

Children's Law Center of Indiana



Custody and Parenting Time

5/24/2013

In **In re the Paternity of J.T.**, 988 N.E.2d 398 (Ind. Ct. App. 2013), the Court affirmed the trial court's decision granting custody to Father because of Mother's routine and severe denial of parenting time to Father. The Court held that a substantial change in the interrelationship of the parties had been established by Father, and this warranted a modification in custody. In April 2010, paternity of the three children was established in Father and a parenting time order for Father with the children was issued. Father filed petitions to show cause in July 2010, January 2012, and April 2012, alleging that Mother was in contempt of the parenting time order. Father also requested a modification of custody in April 2012. After a hearing, the trial court found Mother to be in contempt and awarded Father sole legal and physical custody of the children.

The Court held that a substantial change in circumstances in the interrelationship of the parties was established by evidence that Mother routinely denied Father parenting time, and this substantial change permitted a modification of custody. *Id.* at 401. The Court noted that a child custody order may not be changed unless the modification is in the best interests of the child and there is substantial change in one or more of the factors to be considered. *Id.* at 400 (citing IC 31-17-2-21). The Court also noted that one of the relevant factors under IC 31-17-2-8 that must be considered includes the interaction and interrelationship of the child with the parent or parents. *J.T.* at 400 (citing IC 31-17-2-8). The trial court determined that it was in the best interests of the children to modify the existing custody order; otherwise, the children would be denied any meaningful relationship with Father. *Id.* at 401. The Court opined that the findings made by the trial court were sufficient to support its judgment, and to show that the trial court had not abused its discretion when it granted Father sole legal and physical custody of the children. *Id.* at 400. The findings were as follows: (1) since April 2010, Mother engaged in a continuing pattern of denying parenting time to Father; (2) Father filed three separate contempt petitions regarding the denial of his parenting time; (3) from December 2011 to July 2012, Mother only permitted Father to have a six minute telephone conversation with the children, an eight minute in person conversation with the children outside Mother's house, and another six minute in person conversation with the children outside Mother's house; (4) Father was denied parenting time on thirty-one separate occasions; and (5) Mother had "acted in complete defiance of the existing parenting time orders over an extended period of time" and her pattern denying Father parenting time was "not likely to change, given her demeanor, testimony, and past failure to honor her assurances..." *Id.* 400-01.