

Children's Law Center of Indiana



Custody and Parenting Time

3/15/16

In ***In Re Marriage of Steele-Giri v. Steele***, 51 N.E.3d 119 (Ind. 2016), the Indiana Supreme Court affirmed the trial court's order denying Mother's motion for custody modification and motion for contempt. *Id.* at 130. Parents' marriage was dissolved in 2007 when the child was two years old, and the trial court granted Parents joint legal and physical custody of the child. At that time, Father was living with his long-time girlfriend (Girlfriend), a stay-at-home mother, and her two children, A.G. and M.G. Father was at the time working a job with a flexible schedule. Two years later, Mother planned to relocate to California to be with her now-Husband (Stepfather). In response to Mother's relocation, the trial court entered an Agreed Order, modifying the custody order to grant Father primary physical custody, while Parents continued to share joint legal custody of the child. Mother was granted liberal parenting time with the child. Later, several changes occurred in the households of both parents. Mother and Stepfather had a son, the child's half-brother, and relocated to Oregon, where Stepfather began a new position pursuant to a ten-year contract. Mother became a stay-at-home mother. Father, meanwhile, changed jobs and began working 12-hour shifts in a new position. Girlfriend also took a full time job at a school and no longer stayed home during the day. Father enrolled the child in before and after school care. Since she began attending school, the child struggled academically. Despite the school staff's recommendation to do so, Father did not enroll the child in summer school and did not inform Mother of the recommendation. By the time she was attending third grade, the child was still performing poorly in school, but her teacher reported that she was pleased with the child's progress. The child shared a bedroom with Girlfriend's child, M.G., and the two children did not always get along, although Father testified that the nature of their fighting was that of sibling rivalry. Mother filed a verified petition for modification of custody and a verified petition for rule to show cause. The trial court denied both petitions, and Mother appealed. After the Court of Appeals granted Mother's appeal and reversed the trial court's orders at ***Steele-Giri v. Steele***, 40 N.E.3d 513 (Ind. Ct. App. 2015), the Indiana Supreme Court granted transfer and vacated the Court of Appeals opinion. *Id.* at 123. The Supreme Court ordered Mother to transfer physical custody of the child back to father during the child's winter break from school.

The Court held that the trial court's findings of fact for the issue of custody modification were not clearly erroneous. *Id.* at 125. The Court noted that there was "conflicting evidence" about the child's relationship with M.G. and about the child's adjustment to school. *Id.* at 125-26. Noting that strong deference is given to a trial court in matters of family law, the Court explained that the mere fact there is some evidence in the record to support a different finding is

insufficient to reverse a trial court's order. Id. at 125. The Court reasoned that, although the child was still struggling academically, her teacher testified that she was pleased with the child's progress, and the child was improving her performance. Id. at 126. The Court further reasoned that, although Mother made allegations that M.G. had "shoved" the child in Father's home, Mother did not testify about the alleged shoving, and Father, who was in a position to observe the children on a daily basis, testified that the dissonance between the child and M.G. was no more than sibling rivalry. Id. Because there was evidence in the record to support the trial court's denial of Mother's petition for modification of custody, the Court affirmed the trial court's denial. Id. at 123.

The Court affirmed the trial court's finding that modification of custody was not in the child's best interests. Id. at 128. The Court noted that a party seeking modification of a custody order bears the burden of demonstrating that modification is appropriate, and that "permanence and stability" are paramount concerns in making such a determination. Id. (citation omitted). The Court noted evidence that a modification of custody would impair Father's ability to exercise parenting time as well as the child's close relationship with her paternal grandparents, and found that the trial court could have concluded that modification would not be in the child's best interests. Id. Noting that the standard of review for modification of custody is highly deferential to the trial court's decision, the Court affirmed the trial court's order. Id. at 123.

The Court affirmed the trial court's denial of Mother's motion for rule to show cause. Id. at 130. The Court explained that trial courts are given great deference in determinations of contempt. Id. Although Father at times did not give Mother information about the child's academic progress and needs, the Court noted that there was evidence in the record that Father believed Mother could access the child's records online and that Mother had indicated she was receiving information from the school. Id. at 129-30. Furthermore, the Court observed that the GAL testified Father may not himself have seen some of the information Mother complained he was withholding. Id. at 130. The Court held that the Court of Appeals erred in substituting its own judgment over the trial court's, and found that the trial court's denial of Mother's motion for contempt was not an abuse of discretion and must be affirmed. Id.