to IC 31-14-18-2, which provides that a court in a paternity action may order a party to pay: (1) a reasonable amount for the cost to the other party of maintaining an action; and (2) a reasonable amount for attorney's fees, including amounts for legal services provided and costs incurred, before the commencement of the proceedings or after the entry of judgment. Id. at 272. The Court noted: (1) in awarding attorney fees, the trial court must consider the resources of the parties, their economic condition, the ability of the parties to engage in gainful employment and

to earn adequate income, and such factors that bear on the reasonableness of the award; (2) the trial court may also consider any misconduct by one party that causes the other party to directly incur additional fees; and (3) whether one party is in a superior position to pay fees (multiple citations omitted). Id. The trial court determined that Mother's annual income was about \$60,000 and Father's annual income was about \$150,000. The Court explained that, if the record included only the disparity in incomes, the Court might have affirmed the fee award. Id. at 273. The Court explained that in this case Mother contemptuously circumvented the paternity decree, causing Father to initiate the proceedings, which Mother did not successfully defend, so the trial court abused its discretion in ordering Father to contribute \$10,000 toward her attorney fees. Id.